be appropriate to protect the interests of individuals covered under FEHBP and alleviate any adverse impact on FEHBP that may result from the offering of such health benefit plans.

(4) **FEHBP DEFINED.**—In this section, the term ‘‘FEHBP’’ means the Federal Employees Health Benefits Program offered under chapter 55 of title 5, United States Code.

(b) **CONFORMING AMENDMENTS.**—

(1) Paragraph (1) of section 35(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

‘‘(K) Coverage under a health benefits plan offered under section 362(a)(1) of the Fair Wage, Competition, and Investment Act of 2005.’’

(2) Section 173(f)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(A)) is amended by adding at the end the following new clause:

‘‘(xi) Coverage under a health benefits plan offered under section 362(a)(1) of the Fair Wage, Competition, and Investment Act of 2005.’’

**SEC. 363. CLARIFICATION OF ELIGIBILITY OF SPOUSE OF CERTAIN INDIVIDUALS ENTITLED TO MEDICARE.**

(a) **IN GENERAL.**—Subsection (b) of section 35 of the Internal Revenue Code of 1986 (defining a eligible coverage month) is amended by adding at the end the following:

‘‘(3) **SPECIAL RULE FOR SPOUSE OF INDIVIDUAL ENTITLED TO MEDICARE.**—Any month which includes the eligible coverage month with respect to a taxpayer (determined without regard to subsection (f)(2)(A)) shall be an eligible coverage month for any spouse of such taxpayer.’’

(b) **CONFORMING AMENDMENT.**—Section 173(f)(5)(A)(i) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(5)(A)(i)) is amended by inserting ‘‘including with respect to any month for which the eligible individual would have been treated as such but for the application of paragraph (7)(B)(i))’’ before the comma.

**Subtitle D—Sense of the Senate on Free Trade Agreements**

**SEC. 371. SENSE OF THE SENATE ON FREE TRADE AGREEMENTS.**

(a) **FINDINGS.**—The Senate makes the following findings:

(1) The United States is participating in the Doha Round of World Trade Organization (‘‘WTO’’) negotiations, which seeks to lower trade barriers for all members of the WTO.

(2) In addition to participating in the Doha Round of WTO negotiations, the United States is negotiating bilateral free trade agreements with 20 countries.

(3) Only 1 of those 20 countries is among the top 30 trading partners of the United States.

(4) During the debate on the legislation that was enacted as the Trade Act of 2002 (Public Law 107-210; 115 Stat. 933), a representative of the President argued that “[i]ncreased trade will help our workers, farmers, businesses, and economy by enhancing employment opportunities, opening more markets to American goods and services, and increasing choices and lowering costs for consumers”.

(5) During that debate and on other occasions, the President and individuals in the Executive Branch of the United States have repeatedly argued that increased trade means an increase in the number of jobs in the United States and a higher standard of living for people in the United States.

(6) The President and individuals in the Executive Branch of the United States have also argued that trade expands markets for United States goods and services, creates higher-paying jobs in the United States, and

**STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS**

By Mr. GRASSLEY (for himself, Mr. KOHL, Mr. HATCH, Mr. CARPER, Mr. FRIST, Mr. CHAFEE, Mr. DODD, Mrs. FEINSTEIN, Mr. HAGEL, Mr. KYL, Ms. LANDRIEU, Mrs. LINCOLN, Mr. LUGAR, Mr. MCCAIN, Mr. SCHUMER, Mr. THUNE, Mr. VITTER, Mr. VOINOVICH, Mr. LOTT, Mr. ANDERSON, Ms. SNOWE, Mr. SESSIONS, Mr. DEMINT, Mr. LIEBERMAN, Mr. MARTINEZ, and Mr. ENNEN):

S. 5. A bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to join Senators GRASSLEY, HATCH, CARPER, and many others in introducing the Class Action Fairness Act of 2005. This legislation addresses the current problem with class action litigation, particularly unfair and abusive settlements that shortchange consumers across America.

The time for this bill has come. We have worked together on a bipartisan basis on this legislation in past Congresses and came within cases that primarily involve people from only one State and that interpret State law will remain in State court. These changes will ensure that class action settlements which are approved by the courts are fair to consumers in the appropriate venues and that no case that has merit will be turned away.

We have a simple story to tell. Consumers are too often getting the short end of the stick in class action cases, recovering coupons or pocket change, while their lawyers reap millions. Many of these complex class action cases proceed exactly as we would hope, litigated vigorously by strong advocates, get their day in court or reach a positive settlement that is good for the parties and handled well by their attorney.

Unfortunately, this is not how it always works. Rather, more and more frequently, some are taking advantage of the system and, as a result, consumers are getting the short end of the stick, recovering coupons or pocket change, while the real reward is going to others. The Washington Post put it clearly, “no portion of the American civil justice system is more of a mess than the world of class actions.”

Our remedy is straightforward. Consumers deserve notices that are written in plain English so that they can understand their rights and responsibilities in the lawsuit. Too many of the class action notices are designed to be impossible to comprehend. Further, if the cases are settled, the notice to the members must clearly describe the terms of the settlement, the benefits to each plaintiff and a summary of the attorneys’ fees in the case and how they were calculated. We are grateful that the Federal Judicial Conference already adopted our idea and has already begun to improve the notices provided to class action plaintiffs.

Second, State attorneys general should be notified of proposed class action settlements to stop abusive cases if they want. This encourages a neutral third party to weigh in on whether a settlement is fair and to alert the court if they do not believe that it is. The Attorney General review is an extra layer of security for the plaintiffs and designed to make sure that abusive settlements are not approved without a critical review by one or more experts.

Third, a class action consumer bill of rights will help limit coupon or other unfair settlements.

Finally, we allow many class action lawsuits to be removed to Federal court. This is only common sense. These are national cases affecting consumers in 50 States. If the court rules were being drafted today, these are exactly the types of cases which we would want and expect to be tried in Federal court.

Stories of nightmare class action settlements that affect consumers around the country are all too frequent. For example, a suit against Blockbuster video yielded dollar off coupons for future video rentals for the plaintiffs while their attorneys collected $9.25 million. In California State court, a class of 40 million consumers received $13 rebate on their next purchase of a certain brand of toothpaste. Unfortunately, instead of redeeming the coupons, in essence, the
plaintiffs received nothing, while their attorneys took almost $6 million in legal fees. We could list many, many more examples, but let me discuss just one more case that is almost too strange to believe.

I am speaking about the Bank ofBoston class action suit and the outrageous case of Martha Preston from Baraboo, WI. She was an unnamed class member of a class action lawsuit against the mortgage company that ended in a settlement. The plaintiffs’ lawyers were supposed to represent her. Instead, the settlement that they negotiated for her was a bad joke. She received $4 and change in the lawsuit, while her attorneys pocketed $8 million.

Yet, the huge sums her attorneys received were not the worst of the story. Soon after receiving her $4, Ms. Preston discovered that her lawyers took $200, 20 times her recovery, from her escrow account to help pay their fees. Naturally shocked, she and the other plaintiffs sued the lawyers who quickly turned around and sued her in Alabama, a State she had never visited, for $22 million. Preston lost the case, and she was $75 poorer for her class action experience, but she also had to defend herself against a $25 million suit by the very people who took advantage of her in the first place.

No one can argue with a straight face that the class action process is not in serious need of reform.

Comprehensive studies support the anecdotes we have discussed. For example, a study on the class action problem by the Manhattan Institute demonstrates that class action cases are being brought disproportionately in a few counties where plaintiffs expect to be able to take advantage of lax certification rules.

The study focused on three county courts—Madison County, IL; Jefferson County, TX; and Palm Beach County, FL—that have seen a steep rise in class action filings over the last several years that seems disproportional to their populations. They found that rural Madison County, IL, ranked third nationwide, after Los Angeles County, CA, and Cook County, IL, in the estimated number of class actions filed each year, whereas rural Jefferson County and Palm Beach County ranked eighth and ninth, respectively. As plaintiffs attorneys found that Madison County was a welcoming host, the number of class action suits filed there rose 1,850 percent between 1998 and 2000.

Another trend evident in the research was the use of “cut-and-paste” complaints in which plaintiffs’ attorneys file a number of suits against different defendants, often in the same district, to hike challenging standard industry practices. For example, in one situation, six law firms filed nine nearly identical class actions in Madison County in the same week alleging that the automobile insurance industry is defrauding Americans in the way that they calculate claims rates for totaled vehicles.

The system is not working as intended and needs to be fixed. The way to fix it is to move more of these cases currently being brought in small State courts like Madison County, IL, to Federal court.

The Federal courts are better venues for class actions for a variety of reasons articulated clearly in a RAND study. RAND proposed three primary explanations why these cases should be in Federal court. “First, federal judges scrutinize class action allegations more strictly than state judges, and thereby deny certification in situations where a state judge might grant it improperly. Second, state judges may not have adequate resources to oversee and manage class actions with a national scope. Finally, if a single judge is to be charged with deciding what law will apply in a multistate class action, it is more appropriate that this take place in Federal court than in state court.”

We all know that class actions can result in some important benefits for class members and society, and that most class lawyers and most State courts are acting responsibly. Class actions have been used to desegregate racially divided schools, to obtain redress for victims of employment discrimination, and to compensate individuals exposed to toxic chemicals or defective products. Class actions increase access to our civil justice system because they enable people to pursue claims that collectively would otherwise be too small to litigate.

The difficulty in any effort to improve a basically good system is weeding out the abuses without causing undue damage. The legislation we propose attempts to do this.

Let me emphasize the limited scope of this legislation. We do not close the courthouse door to any class action. We do not require that State attorneys general do anything with the notice they receive to reasonably control fees for class lawyers. And we do not mandate that every class action be brought in Federal court. Instead, we simply promote closer and fairer scrutiny of class actions and class settlements.

Right now, people across the country can be dragged into lawsuits unaware of their rights and unarmed on the legal battlefield. What our bill does is give back to regular people their rights and representation. This measure may not stop all abuses, but it moves us forward. It will help ensure that unsuspecting people like Martha Preston don’t get ripped off.

We believe this is a moderate approach to correct the worst abuses, while preserving the benefits of class actions. It is both pro-consumer and pro-defendant. We believe it will make a difference.

By Ms. COLLINS (for herself, Mr. CARPER, Mr. VONNOVICH, Mr. FEINGOLD, Mr. AKA, and Mr. LIEBERMAN):

S. 21. A bill to provide for homeland security grant coordination and simplification, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.
Establishment of these programs will mean first responders can spend more time training to save lives and less time filling out paper work. The inflexible structure of past homeland security funding, along with shifting federal requirements and increasing amounts of paperwork, poses a number of challenges to State and local governments as they attempt to provide these funds to first responders.

The legislation would provide greater flexibility in the use of these unspent funds. It would give the Department of Homeland Security flexibility to allow States, via a waiver from the Secretary, to use funds from one category, such as training, for another purpose, such as purchasing equipment.

The Senate Committee on Homeland Security and Governmental Affairs will act promptly to mark-up and report this important measure to establish a streamlined, efficient, and fair method for homeland security funds to get into the hands of first responders.

By Mr. STEVENS (for himself, Mr. INOUYE, Ms. SNOWE, and Mr. DODD):

S. 39—A bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, I introduce today S. 39, the “National Ocean Exploration Program Act” to expand exploration and knowledge of our Nation’s oceans. When I introduced this bill in the 108th Congress, Senator Hollings and Senator INOUYE were original co-sponsors. Senator Hollings has left this body, but he worked closely with Senator INOUYE and me on this bill and we thank him for his contributions to ocean policy. Senators SNOWE and DODD would like to be added as original co-sponsors of this bill.

Senator INOUYE and I introduce this legislation today in an effort to increase and coordinate research and exploration of our Nation’s oceans. Alaska and Hawaii are uniquely dependent on the ocean for food, employment, recreation, and the delivery of goods. However, approximately 95 percent of the ocean floor remains unexplored, much of it located in the polar latitudes and the southern ocean. This legislation will advance ocean exploration and increase funding for greater research.

In its final report, the U.S. Commission on Ocean Policy recommended that the National Oceanic and Atmospheric Administration and the National Science Foundation lead an expanded National Ocean Exploration Program. This legislation will accomplish that goal.

The National Exploration Program expands ocean exploration. Through this act we will determine whether there are new marine substances with potential therapeutic benefits; study unique marine ecosystems, organisms and the geology of the world’s oceans; and maximize ocean research by integrating multiple scientific disciplines in the ocean science community.

The program will focus on remote ocean research and exploration. Specifically, research will be conducted on hydrothermal vents communities and seamounts. Increased research in these areas, where organisms exist in highly toxic environments, should yield significant scientific and medical breakthroughs.

Decades ago I helped Oscar Dyson, a great Alaska fisherman, secure a small grant to explore the North Pacific. With that grant he discovered a great number of marine species that are now considered vital to the North Pacific. It is my hope that the National Ocean Exploration Program Act will be the catalyst for that type of ocean exploration and discovery.

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

S. 39

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “National Ocean Exploration Program Act”.

SEC. 2. ESTABLISHMENT.

The Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall, in consultation with the National Science Foundation and other governmental entities in order to support the development of improved oceanographic sciences, establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration.

SEC. 3. PURPOSES.

The purposes of the program are the following:

(1) To explore the physical, biological, chemical, geological, archaeological, temporal, and other characteristics of the oceans to benefit, inform, and inspire the American people.

(2) To create missions and scientific activities of discovery that will improve our understanding, appreciation, and stewardship of the unique marine ecosystems, organisms, chemistry, and geology of the world’s oceans, and to enhance knowledge of submerged maritime historical and archaeological sites.

(3) To facilitate discovery of marine natural products from these ecosystems that may have potential beneficial uses, including those that may help combat disease or provide therapeutic benefits.

(4) To communicate such discoveries and knowledge to policymakers, regulators, researchers, educators, and interested non-governmental entities in order to support policy decisions and additional scientific research and development.

(5) To maximize effectiveness by integrating multiple scientific disciplines, employing the diverse resources of the ocean science community, and making ocean exploration data and information available in a timely and consistent manner.

(6) To achieve heightened education, environmental literacy, public understanding and appreciation of the oceans.

SEC. 4. AUTHORITIES.

In carrying out the program the Administrator of the National Oceanic and Atmospheric Administration shall—

(1) conduct interdisciplinary exploration voyages or other scientific activities in conjunction with other Federal agencies or academic or educational institutions, to survey little known areas and the beds of the ocean, inventory, observe, and assess living and nonliving marine resources, and report such findings;

(2) give priority attention to deep ocean regions, with a focus on surveying deep water marine systems that hold potential for important scientific and medical discoveries, such as hydrothermal vent communities and seamounts;

(3) conduct scientific voyages to locate, document, and study unique marine ecosystems, organisms, and other ocean exploration activities that combine archaeology and oceanographic sciences;

(4) develop, in consultation with the National Science Foundation, a transparent process for reviewing and approving proposals for activities to be conducted under this program;

(5) enhance the technical capability of the United States marine science community by promoting the development of improved oceanographic research platforms, navigation, and data collection systems, as well as underwater platforms and sensors;

(6) conduct public education and outreach activities that improve understanding of oceans, resources, and the public’s role in preserving ocean health; and

(7) accept donations of property, data, and equipment to be applied for the purpose of exploring the oceans or increasing knowledge of the ocean’s edge.

(8) establish an ocean exploration forum to encourage the exchange of ideas and communication among experts and other stakeholders in order to enhance the scientific and technical expertise and relevance of the national program.

SEC. 5. EXPLORATION TECHNOLOGY AND INFRASTRUCTURE TASK FORCE.

The National Oceanic and Atmospheric Administration, in coordination with the National Aeronautics and Space Administration, the U.S. Geological Survey, Office of Naval Research, and other Federal, non-governmental, academic, and other experts, shall convene an ocean technology and infrastructure task force to develop and implement a strategy:

(1) to facilitate transfer of new exploration technology to the program;

(2) to improve availability of communications infrastructure, including satellite capabilities, to the program;

(3) to develop an integrated, workable and comprehensive data management information processing system that will make information on unique and significant features obtained by the program available for research and management purposes; and

(4) to encourage collaborative partnerships with governmental and non-governmental entities that will assist in transferring exploration technology and technical expertise to the program.

SEC. 6. INTERAGENCY FINANCING.

The National Oceanic and Atmospheric Administration, the National Science Foundation, and other Federal agencies involved in the program, are authorized to participate in interagency financing and share, transfer, reserve, and spend funds appropriated to any federal participant the program for the purposes of carrying out any administrative or programmatic project or activity under this program. Funds may be transferred among such departments and agencies through a proper instrument that specifies the
S. 145

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

SECTION 1. REQUIREMENT FOR 12 OPERATIONAL AIRCRAFT CARRIERS WITHIN NAVAL FORCES OF THE NAVY.

Section 5062 of title 10, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) The naval combat forces of the Navy shall include not less than 12 operational aircraft carriers; to the Committee on Armed Services.

Mr. NELSON of Florida. Mr. President, I feel strongly that any reduction in the size of the Nation's carrier fleet is not in the best interest of national security. Therefore, I am introducing legislation to require the Navy to include not less than 12 operational aircraft carriers. I am pleased to be joined by my co-sponsors, Senator MARTINEZ, Senator ALLEN, and Senator SESSIONS.

America's aircraft carrier fleet has played and continues to play a critical role in the global war on terrorism. Carrier-based strike, electronic warfare, and reconnaissance aircraft, and even more importantly, special operations forces have provided the most responsive and capable support throughout operations in the Gulf region. The strategic environment to suggest that America is more, or as secure with eleven carriers as we are with twelve. The operational tempo of our aircraft carriers has never been higher and it is hard to imagine that it will slow any time soon.

The range of strategic threats and opportunities that face the Nation at this moment in the war on terror does not support the idea that we can reduce our fleet without creating significant and unavoidable risk to our global reach and sustainability. I urge my colleagues to join with us to ensure the Navy's global flexibility and striking power. Cutting our carrier fleet now increases strategic risk and reduces our combat power and capability, all for relatively small budgetary savings.

I intend to work with Chairman WARNER and Senator LEVIN to gain the Armed Services Committee's approval of this legislation, and its passage by the full Senate. Identical legislation is being introduced in the House by Representative ANDER CRENSHAW, and I look forward to working with my colleagues in both houses to see that this vital national security legislation reaches the President's desk.

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

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

S. 146

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

SECTION 1. REQUIREMENT FOR 12 OPERATIONAL AIRCRAFT CARRIERS WITHIN NAVAL FORCES OF THE NAVY.

Section 5062 of title 10, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) The naval combat forces of the Navy shall include not less than 12 operational aircraft carriers; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, many of you know of the widespread support and advocacy on the importance of addressing the plight of Filipino World War II veterans. As an American, I believe the treatment of Philippine World War II veterans is bleak and shameful. The Philippines possessed sovereignty in 1898, when it was ceded by Spain, following the Spanish-American War. In 1934, the Congress enacted the Philippine Independence Act, Public Law 73–127, which provided a 10-year time frame for the independence of the Philippines. Between 1934 and final independence in 1946, the United States retained certain powers over the Philippines including the right to call military forces organized by the newly-formed Commonwealth government into the service of the United States Armed Forces.

The Commonwealth Army of the Philippines was called to serve with the United States Armed Forces in the Far East during World War II under President Roosevelt's July 26, 1941 military order. The Filipinos who served were entitled to full veterans' benefits by reason of their active service with our armed forces. Hundreds were wounded and many hundreds more died in battle. Shortly after Japan's surrender, the Congress enacted the Armed Forces Volunteer Recruitment Act of 1945 for the purpose of sending Filipino troops to occupy enemy lands, and to oversee military installations at varied overseas locations. These troops were authorized to receive pay and allowances for services performed throughout the Western Pacific. Although hostilities had ceased, wartime service of these troops continued as a matter of law until the end of 1946. Despite all of their sacrifices, on February 18, 1946, the Congress passed the Recession Act of 1946, now codified as Section 107 of Title 38 of the United States Code. The 1946 Act deemed that the service performed by these Filipino veterans would not be recognized as "active service" for the purpose of any U.S. law conferring "rights, privileges, services, and benefits". Sections 107 and 108 denied Filipino veterans access to health care, particularly for non-service-connected disabilities, and pension benefits. Section 107 also limited service-connected disability and death compensation for Filipino veterans to 50 percent of what their American counterparts receive.

On May 27, 1946, the Congress enacted the Second Supplemental Surplus Appropriations Recession Act, which duplicated the language that had eliminated Filipino veterans' benefits under the First Recession Act. Thus, Filipino veterans who fought in the service of the United States during World War II have been precluded from receiving the same benefits that had been available to them before 1946, and that are available to all other veterans of our armed forces regardless of race, national origin, or citizenship status.

The Filipino Veterans Equity Act, which I introduce today, would restore the benefits due to these veterans by granting full recognition of service for the sacrifices they made during World War II. These benefits include veterans health care, service-connected disability compensation, non-service-connected disability compensation, dependant indemnity compensation, death pension, and full burial benefits.

Throughout the years, I have sponsored several measures to rectify the lack of appreciation America has shown to these gallant men and women who stood in harm's way with our American soldiers and fought the common enemy during World War II. It is time that we as a Nation, recognize our long-standing history and friendship with the Philippines. I believe that the Philippines served in the Commonwealth Army during World War II, there are approximately 60,000 Filipino veterans currently residing in the United States and the Philippines. According to the Department of Veterans Affairs, the Filipino veteran population is expected to decrease to approximately 20,000 or roughly one-third of the current population by 2010.

Heroes should never be forgotten or ignored; let us not turn our backs on those who sacrificed so much. Let us instead work to repay all of these brave men for their sacrifices by providing them the veterans' benefits they deserve.

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

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 1. SHORT TITLE. 
This Act may be cited as the “Filipino Veterans Equity Act of 2005.”

SEC. 2. CERTAIN SERVICE IN THE ORGANIZED MILITARY FORCES OF THE PHILIPPINES AND THE PHILIPPINE SCOUTS DEEMED TO BE ACTIVE SERVICE. 
(a) In general.—Section 107 of title 38, United States Code, is amended—
(1) in subsection (a)—
(A) by striking “not after” after “Army of the United States, shall”; and
(B) by striking “—except benefits under—” and all that follows in that subsection and inserting a period;
(2) in subsection (b)—
(A) by striking “not” after “Armed Forces Voluntary Recruitment Act of 1946 shall”; and
(B) by striking “except” and all that follows in that subsection and inserting a period; and
(3) by striking subsections (c) and (d).
(b) Conforming Amendments.—(1) The heading of such section is amended to read as follows:
“107. Certain service deemed to be active service: service in organized military forces of the Philippines and in the Philippine Scouts.”

SEC. 3. EFFECTIVE DATE. 
(a) In General.—The amendments made by this Act shall take effect on January 1, 2005.
(b) Applicability.—No benefits shall accrue to any person for any period before the effective date of this Act by reason of the amendments made by this Act.

By Mr. AKAKA (for himself and Mr. INOUYE):
S. 147. A bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President, I rise today with the senior Senator from Hawaii to introduce the Native Hawaiian Government Reorganization Act of 2005. This is bipartisan legislation that we have been working on with our colleagues in Hawaii’s Congressional delegation for the past 6 years. During the past 2 years, we have worked closely with Hawaii’s Governor, Linda Lingle, Hawaii’s bipartisan governor in 40 years, to get this legislation enacted. We have also worked closely with the Hawaii State legislature which has passed two resolutions unanimously in support of Federal Recognition for Native Hawaiians. I mention this to underscore the fact that this is bipartisan legislation.

The Native Hawaiian Government Reorganization Act of 2005 does three things:
(1) It authorizes the Office of Native Hawaiian Relations in the Department of the Interior to serve as a liaison between Native Hawaiians and the federal government. Funding for Native Hawaiian programs currently administered by the Departments of Health and Human Services, HHS, Education, or Housing and Urban Development, HUD, would continue to be administered by those agencies.
(2) It establishes the Native Hawaiian Interagency Coordinating Group—an interagency group to be composed of federal officials from agencies which administer Native Hawaiian programs and services to determine that Native Hawaiians have their own programs which are currently administered by different agencies in the Federal Government. This group would encourage communication and collaboration between the Federal agencies working with Native Hawaiians.
(3) It establishes a process for the reorganization of the Native Hawaiian governing entity. While Congress has traditionally treated Native Hawaiians through the Native Hawaiian Islands and Alaska Natives, the formal policy of self-governance and self determination has not been extended to Native Hawaiians. The bill establishes a process for the reorganization of the Native Hawaiian governing entity for the purposes of Federal recognition. The bill itself does not extend Federal recognition—it authorizes the process for Federal recognition.

Following recognition of the Native Hawaiian government, negotiations will ensue between the Native Hawaiian governing entity and Federal and State Governments over matters such as the transfer of lands and natural resources; the exercise of essential governmental authority over any transferred lands, natural resources and other assets, including land use; the exercise of civil and criminal jurisdiction, and the delegation of governmental powers and authority to the Native Hawaiian governing entity by the Federal and State Governments. This reflects the cooperation between the Federal and State governments and the Native Hawaiian governing entity. It also reflects a new era of recognition providing the governing entity with a seat at the table to negotiate such matters.

The bill will not diminish funding for American Indians and Alaska Natives because Native Hawaiians have their own education, health and housing programs which have been separately funded since their creation in 1988.

Finally, the bill does not authorize gaming in Hawaii.

Some have characterized this bill as race-based legislation. As indigenous peoples, Native Hawaiians never relinquished their inherent rights to sovereignty. We were a government that governed ourselves. The century long history of the Native Hawaiian government ended in 1893 with great emotion and despair, inspired by the dignity and grace of Queen Liliuokalani, Native Hawaiians have preserved their culture, tradition, subsistence rights, language, and distinct communities. We have tried to build a better life. My Native Hawaiian grandparents and parents had America come into their homeland and forever change their lives. This is a profound difference.

I am proud to be an American, and I am proud to have served my country in the military. As long as Hawaii is a part of the United States, however, I believe the United States must fulfill its responsibility to Hawaii’s indigenous peoples. I believe it is imperative to clarify the existing legal and political relationship between the United States and Native Hawaiians by providing Native Hawaiians with Federal recognition for the purposes of a government-to-government relationship. Therefore, because this legislation is based on the political and legal relationship between the United States and its indigenous peoples, which has been upheld for many, many years, by the United States Supreme Court based on the Indian Commerce Clause, I strenuously disagree with the mischaracterization of this legislation as race-based.

Why is this bill so important? This bill is critical for the people of Hawaii because of the monumental step forward it provides for Hawaii’s indigenous peoples. As many of my colleagues know, the Kingdom of Hawaii was overthrown in 1893 with the assistance of agents from the United States. In 1935, we enacted Public Law 103-150, commonly referred to as the Apology Resolution, which acknowledged the illegal overthrow of the Kingdom of Hawaii and the deprivation of the rights of Native Hawaiians to self determination. The Apology Resolution committed the United States to acknowledge the ramifications of the overthrow in order to provide a proper foundation of reconciliation between the United States and the Native Hawaiian people.

This bill provides a step forward in the process of reconciliation. The bill establishes the structure for Native Hawaiians and non-Native Hawaiians to discuss longstanding issues resulting from the overthrow of the Kingdom of Hawaii. The structure is the negotiation process between the federally recognized Native Hawaiian government and the Federal and State governments that I referred to earlier in my statement.

This discussion has been assiduously avoided because no one has known how to address or deal with the emotions that are involved when these matters are discussed. There has been no structured process. Instead, there has been fear as to what the discussion would entail, causing people to avoid and shirk the issues. Such behavior has led...
to high levels of anger and frustration as well as misunderstanding between Native Hawaiians and non-Native Hawaiians.

As a young child, I was discouraged from speaking Hawaiian because I was told I could not succeed in the Western world. My parents witnessed the overthrow and lived during a time when all things Hawaiian, including language, which they both spoke fluently, hula, custom, and tradition, were viewed unfavorably and discouraged. My children, however, have had the advantage of growing up during the Hawaiian renaissance, a period of revival for Hawaiian language, custom, and tradition. My grandchildren, benefiting from this revival, can speak Hawaiian and know so much about our history.

It is this generation, however, that is growing impatient with the lack of progress in efforts to resolve longstanding issues resulting from the overthrow dealing with political status and lands, we were told not to "make waves" by addressing these matters. My children, however, have not discussed these matters. It is this generation that cannot believe that we, as Native Hawaiians, have let the situation continue for 110 years.

It is an active minority within this generation, spurred by frustration and sadness, that embraces independence from the United States.

It is for this generation that I bring this bill forward to ensure that there is a structured process to address these issues.

My point is that Hawaii’s people, both Native Hawaiians and non-Native Hawaiians, are no longer willing to pretend that the longstanding issues resulting from the overthrow do not exist. We need the structured process that this bill provides, first in reorganizing the Native Hawaiian governing entity, and second by providing that entity with the opportunity to negotiate and resolve issues with the Federal government that facilitate the growing mistrust, misunderstanding, anger, and frustration about these matters in Hawaii. This can only be done through a government-to-government relationship.

This bill is of significant importance in Hawaii. It has no impact on any of the other states. Hawaii’s entire Congressional delegation supports this legislation. Our Governor, the first Republican to be elected in 40 years, supports this legislation. Indeed, it is her Number One Priority. The Hawaii State Legislature supports this legislation.

and the people of Hawaii support this legislation.

I ask you to stand with me and my esteemed friend, Hawaii’s revered senator, our two House members, our Governor, the State legislature, and the people of Hawaii to enact this critical measure for my state.

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

Mr. KAKA’. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 147
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. This Act may be cited as the “Native Hawaiian Government Reorganization Act of 2003”.

SEC. 2. FINDINGS.
Congress finds that—

(A) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;

(B) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are an indigenous, native people of the United States;

(C) the United States has a special political relationship with the Kingdom of Hawaii; and

(D) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States agreed to allocate approximately 562,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;

(E) by setting aside 200,000 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining native communities in Hawaii;

(F) by setting aside 40,000 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining native communities in Hawaii;

(G) by setting aside 40,000 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining native communities in Hawaii;

(H) by setting aside 40,000 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining native communities in Hawaii;

(I) by setting aside 40,000 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining native communities in Hawaii;

(J) Native Hawaiians have continuously been viewed favorably and discouraged from speaking the language and practicing Hawaiian customs and tradition.

(K) First at the request of the people of Hawaii, and from 1826 until 1893, the United States, including Native Hawaiians; and

(L) Native Hawaiians have a special political relationship with the Kingdom of Hawaii.

(M) despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their cultural and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians.

(N) Native Hawaiians have continuously been viewed favorably and discouraged from speaking Hawaiian because I was told I needed to succeed in the Western world.

(O) Native Hawaiians have continuously been viewed favorably and discouraged from speaking Hawaiian because I was told I needed to succeed in the Western world.

(P) Native Hawaiians have continuously been viewed favorably and discouraged from speaking Hawaiian because I was told I needed to succeed in the Western world.

(Q) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through a treaty with Hawaii or through a plebiscite or referendum; and

(R) Native Hawaiians continue to maintain other distinctly native areas in Hawaii; and

(S) Native Hawaiians have a special political relationship with the Kingdom of Hawaii.

(T) for 5 purposes, 1 of which is the beginning of a new era in the relationship between the United States and the people of Hawaii support this legislative resolution.

(U) with the active participation of Hawaii and the people of Hawaii support this legislative resolution.

(V) Native Hawaiians have also given expression to their rights as native people to self-determination, self-government, and economic self-sufficiency—

(W) Native Hawaiians have also given expression to their rights as native people to self-determination, self-government, and economic self-sufficiency—

(X) Native Hawaiians have also given expression to their rights as native people to self-determination, self-government, and economic self-sufficiency—

(Y) Native Hawaiians have also given expression to their rights as native people to self-determination, self-government, and economic self-sufficiency—

(Z) Native Hawaiians have also given expression to their rights as native people to self-determination, self-government, and economic self-sufficiency—

(A) through the provision of governmental services to Native Hawaiians, including the provision of—

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children’s services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

(x) native language immersion programs;

(xi) native language immersion programs;

(xii) native language immersion programs; and

(xiii) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(xiv) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(xv) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(xvi) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

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(xviii) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(xix) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(xx) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(XX) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(XXI) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural usage areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.
and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(19) this Act provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a Native Hawaiian governing entity for the purpose of recognizing and expressing to the United States their inherent right to self-determination and self-governance;

(20) Congress

(A) reaffirmed that the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) recognizes that Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted statutes of its own accord, under its constitution, and in furtherance of the purposes of the Hawaiian Homes Commission Act (42 U.S.C. 450l et seq., approved March 18, 1920 (Public Law 66-3, 73 Stat. 4), by—

(a) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(b) directing the United States' responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the right of the United States to consent to any actions affecting the lands that comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 186, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(C) has delegated broad authority to the State of Hawaii to administer some of the United States' responsibilities as they relate to the Native Hawaiian people and their lands;

(21) the United States has recognized and reaffirmed the special political and legal relationship Native Hawaiian people through the enactment of the Act entitled, “An Act to provide for the admission of the State of Hawaii into the Union”, approved March 18, 1959 (Public Law 86-3, 73 Stat. 4), by—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 186, chapter 42); and

(B) transferring the United States administration of Native Hawaiian resources, rights, or lands; and

(D) the special trust relationship of American Indians, Alaskan Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of a once-sovereign nation with whom the United States has a political and legal relationship; and

(22) the State of Hawaii supports the reassertion of the political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003.

SEC. 3. DEFINITIONS.

In this Act:

(1) GOVERNMENTAL, INDIGENOUS, NATIVE PEOPLE.—The term "aboriginal, indigenous, native people" means people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States;

(2) ADULT MEMBER.—The term "adult member" means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.

(3) APOLOGY RESOLUTION.—The term “Apology Resolution” means Public Law 109-150, (107 Stat. 2836) extending to the Nation an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the overthrow of the Kingdom of Hawaii on May 17, 1893, overthrow of the Kingdom of Hawaii.

(4) COMMISSION.—The term “commission” means the Commission established under section 7(b) to make findings as to those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in paragraph (4).

(5) COUNCIL.—The term “council” means the Native Hawaiian Interim Governing Council established under section 7(c)(2).

(6) INDIANS.—The term “indigenous, native people” means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(7) INTERAGENCY COORDINATING GROUP.—The term “Interagency Coordinating Group” means the Native Hawaiian Interagency Coordinating Group established under section 6.

(8) NATIVE HAWAIIAN.—For the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the term “Native Hawaiian” means—

(A) an individual who is one of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(i) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(ii) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(B) an individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 U.S.C. 450h, approved March 18, 1920 (42 Stat. 186, chapter 42) as a direct lineal descendant of that individual.

(9) NATIVE HAWAIIAN GOVERNING ENTITY.—The term “Native Hawaiian Governing Entity” means the governing entity organized by the Native Hawaiian people pursuant to this Act.

(10) OFFICE.—The term “Office” means the United States office for Native Hawaiian Relations established by section 5(a).

(11) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(12) SECRETARY OF THE INTERAGENCY COORDINATING GROUP.—The term “Secretary of the Interagency Coordinating Group” means the Secretary of the Department of the Interior, unless the Secretary of the Interior, in consultation with the Native Hawaiian governing entity, makes a determination that it is in the best interest of Native Hawaiians to have the head of an agency other than the Secretary of the Interior to serve as Secretary of the Interagency Coordinating Group.

(13) UNITED STATES.—The term “United States” unless the context otherwise requires, means the United States through the Secretary, and with the advice and consent of the Senate, may exercise any powers granted to the Secretary by this Act.

(14) NATIONAL.—The term “Nation” means—

(A) the United States and the Native Hawaiian governing entity, the term “Native Hawaiian” means—

(i) an individual who is one of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(ii) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(iii) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(B) an individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 U.S.C. 450h, approved March 18, 1920 (42 Stat. 186, chapter 42) as a direct lineal descendant of that individual.

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(A) The purposes of this Act are to

(1) continue the process of reconciliation and to significantly affect Native Hawaiian resources, rights, or lands;

(2) upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, and the conclusion of an Interagency Coordinating Group that the conditions of Native Hawaiians is a matter of national significance, including through the Interagency Coordinating Group, to provide meaningful consultation with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, project, and activities that will significantly affect Native Hawaiian resources, rights, or lands, and to provide for the participation of Native Hawaiians in the planning and development of programs and activities that significantly affect Native Hawaiian resources, rights, or lands;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands, and to provide for the participation of Native Hawaiians in the planning and development of programs and activities that significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, the Governor of the State of Hawaii, and relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) encourage the Interagency Coordinating Group to consult with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands.

(B) The purposes of this Act are to—

(1) continue the process of reconciliation and to significantly affect Native Hawaiian resources, rights, or lands;

(2) provide for the participation of the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands, and to provide for the participation of Native Hawaiians in the planning and development of programs and activities that significantly affect Native Hawaiian resources, rights, or lands; and

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands.

SEC. 5. UNITED STATES OFFICE FOR NATIVE HAWAIIAN INTERESTS.

(A) ESTABLISHMENT.—There is established within the Office of the Secretary, the United States Office for Native Hawaiian Relations.

(B) DUTIES.—The Office shall—

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, and the conclusion of an Interagency Coordinating Group that the conditions of Native Hawaiians is a matter of national significance, including through the Interagency Coordinating Group, to provide meaningful consultation with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands, and to provide for the participation of Native Hawaiians in the planning and development of programs and activities that significantly affect Native Hawaiian resources, rights, or lands;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands, and to provide for the participation of Native Hawaiians in the planning and development of programs and activities that significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, the Governor of the State of Hawaii, and relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) encourage the Interagency Coordinating Group to consult with the Native Hawaiian governing entity and Native Hawaiians with respect to the development of programs, projects, and activities that will significantly affect Native Hawaiian resources, rights, or lands.

(6) PURPOSE.—The purpose of this Act is to provide a process for the reorganization of the Native Hawaiian governing entity and the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(A) ESTABLISHMENT.—In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the “Native Hawaiian Interagency Coordinating Group”.

(B) COMPOSITION.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—
Congressional Record—Senate

January 25, 2005

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely affect Native Hawaiian resources, rights, or lands; and
(2) the Office.
(c) DELEGACY.—(1) The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.
(2) The Secretary shall convene meetings of the Interagency Coordinating Group.
(d) DUTIES.—The Interagency Coordinating Group—
(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;
(2) ensure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, consultation with the Native Hawaiian governing entity; and
(3) ensure that the participation of the Native Hawaiian community is considered in the reorganization of the Native Hawaiian governing entity.

SEC. 7. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to reorganize the Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) COMMISSION.—(1) IN GENERAL.—There is authorized to be established a Commission to be composed of nine members for the purposes of—
(A) preparing and maintaining a roll of the Native Hawaiian community who meet the definition of Native Hawaiian in section 3(8) and shall have expertise in the determination of Native Hawaiian ancestry and lineal decadency.
(B) certify that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(8).

(2) STAFF.—(A) IN GENERAL.—The Commission may, without limitation by law, enter into contracts or agreements (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) COMPENSATION.—(1) IN GENERAL.—Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(3) PAY RATES.—(A) IN GENERAL.—The pay rates of the members of the Commission shall be fixed in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5.

(b) MEETINGS.—(1) IN GENERAL.—The Commission shall meet for the transaction of business at such times and places as the Commission deems advisable.

(2) QUORUM.—A quorum of the Commission shall be five members.

(c) REPORT.—The Commission shall submit to the Secretary the report of the Commission to the Secretary without reimbursement.

(d) APPEALS.—The Commission may hear appeals of the decisions of the Commission.

(e) PUBLIC LAW.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(8), the Secretary shall publish the roll in the Federal Register.

(f) APPEAL.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(8) and to be 18 years of age or older.

(g) PUBLICATION, UPDATE.—The Secretary shall—
(i) publish the roll regardless of whether appeals are pending;
(ii) update the roll and the publication of the roll on the final disposition of any appeal;
(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 3(8) after the initial publication of the roll or any subsequent publications of the roll.

(h) FAILURE TO ACT.—If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.

(i) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(j) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNOR COUNCIL.—

(1) ORGANIZATION.—Each adult member of the Native Hawaiian community listed on the roll published under this section may—
(i) develop criteria for candidates to be eligible to serve on the Native Hawaiian Interim Governing Council;
(ii) elect members from individuals listed on the roll published under this subsection to the Council.

(2) POWERS.—
(i) IN GENERAL.—The Council—
(I) may may elect any member of the Council; and
(ii) have powers other than powers given to the Council under this Act.

(iii) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (i)

(iv) ACTIVITIES.—
(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed eligibility of the organic governing bodies of the Native Hawaiian governing entity, including but not limited to—
(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;  
(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, including the proposed colleges and immunities of the Native Hawaiian governing entity;  
(cc) the proposed civil rights and protections of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity;  
(dd) other issues determined appropriate by the Council. 

II. DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.— Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.  

III. DISTRIBUTION.— The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—  

(aa) a copy of the proposed organic governing documents, as drafted by the Council; and  

(bb) a brief impartial description of the proposed organic governing documents;  

IV. ELECTIONS.— The Council may hold elections for the purpose of ratifying the proposed organic governing documents and to certification of the organic governing documents by the Secretary in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).  

V. SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.— Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents to the Native Hawaiian governing entity to the Secretary.  

VI. CERTIFICATIONS.— (A) IN GENERAL.—Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—  

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;  

(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published under the Secretary;  

(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;  

(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be transferred to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;  

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;  

(vi) provide for the protection of the civil rights of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and  

(vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.  

(B) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (A).— (1) RESUBMISSION BY THE SECRETARY.— If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents to the Council, along with a justification for each of the Secretary’s findings as to why the provisions are not in full compliance.  

(2) AMENDMENT AND RESUBMISSION OF ORGANIC GOVERNING DOCUMENTS.— If the organic governing documents are resubmitted to the Council by the Secretary under clause (1), the Council shall—  

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and  

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.  

(C) CERTIFICATIONS DEEMED MADE.— The certifications required under subparagraph (A) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary. 

(VI. ELECTIONS.— On completion of the certifications by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.  

(VII. REAFFIRMATION.—Notwithstanding any other provision of law, the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.  

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS; CLAIMS.  

(A) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled “An Act to provide for the admission of the State of Hawaii into the Union” approved March 18, 1959 (Public Law 86-3, 73 Stat. 4), is reaffirmed.  

(B) NEGOTIATIONS.  

(1) IN GENERAL.—Upon the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, as well as the proposed priviledges and immunities of the Native Hawaiian governing entity, as defined by the Act, the Native Hawaiian governing entity, as a settlement of any claim against the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.  

(2) AMENDMENTS TO EXISTING LAWS.— Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii, and the Native Hawaiian governing entity, as a settlement of any claim against the United States arising under Federal law that—  

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the 3 governments; and  

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the 3 governments.  

(C) CLAIMS.— (1) IN GENERAL.— Nothing in this Act serves as a settlement of any claim against the United States.  

(2) STATUTE OF LIMITATIONS.— Any claim against the United States arising under Federal law that—  

(A) is in existence on the date of enactment of this Act; and  

(B) is asserted by the Native Hawaiian governing entity on behalf of the Native Hawaiian people; and  

(C) relates to the legal and political relationship between the United States and the Native Hawaiian people; shall be brought in the court of jurisdiction over such claims not later than 20 years after the date on which Federal recognition is extended to the Native Hawaiian governing entity under section 7(c)(6).  

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.  

(A) INDIAN GAMING REGULATORY ACT.— Nothing in this Act shall be construed to authorize the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).  

(B) BUREAU OF INDIAN AFFAIRS.— Nothing contained in this Act provides an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for the programs or services.  

SEC. 10. SEVERABILITY. If any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.  

SEC. 11. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as are necessary to carry out this Act.  

Mr. INOUYE. Mr. President, I am pleased to join my colleague, Senator AKAKA, as a cosponsor of the Native Hawaiian Government Reorganization Act.  

Having served on the Indian Affairs Committee for the past 27 years, I know that most of our colleagues are more familiar with conditions and circumstances in Indian country, and naturally, they bring their experience with Indian country to bear in considering this measure, which has been pending in the Senate for the past six years. 

Accordingly, Mr. President, I believe it is important that our colleagues understand what this bill seeks to accomplish as well as how it differs from legislation affecting Indian country.  

It is a little known fact that beginning in 1910 and since that time, the
Congress has passed and the President has signed into law over 160 Federal laws designed to address the conditions of Native Hawaiians.

Thus, Federal laws which authorize the provision of health care, education, housing, and job training and employment, as well as programs to provide for the preservation of the Native Hawaiian language, Native language immersion, Native cultural and grave protections and repatriation of Native sacred objects have been in place for decades.

The Native Hawaiian programs do not draw upon funding that is appropriated for American Indians or Alaska Natives—there are separate authorizations for programs that are administered by different Federal agencies—not the Bureau of Indian Affairs or the Indian Health Service, for instance—and the Native Hawaiian program funds are not drawn from the Interior Appropriations Subcommittee account. Thus, they have no impact on the funding that is provided for the other indigenous, native people of the United States.

However, unlike the native people residing on the mainland, Native Hawaiians have not been able to exercise their rights as Native people to self-determination or self-governance because their government was overthrown on January 17, 1893.

This bill would provide a process for the reorganization of the Native Hawaiian government and the resumption of a political and legal relationship between that government and the government of the United States.

Because the Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when the United States extends Federal recognition to an Indian tribal group does not apply.

Thus, the bill provides authority for a process of negotiations amongst the United States, the State of Hawaii, and the reorganized Native Hawaiian government to address such matters as the exercise of civil and criminal jurisdiction by the respective governments, the transfer of land and natural resources and other assets, and the exercise of governmental authority over those lands, natural resources and other assets.

Upon reaching agreement, the U.S. Congress and the legislature of State of Hawaii would have to enact legislation implementing the agreements of the three governments, including amendments that will necessarily have to be made to existing Federal law, such as the Native Hawaiian Homes Act and the Hawaiian Homes Commission Act, and to State law, including amendments to the Hawaii State Constitution, before any of the new governmental relationships and authorities can take effect.

This is because concerns which are premised on the manner in which Federal Indian law provides for the respective governmental authorities of the state governments and Indian tribal governments simply don’t apply in Hawaii.

Our state government, both the Governor and the state legislature of Hawaii, fully support enactment of this measure. They will be at the table with the United States and the Native Hawaiian government to negotiate the relationships amongst governments that will best serve the needs and interests not only of the Native Hawaiian community but those of all of the citizens of Hawaii.

Mr. President, we have every confidence that consistent with the Federal policy of the last 35 years, the restoration of the rights to self-determination and self-governance will enable the Native Hawaiian people, as the direct, lineal descendants of the aboriginal, indigenous native people of what has become our nation’s fiftieth state, to take their rightful place in the family of governments that makes up our constitutional system of government.

By Mr. McCAIN (for himself, Mr. STEVENS, and Mr. DORGAN):

S. 148. A bill to establish a United States-boxing commission to administer the Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. McCain. Mr. President, today I am pleased to be joined by Senators STEVENS and DORGAN in introducing the Professional Boxing Amendments Act of 2005. This legislation is virtually identical to a measure approved unanimously by the Senate last year. I remain committed to moving the Professional Boxing Amendments Act through the Senate and I trust that my colleagues will once again vote favorably on this important legislation.

Simply put, this legislation would better protect professional boxing from the fraud, corruption, and ineffective regulatory body that has plagued the sport for far too many years, and that have devastated physically and financially many of our Nation’s professional boxers.

For almost a decade, Congress has made efforts to improve the sport of professional boxing—and for very good reason. With rare exception, professional boxers come from the lowest rung on our economic ladder. They are the least educated and most exploited athletes. The Professional Boxing Safety Act of 1996 and the Muhammad Ali Boxing Reform Act of 2000 established uniform health and safety standards for professional boxers, as well as basic protections for boxers against the sometimes coercive, exploitative, and unethical business practices of promoters, managers, and sanctioning organizations. But further action is needed.

The Professional Boxing Amendments Act would strengthen existing Federal law by setting the basic health and safety standards for professional boxers, establishing a centralized medical registry to be used by local commissions to protect boxers, reducing the arbitrary practices of sanctioning organizations, and enhancing the uniformity and basic standards for professional boxing contracts. Most importantly, this legislation would establish a Federal regulatory entity to set basic uniform standards for certain aspects of the sport.

Current Federal boxing law has improved to some extent the state of professional boxing. I remain concerned, as do many others, that the sport remains at risk. Some State and tribal boxing commissions still to this day do not comply with Federal boxing law, and there is still a troubling lack of enforcement of the law by both Federal and State officials. Indeed, professional boxing remains the only major sport in the United States that does not have a strong, centralized association, league, or other regulatory body to establish and enforce uniform rules and practices. Because a powerful few benefit greatly from the current system of patchwork compliance and enforcement of Federal boxing law, a national self-regulating organization—though preferable to Federal government oversight—is not a realistic option.

Ineffective and inconsistent oversight of professional boxing has contributed to the continuing scandals, controversies, unethical practices, and bloody deaths. These problems have led many in professional boxing to conclude that the only solution is an effective and accountable Federal boxing commission. The Professional Boxing Amendments Act would create such an entity.

This bill would establish the United States Boxing Commission (USBC or Commission). The Commission would be responsible for protecting the health, safety, and general interests of professional boxers. It would also be responsible for ensuring uniformity, fairness, and integrity in professional boxing. More specifically, the Commission would administer Federal boxing law and coordinate with other Federal regulatory agencies to ensure that this law is enforced; oversee all professional boxing matches in the United States; and work with the boxing industry and local commissions to improve the safety, integrity, and professionalism of professional boxing in this United States.

The USBC would also license boxers, promoters, managers, and sanctioning organizations. The Commission would have the authority to revoke such a license for violations of Federal boxing law, or for conduct that is unethical or illegal conduct, to protect the health and safety of a boxer, or if the revocation is otherwise in the public interest.

It is important to state clearly and plainly for the record that the purpose of the USBC is not to interfere with the daily operations of State and tribal boxing commissions. Instead, the Commission would work in consultation
with local commissions, and it would only exercise its authority when reason-
able grounds exist for such inter-
vention. In point of fact, the Professional Boxing Amendments Act states explicitly that it would not prohibit any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or super-
vision of professional boxing to the ex-
tent not inconsistent with the provi-
sions of Federal boxing law.

Let there be no doubt, however, of the very basic and pressing need in pro-
fessional boxing for a Federal boxing commission. The establishment of the USBC would address that need.

The problems that plague the sport of professional boxing undermine the credibility of the sport in the eyes of the public—and more importantly—compromise the safety of boxers. The Professional Boxing Amendments Act provides an effective approach to curbing these problems. I again urge my colleagues to support this legislation.

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

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRERENTS OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Professional Boxing Amendments Act of 2005”.

(b) Table of Contents.—The table of con-
ents for this Act is as follows:

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Short title; table of contents.</td>
</tr>
<tr>
<td>2</td>
<td>Amendment of Professional Boxing Safety Act of 1996.</td>
</tr>
<tr>
<td>3</td>
<td>Definitions.</td>
</tr>
<tr>
<td>4</td>
<td>Purposes.</td>
</tr>
</tbody>
</table>
| 5       | United States Boxing Commission approval, or ABC or com-
|         | mission sanction, required for matches. |
| 6       | Safety standards. |
| 7       | Registration. |
| 8       | Review. |
| 9       | Reporting. |
| 10      | Contract requirements. |
| 11      | Coerce contracts. |
| 12      | Sanctioning organizations. |
| 13      | Required disclosures by sanc-
|         | tioning organizations. |
| 14      | Required disclosures by pro-
|         | motors and broadcasters. |
| 15      | Judges and referees. |
| 16      | Medical registry. |
| 17      | Conflicts of interest. |
| 18      | Enforcement. |
| 19      | Repeal of deadwood. |
| 20      | Recognition of tribal law. |
| 21      | Establishment of United States Boxing Commission. |
| 22      | Study and report on definition of promoter. |
| 23      | Effective date. |

SEC. 2. AMENDMENT OF PROFESSIONAL BOXING SAFETY ACT OF 1996.

Except as otherwise expressly provided, whenever in this title an amendment or re-
alp is expressed in terms of an amend-
to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Profes-
6301 et seq.).
appropriate resuscitation equipment continu-
inserting after paragraph (2) the following:

as paragraphs (4) and (5), respectively, and
inserting (including a response to any specific
questions submitted by the boxer); and

(3) by striking subsection (b); and
(4) by striking ("a) PROCEDURES.--"

SEC. 9. REPORTING.
Section 8 (15 U.S.C. 6307) is amended—

(1) by striking "that, except as provided in
subsections (b), (c), or (d) of paragraph (1),
"(A) by inserting the following:

(3) by striking "boxer registry." and
inserting "the Commission.".

SEC. 10. CONTRACT REQUIREMENTS.
Section 9 (15 U.S.C. 6307a) is amended to read as follows:

"(a) IN GENERAL.—"In General.—The Commission, in
consultation with the Association of Boxing Commissions, has
established requirements for professional boxing matches. The
requirements shall be of a technical knockout.

(b) CONFORMING AMENDMENT.—Section 19 (15 U.S.C. 6310) is repealed.

SEC. 6. SAFETY STANDARDS.
Section 5 (15 U.S.C. 6304) is amended—

(1) by striking "requirements or an alternative
requirement in effect under regulations of a
boxing commission that provides equivalent
protection of the health and safety
of boxers." and inserting "requirements:";
(2) by adding at the end of paragraph (1) "The examination shall include testing for infectious diseases in accordance with standards established by the Commission."

(3) by striking paragraph (2) and inserting the following:

"(2) An ambulance continuously present on

(4) by designating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and
inserting after paragraph (2) the following:

(5) by striking "boxer registry." and
inserting "the Commission.".

SEC. 11. SANCTIONING ORGANIZATIONS.
Section 13 (15 U.S.C. 6307e) is amended—

(1) by striking the matter preceding para-
graph (1) and inserting "Within 7 days after a
professional boxing match of 10 rounds or
more, the sanctioning organization, if any,
that for that match shall provide to the Commis-
ion, and, if requested, to the boxing com-
mission in the State or on Indian land
responsible for regulating the match, a written
statement of:

(2) by striking "will assess" in paragraph
(1) and inserting "has assessed, or will

(3) by striking "will receive" in paragraph
(2) and inserting "has received, or will
receive."

SEC. 14. REQUIRED DISCLOSURES BY PROMOTERS AND BROADCASTERS.
Section 15 (15 U.S.C. 6307f) is amended—

(1) by striking "promoters," in the sec-
tion caption and inserting "promoters and
broadcasters;"

(2) by striking so much of subsection (a) as
precedes paragraph (1) and inserting the fol-
lowing:

"(a) DISCLOSURES TO BOXING COMMISSIONS AND THE COMMISSION.—Within 7 days after a professional boxing match of 10 rounds or
more, the promoter of any boxer participat-
ing in that match shall provide to the Commis-
ion, and, if requested, to the boxing com-
mission in the State or on Indian land
responsible for regulating the match, a written
statement of:

(1) post a copy, within 7 days after the
change, on its Internet website or home
page, if any, including an explanation of the
change, for a period of not less than 30 days;

(2) by striking paragraphs (3) and (4) of
subsection (a) and inserting the following:

(5) by inserting a "statement of" before
"any" in subsection (a)(3)(C);
(7) by striking the matter in subsection (b) following “Boxer—” and preceding paragraph (1) and inserting “Within 7 days after a professional boxing match of 10 rounds or more, the promoter of that match shall provide to each boxer participating in the bout or match with whom the promoter has a bout or promotional agreement a statement of—”;

(8) by striking “match;” in subsection (b)(1) and inserting “match, and that the promoter has paid, or agreed to pay, to any other person in connection with the match;”;

and

(9) by adding at the end the following:

“(d) REQUIRED DISCLOSURES BY BROADCASTERS.—

“(1) IN GENERAL.—A broadcaster that owns the television broadcast rights for a professional boxing match scheduled for 10 rounds or more, shall, within 7 days after that match, provide to the Commission the information required under subsection (b), except that the information described in paragraph (1) shall consist of information that is necessary to identify the boxers and the broadcast.

“(2) COPY TO BOXING COMMISSION.—Upon request from the boxing commission in the State or Indian land responsible for regulating a professional boxing match to which paragraph (1) applies, a broadcaster shall provide the information described in paragraph (1) to that boxing commission.

“(3) CONFIDENTIALITY.—The information provided to the Commission or to a boxing commission pursuant to this subsection shall be confidential and not revealed by the Commission or a boxing commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identifiable broadcasters.

“(4) TELEVISION BROADCAST RIGHTS.—In paragraph (1), the term ‘television broadcast rights’ means the right to broadcast the match, or a portion thereof, via a broadcast station, cable service, or multichannel video programming distributor as such terms are defined in section 3(5), 602(6), and 602(13) of the Communications Act of 1934 (47 U.S.C. 355, 602(6), and 602(13), respectively).

SEC. 15. JUDGES AND REFEREES.

(a) IN GENERAL.—Section 16 (15 U.S.C. 6307h) is amended—

(1) by inserting “(a) LICENSING AND ASSIGNMENT REQUIREMENT.—” before “No person;”;

(2) by striking “certified and approved,” and inserting “selected;”;

(3) by inserting “or Indian lands” after “State”; and

(4) by adding at the end the following:

“(b) JUDGES.—A boxing match shall consist of 3 members appointed by the Commission shall be citizens of the United States and be of outstanding character and recognized integrity; and

“(c) REFEREES.—A boxing match shall consist of 3 referees, except that at least 1 of the referees shall be a citizen of the United States and be of outstanding character and recognized integrity.

SEC. 16. MEDICAL REGISTRY.

The Act is amended by inserting after section 13 (15 U.S.C. 6307e) the following:

“SEC. 14. MEDICAL REGISTRY.

“(a) IN GENERAL.—The Commission shall provide the information in subsection (d) to the boxing commission in the State or Indian land responsible for regulating the bout; and

“(b) CONTENT; SUBMISSION.—The Commission shall require each boxing commission in the State or Indian land responsible for regulating a professional boxing match scheduled for 10 rounds or more, of each referee or medical officer to establish and maintain, a registry of each boxer participating in the match; and

“(c) LICENSING REQUIRED.—The medical officer or referee shall provide the registry information to the Commission.

“(d) PRIVACY.—The medical officer or referee shall establish confidentiality standards for the disclosure of personally identifiable information to a boxing commission.

“(e) CONFIDENTIALITY.—The information provided to a boxing commission in the State or Indian land responsible for regulating a professional boxing match scheduled for 10 rounds or more, shall be confidential and not revealed by the Commission or any boxing commission, except that the Commission may publish an analysis of the data in aggregate form or in a manner which does not disclose confidential information about identifiable medical officers, referees, or other representatives of the site or representative of the site of the match; and

“(f) Recordkeeping.—A boxing commission shall keep a complete record of all information described in paragraphs (a) through (e).

SEC. 17. CONFLICTS OF INTEREST.

Section 17 (15 U.S.C. 6308) is amended—

(1) by striking “enforces State boxing laws,” in subsection (a) and inserting “enforces State or tribal boxing laws,”;

(2) by striking “to,” and inserting “hold office in,” in subsection (a);

(3) by striking the last sentence of subsection (a);

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

“(b) BOXERS.—A boxer may not own or control, directly or indirectly, an entity that promotes the boxer’s bouts if that entity is responsible for—

“(i) executing a bout agreement or promotional agreement with the boxer’s opponent;

“(ii) providing any payment or other compensation to—

“(A) the boxer’s opponent for participation in a bout with the boxer;

“(B) the boxing commission that regulates the bout; or

“(C) ring officials who officiate at the bout.

SEC. 18. ENFORCEMENT.

Section 18 (15 U.S.C. 6309) is amended—

(1) by striking “(a) INJUNCTIONS.—” in subsection (a) and inserting “(a) ACTIONS BY ATTORNEY GENERAL.—”;

(2) by inserting “any officer or employee of the Commission,” after “laws,” in subsection (b)(3);

(3) by striking “has engaged in or” after “organization” in subsection (c);

(4) by striking “subsection (b) in subsection (c)(3) and inserting “subsection (b), a civil penalty of not more than $5,000;”;

and

(5) by striking “boxer” in subsection (d) and inserting “person”.

SEC. 19. REPEAL OF DEADWOOD.

Section 20 (15 U.S.C. 6311) is repealed.

SEC. 20. RECOGNITION OF TRIBAL LAW.

Section 22 (15 U.S.C. 6313) is amended—

(1) by inserting “TRIBAL” in the section heading after “STATE”;

(2) by inserting “or Indian tribe” after “State”.

SEC. 21. ESTABLISHMENT OF UNITED STATES BOXING COMMISSION.

(a) IN GENERAL.—The Act is amended by adding at the end the following:

“TITLE II—UNITED STATES BOXING COMMISSION

“SEC. 201. PURPOSE.

“The purpose of this title is to protect the health, safety, and welfare of boxers and to ensure fairness in the sport of professional boxing.

“SEC. 202. UNITED STATES BOXING COMMISSION.

“(a) IN GENERAL.—The United States Boxing Commission is established as a commission within the Department of Commerce.

“(b) MEMBERS.

“(1) IN GENERAL.—The Commission shall consist of 3 members appointed by the President, by and with the advice and consent of the Senate.

“(2) QUALIFICATIONS.

“(A) IN GENERAL.—Each member of the Commission shall be a citizen of the United States.

“(B) ETHICAL QUALIFICATIONS.—The member shall have no financial interest in professional boxing activities or in a field directly related to professional sports.

“(C) DISQUALIFIED PERSONS.—No member of the Commission may, while serving as a member of the Commission—

“(i) be engaged as a professional boxer, manager, promoter, matchmaker, referee, or in any other capacity in the conduct of the business of professional boxing;

“(ii) be in a position of pecuniary interest in the earnings of any boxer or the proceeds or outcome of any boxing match; or

“(iii) serve as a member of a boxing commission.

“(D) BIPARTISAN MEMBERSHIP.—Not more than 2 members of the Commission shall be members of the same political party.

“(E) GEOGRAPHIC BALANCE.—Not more than 2 members of the Commission may be residents of the same geographic region of the United States when appointed to the Commission.

“(F) TERM.

“(A) IN GENERAL.—The term of a member of the Commission shall be 3 years.

“(B) REAPPOINTMENT. Members of the Commission may be reappointed to the Commission.

“(C) MIDTERM VACANCIES.—A member of the Commission appointed to fill a vacancy in the Commission occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed for the unexpired term of the member.

“(D) CONTINUING PENDING REPLACEMENT.—A member of the Commission may
serve after the expiration of that member’s term until a successor has taken office.

(6) REMOVAL.—A member of the Commission may be removed by the President only for cause.

(c) EXECUTIVE DIRECTOR.—

(1) IN GENERAL.—The Commission shall employ an Executive Director to perform the administrative functions of the Commission under this Act, and such other functions and duties of the Commission as the Commission shall determine.

(2) DISCHARGE OF FUNCTIONS.—Subject to the authority, direction, and control of the Commission the Executive Director shall carry out the functions and duties of the Commission under this Act.

(d) GENERAL COUNSEL.—The Commission shall employ a General Counsel to provide legal advice to the Executive Director and the Commission in the performance of its functions under this Act, and to carry out such other functions and duties as the Commission shall specify.

(e) STAFF.—The Commission shall employ such additional staff as the Commission considers appropriate to assist the Executive Director and the General Counsel in carrying out the functions and duties of the Commission under this Act.

(f) COMPENSATION.—

(1) IN GENERAL.—Each member of the Commission shall be compensated at a rate equal to the rate of basic pay prescribed for level IV of the Executive Schedule under section 5316 of title 5, United States Code, as rates the Commission determines to be reasonable; and

(2) DISCHARGE OF FUNCTIONS.—

(1) REQUIREMENT FOR LICENSE.—No person may compete in a professional boxing match except as provided in a license granted to that person under this subsection.

(2) APPLICATION AND TERM.—

(A) IN GENERAL.—The Commission shall—

(i) establish application procedures, forms, and fees; and

(ii) establish and publish appropriate standards for licenses granted under this section.

(3) ISSUE OF LICENSE.—The Commission may, after notice and opportunity for a hearing, suspend or revoke any license issued under the provisions of this Act if the Commission finds that—

(A) the license holder has violated any provision of this Act;

(B) there are reasonable grounds for belief that a standard prescribed by the Commission under this title is not being met, or that bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, or intimidation have occurred in connection with a license; or

(C) the suspension or revocation is necessary for the protection of health and safety or is otherwise in the public interest.

(2) PERIOD OF SUSPENSION.—

(A) IN GENERAL.—A suspension of a license under this section shall be effective for a period determined appropriate by the Commission except as provided in subparagraph (B).

(B) SUSPENSION FOR MEDICAL REASONS.—In the case of a license holder whose physical or mental condition makes it impossible for him to participate in a professional boxing match, the Commission may suspend the license of that person for a period determined appropriate by the Commission.

(3) PERIOD OF REVOCATION.—In the case of a revocation of the license of a boxer, the Commission may set, charge, and adjust varying fees on the basis of classifications of persons, functions, and events determined appropriate by the Commission.

(2) LIMITATIONS.—

(A) the license holder is not adversely affected;

(B) sanctioning organizations and promoters pay comparatively the largest portion of the fees; and

(C) promoters pay as small a portion of the fees as is possible.

(3) COLLECTION.—Fees established under the provisions of this Act may be enforced through boxing commissions or by any other means determined appropriate by the Commission.

SEC. 205. NATIONAL REGISTRY OF BOXING PERSONNEL.

(a) REQUIREMENT FOR REGISTRY.—The Commission shall establish and maintain a national registry of professional boxers and other personnel determined by the Commission as performing a professional activity for professional boxing matches.

(b) CONTENTS.—The information in the registry shall include the following:

(1) BOXERS.—A list of professional boxers and other personnel established under section 114 of this Act, which the Commission shall secure from disclosure in accordance with the confidentiality requirement of section 114.

(2) OTHER PERSONNEL.—Information pertinent to the sport of professional boxing on boxing promoters, boxing matchmakers, boxing managers, trainers, cut men, referees, boxing judges, physicians, and any other person determined by the Commission as performing a professional activity for professional boxing matches.

SEC. 206. CONSULTATION REQUIREMENTS.

The Commission shall consult with the Association of Boxing Commissions—

(1) before prescribing any regulation or establishing any standard under the provisions of this title; and

(2) not less than once each year regarding matters relating to professional boxing.

SEC. 207. MISCONDUCT.

(a) SUSPENSION AND REVOCATION OF LICENSE OR REGISTRATION.

(1) AUTHORITY.—The Commission may, after notice and opportunity for a hearing, suspend or revoke any license issued under the provisions of this title if the Commission finds that—

(A) the license holder has violated any provision of this Act;

(B) there are reasonable grounds for belief that a standard prescribed by the Commission under this title is not being met, or that bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, or intimidation have occurred in connection with a license; or

(C) the suspension or revocation is necessary for the protection of health and safety or is otherwise in the public interest.

(2) PERIOD OF SUSPENSION.—

(A) IN GENERAL.—A suspension of a license under this section shall be effective for a period determined appropriate by the Commission except as provided in subparagraph (B).

(B) SUSPENSION FOR MEDICAL REASONS.—In the case of a license holder whose physical or mental condition makes it impossible for him to participate in a professional boxing match, the Commission may suspend the license of that person for a period determined appropriate by the Commission.

(3) PERIOD OF REVOCATION.—In the case of a revocation of the license of a boxer, the Commission may set, charge, and adjust varying fees on the basis of classifications of persons, functions, and events determined appropriate by the Commission.

(2) LIMITATIONS.—

(A) the license holder is not adversely affected;

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(2) OTHER PERSONNEL.—Information pertinent to the sport of professional boxing on boxing promoters, boxing matchmakers, boxing managers, trainers, cut men, referees, boxing judges, physicians, and any other person determined by the Commission as performing a professional activity for professional boxing matches.
Section 1. Short Title; Table of Contents

This Act may be cited as the ‘Professional Boxing Safety Act’.

(a) Annual Report—The Commission shall submit a report on its activities to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce each year. The annual report shall include:

(1) a detailed description of the activities of the Commission for the year covered by the report; and

(2) an overview of the licensing and enforcement activities of the State and tribal organization boxing commissions.

(b) Public Report—The Commission shall issue annually a public report of the Commission on the progress made at Federal and State levels and on Indian lands in the reform of professional boxing, which shall be submitted on issues of continuing concern to the Commission.

(c) First Annual Report on the Commission—The first annual report under this title shall be submitted not later than 2 years after the effective date of this title.

Section 2. Authorization of Appropriations

(a) In General—There are authorized to be appropriated for the Commission for each fiscal year such sums as may be necessary for the Commission to perform its functions for that fiscal year.

(b) Receipts Credited asOffsetting Collections.—Notwithstanding section 3302 of title 31, United States Code, any fee collected under this title shall be credited as offsetting collections.

Section 3. Noninterference with Boxing Commissions

Nothing in this Act prohibits any boxing commission from exercising any of its powers, duties, or functions with respect to the regulation or supervision of professional boxing matches.

Section 4. Repeal

Except as provided in section 20, this Act shall be repealed 5 years after the effective date of this Act except as provided in section 20.

Section 5. Commission Amendments

(a) PBSA.—The Professional Boxing Safety Act of 1966, as amended by this Act, is further amended—

(1) by amending section 1 to read as follows:

Title I—Professional Boxing Safety

Subtitle A—Professional Boxing

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Minimum Standards.

Sec. 4. Licensing and Enforcement

Subtitle B—Boxing

Sec. 1. Annual report.

Sec. 2. Public report.

Sec. 3. Authorization of Appropriations.

Sec. 4. Noninterference with Boxing Commissions.

Sec. 5. Repeal.

Sec. 6. Commission Amendments.

(b) PBSA.—The Professional Boxing Safety Act of 1966, as amended by this Act, is further amended—

(1) by amending section 1 to read as follows:

Title I—Professional Boxing Safety

Subtitle A—Professional Boxing

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Minimum Standards.

Sec. 4. Licensing and Enforcement

Subtitle B—Boxing

Sec. 1. Annual report.

Sec. 2. Public report.

Sec. 3. Authorization of Appropriations.

Sec. 4. Noninterference with Boxing Commissions.

Sec. 5. Repeal.

Sec. 6. Commission Amendments.
"Sec. 115. Conflicts of interest.

Sec. 116. Enforcement.

Sec. 117. Professional boxing matches conducted on Indian lands.

Sec. 118. Relationship with State or Tribal law.

TITLE II—UNITED STATES BOXING COMMISSION

Sec. 201. Licensing and registration of boxing personnel.


Sec. 203. Functions.

Sec. 204. Licensing and registration of boxing personnel.

Sec. 205. National registry of boxing personnel.

Sec. 206. Designation of state and territorial boxing commissions.

Sec. 207. Liberal grants to state boxing commissions.

Sec. 208. Noninterference with state and territorial boxing commissions.

Sec. 209. Resistance from other agencies.

Sec. 210. Reports.

Sec. 211. Initial implementation.

Sec. 212. Authorization of appropriations.

(a) By inserting after section 3 the following:

TITLE I—PROFESSIONAL BOXING SAFETY;

(b) By redesignating sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, and 22 as sections 101 through 118, respectively;

(c) By striking section (a) of section 113, as redesignated, and inserting the following:

(1) set forth a proposed definition of the term "promoter" for purposes of the Professional Boxing Safety Act;

(2) describe the findings, conclusions, and rationale of the Commission for the proposed definition, together with any recommendations of the Commission based on the study.

SEC. 23. EFFECTIVE DATE.

(a) In GENERAL.—Except as provided in subsection (b), the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) 1-YEAR DELAY FOR CERTAIN TITLE II PROVISIONS.—Sections 200 through 212 of the Professional Boxing Safety Act of 1996, as added by section 21(a) of this Act, shall take effect 1 year after the date of enactment of this Act.

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. DODD, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHEY, Mr. REED, and Mr. SARBANES):

S. 150. A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, I am both happy and sad to re-introduce the Clean Power Act again with Senators LIEBERMAN and COLLINS and the other 16 cosponsors of the legislation from the last Congress. I am happy that they are all still as committed as I am to the fight to reduce pollution and to protect the public's health and to clean up and conserve the environment for future generations.

I am sad that we have not made more progress in this fight to reduce harmful emissions of carbon dioxide (CO₂), nitrogen oxides (NOₓ), mercury, and carbon dioxide from fossil fuel power plants. More than 25,000 people are dying prematurely every year because of fine particulate pollution (PM₂.₅) that is emitted by power plants in the form of SO₂ and NOₓ. More than 4,000 people are dying of heart attacks due to ozone exposure, part of which is caused by power plant emissions. And, over 160 million people are living in areas with unhealthy air quality.

Acid rain continues to fall on our forests and lakes stressing ecosystems in the Northeast and the Southeast. Nearly all the States have some kind of fish kill law, which has been in effect since this legislation was first introduced in Congress assembled, prior to that Committee action, I and Senator RIEDEMANN before me, sought to engage our colleagues in a bipartisan dialogue to move four pollutant legislation. Though the President promised to support such legislation while a candidate, in 2000, he reversed himself on that pledge in early 2001. Since early 2001, the Administration refused to negotiate, to consider compromise or even to respond to legitimate requests for information or timely technical assistance. Instead, they have concentrated their efforts on undermining the Clean Air Act with a particularly focused tax cutting New Source Review. They have not shown any real interest in legislating in this matter.

I am sad that the Administration's general approach has been to go back to what was before 1990, to undue President Bush Sr.'s legacy. That is not what the American people want and it is not what they and their children deserve. They deserve better. They deserve the promise of the Clean Air Act which is constant improvement and moving forward to provide safe air for everyone to breathe.

It is long past time that all power plants in this country meet modern emission performance standards. There is simply no excuse in a technologically advanced society like ours to have power plants running on 1930s technology. It should be embarrassing for us all and requires a swift and concerted effort and significantly more funding than the Administration and Congress have appropriated thus far to maximize the use of all of our energy resources, including coal and renewables, in an environmentally friendly way.

Simply letting these old dirty dinosaurs keep chugging along is bad for public health and the environment and bad for innovation and the development of new technologies. It is a stone age response to a modern day problem.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD. There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Clean Power Act of 2005".

SEC. 2. ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS.

(a) In GENERAL.—The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

TITLE VII—ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS

Sec. 701. Findings.

Sec. 702. Purposes.

Sec. 703. Definitions.
ties to meet the emission limitations (other
than the emission limitation for mercury) through an alternative method of compli-
ance consisting of an emission allowance and transfer system; and
(b) to encourage energy conservation, use of renewable and clean alternative tech-
nologies, and pollution prevention as long-
range strategies, consistent with this title, for reducing all other adverse impacts of energy generation and use.

SEC. 703. DEFINITIONS.

In this title:

(1) COVERED POLLUTANT.—The term ‘covered pollutant’ means—
(A) sulfur dioxide;
(B) any nitrogen oxide;
(C) carbon dioxide; and
(D) mercury.

(2) ELECTRICITY GENERATING FACILITY.—The term ‘electricity generating facility’ means an electric or thermal electricity gener-
ating unit, a combination of such units, or a commercial building, as determined by the Admin-
istrator; or

(3) ELECTRICITY INTENSIVE PRODUCT.—The term ‘electricity intensive product’ means any product with respect to which the cost of
energy represents an expected average of 20 percent or more of the value of the product.

(4) EMISSION ALLOWANCE.—The term ‘emission allowance’ means a unit that
(B) generates electric energy, for sale, through combustion of fossil fuel; and
(C) emits a covered pollutant into the at-
mosphere.

(5) ENERGY EFFICIENT BUILDING.—The term ‘energy efficient building’ means an electric or thermal energy gener-
ating facility that a residential building, commercial building, as determined by the Admin-
istrator, or

(6) ENERGY EFFICIENT PROJECT.—The term ‘energy efficiency project’ means any specific action (other than ownership or op-
eration of an energy efficient building) com-

(7) ENERGY EFFICIENT PRODUCT.—The term ‘energy efficient product’ means a product manufactured after the date of enactment of this title that has an expected lifetime elec-
tricity or natural gas consumption that qualifies for the applicable Energy Star label for that type of product; and

(8) LIFETIME.—The term ‘lifetime’ means
(A) in the case of a residential building that is an energy efficient building, 30 years; and
(B) in the case of a commercial building that is an energy efficient building, 15 years; and

(9) MERCURY.—The term ‘mercury’ includes any mercury compound.

(10) NEW CLEAN FOSSIL FUEL-FIRED ELECTRICITY GENERATING UNIT.—The term ‘new clean fossil fuel-fired electricity generating unit’ means a unit that—
(A) has been in operation for 10 years or less; and
(B) (i) a natural gas fired generator that—
(1) has an energy conversion efficiency of at least 55 percent; and
(2) uses best available control technology (as defined in section 160); and
(3) in the case of a fuel cell operating on fuel derived from a nonrenewable source of energy.

(11) NONWESTERN REGION.—The term ‘non-western region’ means the area of the States that is not included in the western region.

(12) RESIDENTIAL ELECTRICITY GENERATING UNIT.—The term ‘residential electricity generating unit’ means an electric or thermal electricity generating unit, or combination of units, that—
(A) has a nameplate capacity of less than 75 megawatts; and
(B) generates electric energy, for sale, through combustion of fossil fuel; and
(C) emits a covered pollutant into the at-
osphere.

(13) SMALL ELECTRICITY GENERATING FACILITY.—The term ‘small electricity gener-
ating facility’ means an electric or thermal electricity generating unit, or combination of units, that—
(A) has a nameplate capacity of less than 15 megawatts (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Admin-
istrator); and
(B) generates electric energy, for sale, through combustion of fossil fuel; and
(C) emits a covered pollutant into the at-
osisphere.

(14) WESTERN REGION.—The term ‘western region’ means the area comprising the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
SEC. 704. EMISSION LIMITATIONS.

(a) IN GENERAL.—Subject to subsections (b) and (c), the Administrator shall promulgate regulations to ensure that, during 2010 and each succeeding year, the total annual emissions of covered pollutants from all electricity generating facilities located in all States does not exceed—

(1) in the case of sulfur dioxide—

(A) 275,000 tons in the western region; or

(B) 1,975,000 tons in the nonwestern region;

(2) in the case of nitrogen oxides, 1,510,000 tons;

(3) in the case of carbon dioxide, 2,050,000,000 tons; or

(4) the case of mercury, 5 tons.

(b) EXCESS EMISSIONS BASED ON UNUSED ALLOWANCES.—The regulations promulgated under subsection (a) shall authorize emissions of covered pollutants in excess of the national emission limitations established under that subsection for a year to the extent that the number of tons of the excess emissions is less than or equal to the number of emission allowances that are—

(1) used in the year; but

(2) allocated for any previous year under section 707.

(c) REDUCTIONS.—For 2010 and each year thereafter, the quantity of emissions specified for each covered pollutant in subsection (a) shall be reduced by the sum of—

(1) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year;

(2) any number of tons of reductions in emissions of the covered pollutant required under section 705(b).

SEC. 705. EMISSION ALLOWANCES.

(a) CREATION AND ALLOCATION.—

(1) IN GENERAL.—For 2010 and each year thereafter, subject to paragraph (2), there are created, and the Administrator shall allocate in accordance with section 707, emission allowances as follows:

(A) in the case of sulfur dioxide—

(i) 275,000 emission allowances for each year for use in the western region; and

(ii) 1,975,000 emission allowances for each year for use in the nonwestern region;

(B) in the case of nitrogen oxides, 1,510,000 emission allowances for each year;

(C) in the case of carbon dioxide, 2,050,000,000 emission allowances for each year.

(2) REDUCTIONS.—For 2010 and each year thereafter, the number of emission allowances specified for each covered pollutant in subsection (a) shall be reduced by a number equal to the sum of—

(A) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

(B) any number of tons of reductions in emissions of the covered pollutant required under section 705(b).

(b) NATURE OF EMISSION ALLOWANCES.—

(1) NOT A PROPERTY RIGHT.—An emission allowance allocated by the Administrator under subsection (a) is not a property right.

(2) NO LIMIT ON AUTHORITY TO TERMINATE OR LIMIT.—Nothing in this title or any other provision of law limits the authority of the Administrator to terminate or limit an emission allowance.

(3) TRACKING AND TRANSFER OF EMISSION ALLOWANCES.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish an emission allowance tracking and transfer system to account for emission allowances of sulfur dioxide, nitrogen oxides, and carbon dioxide.

(B) REQUIREMENTS.—The emission allowance tracking and transfer system established under this paragraph (A) shall—

(i) incorporate the requirements of subsection (a)(1) of section 112 (except that written certification by the transferee shall not be necessary to effect a transfer); and

(ii) permit any entity—

(I) to buy, sell, or hold an emission allowance; and

(II) to permanently retire an unused emission allowance.

(C) PROCEDURES OF TRANSFERS.—Proceeds from the transfer of emission allowances by any person to which the emission allowances have been allocated—

(i) shall not constitute funds of the United States; and

(ii) shall not be available to meet any obligations of the United States.

(2) IDENTIFICATION AND USE.—

(A) I N GENERAL.—Each emission allowance allocated by the Administrator shall bear a unique serial number, including—

(i) an identifier of the covered pollutant to which the emission allowance pertains; and

(ii) the first year for which the allowance may be used.

(b) SULFUR DIOXIDE EMISSION ALLOWANCES.—In the case of sulfur dioxide emission allowances, the Administrator shall ensure that the emission allowances allocated for any year under that subparagraph, not later than 180 days after the date of enactment of this title, are adequate to verify, monitor, and document emissions of small electricity generating facilities.

(c) IDENTIFICATION AND USE.—

(1) IN GENERAL.—On or before April 1, 2011, and April 1 of each year thereafter, the owner or operator of each electricity generating facility shall submit to the Administrator an emission allowance for the applicable covered pollutant (other than mercury) for each ton of sulfur dioxide, nitrogen oxides, or carbon dioxide emitted by the electricity generating facility during the previous calendar year.

(2) SPECIAL RULE FOR OZONE EXCEEDANCES.—

(A) IDENTIFICATION OF FACILITIES CONTRIBUTING TO NONATTAINMENT.—Not later than December 31, 2009, and the end of each 3-year period thereafter, each State, consistent with the obligations of the State under section 110(a)(2)(D), shall identify the electricity generating facilities in the State and in other States that are significantly contributing to nonattainment of the national ambient air quality standard for ozone in a State during the previous year.

(B) SUBMISSION OF EMISSION ALLOWANCES.—In 2010 and each year thereafter, on petition from a State or a person demonstrating that the control measures in effect at an electricity generating facility that is identified under subparagraph (A) as significantly contributing to nonattainment of the national ambient air quality standard for ozone in a State during the previous year are inadequate to prevent the significant contribution described in subparagraph (A), the Administrator, if the Administrator determines that the generating facility is inadequately controlled for nitrogen oxides, may require that the electricity generating facility submit 3 nitrogen oxide emission allowances for each ton of nitrogen oxides emitted by the electricity generating facility during any period of an exceedance of the national ambient air quality standard for ozone in the State during the previous year.

(d) ANNUAL SUBMISSION OF EMISSION ALLOWANCES.—In the case of sulfur dioxide emission allowances, the Administrator shall ensure that the emission allowances allocated for any year under that subparagraph, not later than 180 days after the date of enactment of this title, are adequate to verify, monitor, and document emissions of small electricity generating facilities.

(e) EMISSION VERIFICATION, MONITORING, AND RECORDKEEPING.—

(1) IN GENERAL.—The Administrator shall ensure that Federal regulations, in combination with any applicable State regulations, are adequate to verify, monitor, and document emissions of covered pollutants from electricity generating facilities.

(2) EMISSIONS FROM SMALL ELECTRICITY GENERATING FACILITIES.—On or before July 1, 2006, the Administrator, in cooperation with State agencies, shall complete, and on an annual basis update, a comprehensive inventory of emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and other relevant pollutants from small electricity generating facilities.

(3) MONITORING INFORMATION.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this title, the Administrator shall promulgate regulations to require every electricity generating facility to submit to the Administrator—

(i) not later than April 1 of each year, verifiable information on covered pollutants emitted by the electricity generating facility in the previous year, expressed in—

(I) tons of covered pollutants;

(II) tons of covered pollutants per megawatt hour of energy (or the equivalent thermal energy) generated; and

(iii) as part of the first submission under clause (i), verifiable information on covered pollutants emitted by the electricity generating facility in 2002, 2003, and 2004, if the electricity generating facility was required to report that information in those years.

(B) SOURCE OF INFORMATION.—Information submitted under paragraph (a) shall be obtained using a continuous emission monitoring system (as defined in section 102).

(C) AVAILABILITY TO THE PUBLIC.—The information described in subparagraph (a) shall be made available to the public—

(i) in the case of the first information required to be submitted under that paragraph, not later than 18 months after the date of enactment of this title; and

(ii) in the case of each year thereafter, not later than April 1 of the year.

(4) AMBIENT AIR QUALITY MONITORING FOR SULFUR DIOXIDE AND HAZARDOUS AIR POLLUTANTS.—

(A) IN GENERAL.—Beginning January 1, 2006, each coal-fired electricity generating facility with an aggregate generating capacity of 50 megawatts or more shall, in accordance with guidelines issued by the Administrator, commence ambient air quality monitoring with a 30-mile radius of the coal-fired electricity generating facility for the purpose of measuring maximum concentrations of sulfur dioxide and hazardous air pollutants emitted by the coal-fired electricity generating facility.
“(ii) at which the concentration of pollutants being monitored is expected to be the greatest; and

“(iii) at which the monitoring shall be the most frequent.

“(C) FREQUENCY OF MONITORING OF SULFUR DIOXIDE.—Monitoring of sulfur dioxide under subparagraph (A) shall be carried out on a continuous basis and averaged over 5-minute periods.

“(D) AVAILABILITY TO THE PUBLIC.—The results of the monitoring under subparagraph (A) shall be made available to the public.

“(f) EXCESS EMISSION PENALTY.—

“(1) IN GENERAL.—Subject to paragraph (2), section (a) shall apply only to an owner or operator of an electric utility generating facility.

“(g) CALCULATION OF PENALTY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the penalty for failure to submit emission allowances for covered pollutants as required under subsection (d) shall be equal to 3 times the product obtained by multiplying—

“(i) as applicable—

“(ii) the number of tons emitted in excess of the emission limitation requirement applicable to the electric utility generating facility; or

“(iii) the number of emission allowances that the owner or operator failed to submit; and

“(ii) the average annual market price of emission allowances (as determined by the Administrator).

“(B) MERCURY.—In the case of mercury, the penalty shall be equal to 3 times the product obtained by multiplying—

“(i) the number of grams emitted in excess of the emission limitation requirement for mercury applicable to the electric utility generating facility; and

“(ii) the average cost of mercury controls at electricity generating units that have a nameplate capacity of 15 megawatts or more in all States (as determined by the Administrator).

“(g) SIGNIFICANT ADVERSE LOCAL IMPACTS.—

“(1) IN GENERAL.—If the Administrator determines that emissions of an electric utility generating facility may reasonably be anticipated to cause or contribute to a significant adverse local impact, including endangerment of public health, contribution to acid deposition in a sensitive receptor area, and other degradation of the environment, the Administrator shall limit the emissions of the electric utility generating facility as necessary to avoid that impact.

“(2) VIOLATION.—Notwithstanding the availability of emission allowances, it shall be a violation of this Act for any electric utility generating facility to exceed any limitation on emissions established under paragraph (1).

“(h) ADDITIONAL REDUCTIONS.—

“(1) PROTECTION OF PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT.—If the Administrator determines that the emission levels limited by paragraph (1) are not reasonably anticipated to protect public health or welfare or the environment (including protection of children, pregnant women, minority or low-income communities, and other sensitive populations), the Administrator shall require reductions in emissions from electric utility generating facilities in addition to the reductions required under the other provisions of this title.

“(2) EXCEPTION FOR CERTAIN CARBON DIOXIDE EMISSIONS.—The prohibition described in paragraph (1) shall not apply in the case of carbon dioxide emission allowances generated from an emission control program that limits total carbon dioxide emissions from the entirety of any industrial sector.

“(c) METHODOLOGY.—The program established under subsection (a) shall clearly identify the methodology for the allocation of emission allowances, including standards for monitoring annual electric generation and energy efficiency as the standards relate to emissions.

“SEC. 707. EMISSION ALLOWANCE ALLOCATION.

“(a) ALLOCATION TO ELECTRICITY CONSUMERS.—

“(1) IN GENERAL.—For 2010 and each year thereafter, after making allocations of emission allowances under subsections (b) through (f), the Administrator shall allocate the remaining emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to households served by electricity.

“(2) ALLOCATION AMONG HOUSEHOLDS.—The allocation to each household shall reflect—

“(A) the number of persons residing in the household;

“(B) the ratio that—

“(i) the quantity of the residential electricity consumption of the State in which the household is located; bears to

“(ii) the quantity of the residential electricity consumption of all States; and

“(C) the ratio that

“(i) the quantity of the residential electricity consumption of the State in which the household is located; bears to

“(ii) the quantity of the residential electricity consumption of all States.

“(d) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the allocation of emission allowances to households under this subsection, including as necessary the appointment of 1 or more trustees—

“(A) to receive the emission allowances for the benefit of the households;

“(B) to obtain fair market value for the emission allowances; and

“(C) to distribute the proceeds to the beneficiaries.

“(e) ALLOCATION FOR TRANSITION ASSISTANCE.—

“(1) IN GENERAL.—For 2010 and each year thereafter through 2019, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury in the following manner:

“(A) 80 percent shall be allocated to provide transition assistance to—

“(i) dislocated workers (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)) whose employment has been terminated or who have been laid off as a result of the emission reductions required by this title; and

“(ii) communities that have experienced disproportionate adverse economic impacts as a result of the emission reductions required by this title;

“(B) 20 percent shall be allocated to producers of electricity that have a number equal to the product obtained by multiplying—

“(i) the ratio that—

“(II) the number of persons residing in the household; bears to

“(II) the average quantity of electricity consumed in the previous year by producers that use the most energy efficient process for producing the electricity intensive product; and

“(iii) with respect to the previous year, the national average quantity (expressed in megawatt hour) of electricity generated by electricity generating facilities in all States.

“(B) The percentage referred to in paragraph (1) (excluding the percentages referred to in paragraph (a)) are—

“(A) in the case of 2010, 6 percent;
“(B) in the case of 2011, 5.5 percent; (C) in the case of 2012, 5 percent; (D) in the case of 2013, 4.5 percent; (E) in the case of 2014, 4 percent; (F) in the case of 2015, 3.5 percent; (G) in the case of 2016, 3 percent; (H) in the case of 2017, 2.5 percent; (I) in the case of 2018, 2 percent; and (J) in the case of 2019, 1.5 percent.

(3) REGULATIONS FOR ALLOCATION FOR TRANSITION ASSISTANCE TO DISLOCATED WORKERS AND COMMUNITIES.

(”A) ‘‘FACILITIES,’’ the date—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate adjustments for the distribution of emission allowances under paragraph (1)(A), including as necessary the appointment of 1 or more trustees— (i) to preserve the emission allowances allocated under paragraph (1)(A) for the benefit of the dislocated workers and communities— (ii) to obtain fair market value for the emission allowances; and (iii) to apply the proceeds to providing transition assistance to the dislocated workers and communities— (A) grants to employers, employer associations, and representatives of employees— (I) to provide training, adjustment assistance, and employment services to dislocated workers as prescribed by States to— (i) make income-maintenance and needs-related payments to dislocated workers; and, (ii) grants to States and local governments to assist communities in attracting businesses to— (1) in general. For 2010 and each year thereafter, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to the owners or operators of electricity generating facilities in the ratio that— (A) the number of electricity generating facilities by each electricity generating facility in 2003, bears to (B) the quantity of electricity generated by all electricity generating facilities in 2003.

(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are— (A) in the case of 2010, 10 percent; (B) in the case of 2011, 9 percent; (C) in the case of 2012, 8 percent; (D) in the case of 2013, 7 percent; (E) in the case of 2014, 6 percent; (F) in the case of 2015, 5 percent; (G) in the case of 2016, 4 percent; (H) in the case of 2017, 3 percent; (I) in the case of 2018, 2 percent; and (J) in the case of 2019, 1 percent.

(6) ALLOCATION TO ENCOURAGE BIOLOGICAL CARBON SEQUESTRATION.—(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate, on a competitive basis and in accordance with paragraphs (2) and (3), not more than 0.075 percent of the carbon dioxide emission allowances created by section 705(a) for the year for the purposes of— (A) carrying out projects to reduce net carbon dioxide emissions through biological carbon dioxide sequestration in the United States that— (i) result in benefits to watersheds and fish and wildlife habitats; and (ii) shall be carried out in accordance with project reporting, monitoring, and verification guidelines based on— (1) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project; (II) comprehensive carbon accounting that— (aaa) reflects net increases in carbon reservoirs; and (bb) takes into account any carbon emissions from the project. These increases in carbon reservoirs in existence as of the date of commencement of the project; (III) adjustments to account for— (aaa) emissions from the facility as may result at other locations as a result of the impact of the project on timber supplies; or (bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and (IV) adjustments to reflect the expected carbon storage over carbon dioxide sequestration life spans, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir; and (B) conducting accurate inventories of carbon sinks.

(2) CARBON INVENTORY.—The Administrator, in consultation with the Secretary of Energy and the Administrator, shall allocate not more than 5 percent of the emission allowances described in paragraph (1) to not more than 5 State or multistate land management agencies or nonprofit entities that— (A) have a primary goal of land conservation; and (B) submit to the Administrator proposals for projects— (i) to demonstrate and assess the potential for the development and use of carbon inventoring and accounting systems; (ii) to improve the standards relating to, and the identification of, incremental carbon sequestration in forests, agricultural soils, grasslands, or rangelands; and (iii) to assist in development of a national biological carbon storage baseline or inventory.

(3) REVOLVING LOAN PROGRAM.—The Administrator shall allocate not more than 10 percent of the emission allowances described in paragraph (1) to States, based on proposals submitted pursuant to paragraph (1) to conduct programs under which each State shall— (A) use the proceeds from the sale or other transfer of emission allowances under this subsection to establish a revolving loan program to provide loans to owners of nonindustrial private forest land in the State to carry out forest and forest soil carbon sequestration activities that will achieve the purposes specified in paragraph (2)(B); and (B) for 2011 and each year thereafter, contribute to the program of the State an amount equal to 25 percent of the value of the emission allowances received under this paragraph for the year in cash, in-kind services, or technical assistance.

(4) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances for the purpose of carrying out activities described in this subsection.

(5) RECOMMENDATIONS CONCERNING CARBON DIOXIDE EMISSION ALLOWANCES.—(A) IN GENERAL.—Not later than 4 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture, shall submit to Congress recommendations for establishing a system under which entities that receive grants or loans under this section may be allocated carbon dioxide emission allowances created by section 705(a) for incremental carbon sequestration in forests, agricultural soils, grasslands, or rangelands.

(B) GUIDELINES.—The recommendations shall include recommendations for development, reporting, monitoring, and verification guidelines for quantifying net carbon sequestration from land-use projects that address the elements specified in paragraph (1)(A).

(6) ALLOCATION TO ENCOURAGE GEOLOGICAL CARBON SEQUESTRATION.—(1) IN GENERAL.—For 2010 and each year thereafter, the Administrator shall allocate not more than 3 percent of the carbon dioxide emission allowances created by section 705(a) to entities that carry out geological sequestration of carbon dioxide produced by a carbon dioxide generating facility in accordance with requirements established by the Administrator—
**(1) To ensure the permanence of the sequestration; and**

**(2) To ensure that the sequestration will not cause or contribute to significant adverse effects on the environment.**

**(2) NUMBER OF EMISSION ALLOWANCES.**

For 2010 and each year thereafter, the Administrator shall allocate to each entity described in paragraph (1) a number of emission allowances that is equal to the number of tons of carbon dioxide produced by the electric generating facility during the previous calendar year, as determined geologically as described in paragraph (1).

**(3) USE OF EMISSION ALLOWANCES.** An entity that allocates emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

**SEC. 708. MERCURY EMISSION LIMITATIONS.**

**(a) IN GENERAL.**

**(1) REGULATIONS.**

**(A) IN GENERAL.** Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish emissions limitations for mercury emissions by coal-fired electricity generating facilities.

**(B) NO EXCEEDANCE OF NATIONAL LIMITATION.**— Entities that are subject to the national limitation for mercury emissions from coal-fired electricity generating facilities established under section 704(a)(4) are not exempt from these regulations.

**(C) EMISSION LIMITATIONS FOR 2009 AND THEREAFTER.** In carrying out subparagraph (A), for 2009 and each year thereafter, the Administrator shall:

**(i)** subject to subsections (e) and (f) of section 112, establish limitations on emissions of mercury from electric generating facilities that allow emissions in excess of 2.48 grams of mercury per 1000 megawatt hours; or

**(ii)** determine whether, during the 2 previous years, the total mercury emissions from electric generating facilities located in all States, and

**(i)** determine whether, during the 2 previous years, the total mercury emissions from electric generating facilities described in subparagraph (A) exceed the national limitation for mercury emissions established under section 704(a)(4).

**SEC. 713. RELATIONSHIP TO OTHER LAW.**

**(2) EFFECT ON OTHER LAW.**

**(E) appropriate limitations on mercury emissions from sources or processes that reprocess or use coal combustion waste, including manufacturers of wallboard and cement.**

**SEC. 709. OTHER HAZARDOUS AIR POLLUTANTS.**

**(a) IN GENERAL.** Not later than January 1, 2006, the Administrator shall issue to owners and operators of coal-fired electricity generating facilities requests for information described in section 114 that are of sufficient scope to determine whether a surplus of standards under section 112(d) for hazardous air pollutants other than mercury emitted by coal-fired electricity generating facilities.

**(b) DEADLINE FOR SUBMISSION OF REQUESTED INFORMATION.**—The Administrator shall require each recipient of a request for information described in subsection (a) to submit the requested data not later than 180 days after the date of the request.

**(c) PROMULGATION STANDARDS.**—The Administrator shall:

**(i)** not later than January 1, 2006, propose emission standards under section 112(d) for hazardous air pollutants other than mercury;

**(ii)** not later than January 1, 2007, promulgate emission standards under section 112(d) for hazardous air pollutants other than mercury.

**(d) PROHIBITION ON EXCESS EMISSIONS.**—It shall be unlawful for an electricity generating facility to exceed emission standards for hazardous air pollutants other than mercury promulgated under subsection (c) to emit, after December 31, 2006, any such pollutant in excess of the standards.

**(e) EFFECT ON OTHER LAW.**—Nothing in this section affects the requirements of any other provision of this Act; or

**(f) ADDITIONAL REQUIREMENTS.**—The requirements of this subsection shall be in addition to the other requirements of this title.

**SEC. 715. RELATIONSHIP TO OTHER LAW.**

**(a) IN GENERAL.**—Except as expressly provided in this title, nothing in this title—

**(i)** limits or otherwise affects the application of any other provision of this Act; or

**(ii)** precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.

**(b) REGIONAL SEASONAL EMISSION CONTROL.**—Nothing in this title affects any regional seasonal emission control for nitrogen oxides established by the Administrator or a State under title I.

**SEC. 716. EFFECT OF FAILURE TO PROMULGATE REGULATIONS.**

**SEC. 717. USE OF EMISSION ALLOWANCES.**

**(A) EACH ELECTRICITY GENERATING FACILITY THAT HAS NOT COMPLIED WITH—**

**(1) A COAL-FIRED ELECTRICITY GENERATING FACILITY THAT HAS NOT COMPLIED WITH—**

The regulations shall ensure that any mercury cap-and-trade program established by the Administrator to ensure the permanence of the sequestration of carbon dioxide by the electric generating facility during the previous calendar year, as determined geologically.

**SEC. 710. MODERNIZATION OF ELECTRICITY GENERATING FACILITIES.**

**SEC. 711. PROHIBITIONS.**

**(d) PROHIBITION ON USE OF EMISSION ALLOWANCES.**—Notwithstanding any emission allowance allocated under this title except in accordance with regulations promulgated by the Administrator, each electricity generating facility that has no controls in place shall:

**(d) subject to subsections (e) and (f) of section 112, establish limitations on emissions of hazardous air pollutants other than mercury; and

**(e) LIMITATIONS ON USE OF EMISSION ALLOWANCES.**—The regulations shall ensure that any mercury cap-and-trade program established by the Administrator to ensure the permanence of the sequestration of carbon dioxide by the electric generating facility during the previous calendar year, as determined geologically.
striking ‘opacity’ and inserting ‘mercury, opacity’."

SEC. 3. SAVINGS CLAUSE.
Section 193(c) of the Clean Air Act (42 U.S.C. 7515) is amended by striking ‘date of the enactment of the Clean Air Act Amendments of 1990’ each place it appears and inserting ‘date of enactment of the Clean Power Act of 2005’.

SEC. 4. ACID PRECIPITATION RESEARCH PROGRAM.
Section 113(j) of the Clean Air Act (42 U.S.C. 7430(j)) is amended—
(1) in paragraph (F) to add—
(A) in subparagraph (F)(i), by striking ‘effects’ and inserting ‘effects, including an assessment of—’;
(B) in subparagraph (F)(ii), by striking ‘acid-neutralizing capacity; and’ and inserting ‘acid-neutralizing capacity greater than zero; and’;
(C) by striking paragraph (G)(ii) and inserting—
‘(G) SENSITIVE Ecosystems.—
(i) In general.—Beginning in 2006, in addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2006 through 2015—
(1) I N GENERAL.—Not later than December 31, 2012, the Administrator shall consider the findings and recommendations of the report revisions under paragraph (A). The Administrator shall determine whether the levels of carbon dioxide emissions under titles IV and VII are sufficient to—
(a) achieve the necessary reductions identified in the report revisions under paragraph (A); and
(b) ensure achievement of the environmental outcomes identified under paragraphs (3)(G)(i), (3)(H), and (3)(I).
(ii) MODERNIZATION.—In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2006 through 2015—
(1) for equipment and site modernization of the National Atmospheric Deposition Program National Trends Network $6,000,000 to the Environmental Protection Agency;
(2) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Mercury Deposition Network $2,400,000 to the Environmental Protection Agency; and
(3) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Mercury Deposition Network $1,500,000 to the National Oceanic and Atmospheric Administration.
(3) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency.
(4) for the Temporally Integrated Monitoring of Ecosystems and Long-Term Monitoring Program $2,500,000 to the Environmental Protection Agency.
(5) for the Environmental Protection Agency.
(6) for the Environmental Protection Agency.

SEC. 5. AUTHORIZE APPROPRIATIONS FOR DEPOSITION MONITORING.
(a) OPERATIONS AND MAINTENANCE.—In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2006 through 2015—
(1) for the National Atmospheric Deposition Program National Trends Network—
(A) $2,000,000 to the United States Geological Survey;
(B) $500,000 to the Environmental Protection Agency;
(C) $900,000 to the National Park Service; and
(D) $400,000 to the Forest Service;
(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—
(A) $400,000 to the Environmental Protection Agency;
(B) $400,000 to the United States Geological Survey;
(C) $100,000 to the National Oceanic and Atmospheric Administration; and
(D) $100,000 to the National Park Service;
(3) for the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,500,000 to the National Oceanic and Atmospheric Administration;
(4) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency.

SEC. 6. TECHNIQUES.
Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7461 et seq.)—
(1) is amended by redesignating sections 401 through 403 as sections 401 through 403, respectively; and
(2) is redesignated as title VIII and moved to a separate chapter.

Ms. COLLINS. Mr. President, I rise today to join Senator JEFFORDS and Senator McCaIN in introducing the Clean Power Act of 2005. This bill closes the loophole that has allowed the dirtiest, most polluting power plants in the Nation to escape significant pollution controls for more than 30 years.

Maine is one of the most beautiful and pristine States in the Nation. It is also one of the most environmentally responsible States in the Nation. Maine has fewer emissions of the pollutants that cause smog and acid rain than all but a handful of States. It also has one of the lowest emissions of carbon dioxide nationwide.

Unfortunately, despite the collective environmental commitment of both its citizens and industries, Maine still suffers from air pollution. Every freshwater lake, river, and stream in Maine is subject to a State mercury advisory that warns pregnant women and young children to limit consumption of fish caught in those waters. Even Acadia National Park, one of our most beautiful national parks, experiences days in which visibility is obscured by smog.

Where does all this pollution come from? A large part of it comes from a relatively small number of mostly coal-fired powerplants that exploit loopholes to escape the provisions of the Clean Air Act. Coal-fired powerplants are the single largest source of carbon dioxide, mercury, nitrogen oxides, and greenhouse gas emissions in the Nation. A single coal-fired powerplant can emit more of the pollutants that cause smog and acid rain than all of the cars, factories, and businesses in Maine combined.

As the easternmost State in the Nation, Maine is downwind of almost all powerplants in the United States. Many of the pollutants emitted by these powerplants—mercury, sulfur dioxide, nitrogen oxides, and carbon dioxide—end up in or over Maine. Airborne mercury falls into our lakes and streams, contaminating freshwater fish and threatening our people’s health. Carbon dioxide is causing climate change that threatens to alter Maine’s delicate ecological balance. Sulfur dioxide and nitrogen oxides come to Maine in the form of acid rain and smog that damage the health of our people and the health of our environment.

A single powerplant can emit nearly a ton of mercury in a single year. That’s equivalent to incinerating over one million mercury thermometers and is enough to contaminate millions of acres of freshwater lakes. In contrast, Maine has zero powerplant emissions of mercury. This bill would reduce mercury emissions from powerplants by 90 percent.

Powerplants are also one of the largest contributors of greenhouse gas emissions in the United States. In fact, powerplants account for 40 percent of our carbon dioxide emissions, which scientists believe are the primary cause of man-made global warming. I recently had the opportunity to view firsthand some of the dramatic impacts of global warming. In August, I traveled with Senator McCaIN and several other Senators to the northernmost community in the world. We visited Ny-Alesund on the Norwegian island of Spitsbergen in the 78°N. Ny-Alesund lies well north of the Arctic Circle and is much closer to the North Pole than to Oslo, the country’s...
capital. It has even served as a starting point for several polar expeditions.

Scientists tell us that the global climate is changing more rapidly than at any time since the beginning of civilization. They further state that the region in which the changing most rapidly is the Arctic. These changes are remarkable and disturbing.

In the last 30 years, the Arctic has lost sea-ice cover over an area 10 times as large as the State of Maine. In the summer, the change is even more dramatic with the ice disappearing. The ice that remains is as much as 40\% thinner than it was just a few decades ago. In addition to disappearing sea-ice, Arctic glaciers are also rapidly re-treating. In Ny-Alesund, Senator MCCAIN and I witnessed massive blocks of ice falling off glaciers that had already retreated well back from the shores where they once rested.

The Clean Power Act takes an important step in addressing global warming by reducing powerplant emissions of carbon dioxide to 2000 levels by the year 2010. Although doing so will not solve the problem of global warming, it is an important first step. In light of the rapid warming in the Arctic and the significance that this warming portends for the rest of the planet, reducing carbon dioxide emissions is a step that we can no longer afford to put off.

I am pleased that the Senate Environment and Public Works Committee will be considering clean air legislation in the 109th Congress. The Jeffords-Colli-ns-Lieberman bill does more to reduce smog, acid rain, mercury pollution, and global warming than any other bill. Our bill provides more public health and environmental benefits than any other serious proposal, and it provides those benefits sooner.

I believe it is time to stop acid rain, free our lakes from mercury pollution, reduce global warming, and eliminate the threats that pose to our Maine skies and jeopardize our health.

I look forward to working with the administration and my colleagues on both sides of the aisle to provide cleaner air.

Mrs. SNOWE, Mr. President, I rise today to cosponsor Senator JEFFORDS’ bill—as I have in the last three Congresses—because I remain dedicated to reducing power plant emissions that cause some of the Nation’s— and Maine’s—worst public health and environmental problems.

For too many years, coal-burning power plants exempt from emissions standards under the Clean Air Act have created massive pollution problems for the Northeast because whatever spews out of their smokestacks in the Mid- west, blows into the Northeast, includ- ing my State of Maine, giving it the dubious distinction of being at the "end of the tailpipe", so to speak.

The Jeffords legislation calls for reductions in power plant emissions for pollutants that cause smog, soot, respir- atory disease; acid rain that kills our forests and may be affecting Atlan- tic salmon streams; mercury that con- taminates our lakes, rivers and streams; and poses health risks to chil- dren and the unborn, and climate variabilities from manmade carbon di- oxide emissions that cause severe shifts in our weather patterns. Maine suffers from asthma cases per capita, which is not a sur- prise, but which it can do little about when nearly 80 percent of the State’s dirty air—is some days as high as 90 percent—is not of their own making but is being transported in from the Midwest and Southeast.

This bill will dramatically cut aggre- gate power plant emissions by 2010 for the four major power plant pollutants: nitrogen oxides (NOx), the primary cause of smog, by 71 percent from 2000 levels; sulfur dioxide (SO2), that causes acid rain and respiratory disease, by 81 percent from 2000 levels; mercury (Hg), which poisons our lakes and rivers, by 71 percent from 2000 levels; and mercury reductions are set at levels that are expected to be cost- effective with available technology.

The Clean Power Act will also elimi- nate the outdated coal-burning power plants that were grandfathered in under the Clean Air Act unless they apply the best available pollution con- trol technology by their 40th birthday or 2014, whichever is later. The thinking for the exemption in the Clean Air Act was based, at the time, on the as- sumption that the plants would not stay on line much longer. However, as energy has gotten more expensive, companies are keeping these older, dirtier plants up and running.

Furthermore, just as the Clean Air Act already provides tradable allow- ances reductions in the Jeffords’ legislation also allows for tradable allowances to control emissions for three other pollutants—NOx, SO2, and CO—by using market-oriented mechanisms to meet emissions reduction requirements.

The tradable allowances would be distributed to five main categories, including 63 percent or more to house- holds; six percent for transition assist- ance to affected communities and in- dustries who would be hurt over time; up to 20 percent to renewable energy generation, efficiency projects and cleaner energy sources, based on avoid- ed pollution; 10 percent to existing electric generating facilities based on 2003 output; and up to 1.5 percent of the carbon dioxide allowances for biologi- cal and geological carbon sequestra- tion. Of note, trading will not be al- lowed if it enables a power plant to pol- lute at a level that damages public health or the environment.

I am optimistic that the Congress can come together with the President, industry and all those who want cleaner, healthier air to create a cohesive

While I recognize that the pollutants listed under the Clean Air Act were chosen in order to achieve healthier air for humans by cutting back on smog and soot, and also for mercury con- tamination, I believe it is long past due that carbon dioxide be recognized as a pollutant that is woven with the health of the planet, and indirectly, all of us.

I am supporting the goal of CO2 emis- sions reduction in the Jeffords’ bill in the hopes that the bill will be a ral- ling point to further the debate for re- ducing CO2 emissions. In the same time, get on the cleaner side sooner.

In particular, Congress needs to de- velop a market mechanism approach for CO2 emissions trading—such as we now have for acid rain—to allow U.S. industries the flexibility and certainty to reduce CO2 emissions without the threat of higher energy production costs in the future that will be passed on to the consumer. I will continue to work with my colleagues, the White House and representatives from various industry groups, and environmental organizations to achieve this goal.

The bottom line is that we have the opportunity to raise the bar for cleaner domestic energy production in an eco- nomically effective manner. Solutions exist in available and developing tech- nologies, and most of all in the entre- prendeurial spirit of the American people who want a cleaner and healthier environment, including those in Maine who want to ensure that the State’s pristine lakes and coast will remain clean and our forests and fish healthy for generations to come.

My State of Maine is leading the way in attempting to reduce CO2 emissions as it is the first state in the nation to enact a law setting goals for the reduc- tion of global warming emissions, with An Act to Develop a Market Mechanism in Addressing the Threat of Climate Change. The Act requires Maine to de- velop a climate change action plan to reduce carbon dioxide emissions to 1990 levels by 2010, 10 percent below 1990 lev- els by 2020, and by as much as 75 to 80 percent over the long term. These are the cuts previously agreed to by the New England Governors and Eastern Canadian Premiers. The State law will also inventory and reduce CO2 emis- sions from state-funded programs and facilities, and spur at least 50 part- nerships with businesses and non-profit organizations to reduce CO2 emissions.

While Maine was the first to put into effect a comprehensive climate change law, other states from the Northeast and around the country have taken, or are currently taking, actions to ad- dress climate change at the state or re- gional level. The Jeffords’ legislation calls for Federal leadership as well and a comprehensive legislative effort to ad- dress climate change at the state or re- gional level. The Jeffords’ legislation calls for Federal leadership as well and a comprehensive legislative effort to ad- dress climate change at the state or re- gional level. The Jeffords’ legislation calls for Federal leadership as well and a comprehensive legislative effort to ad- dress climate change at the state or re- gional level. The Jeffords’ legislation calls for Federal leadership as well and a comprehensive legislative effort to ad- dress climate change at the state or re- gional level.
policy that is best suited for our nation, and I urge my colleagues to support the Jeffords’ four-pollutant legislation.

By Mr. COLEMAN (for himself and Mr. Pryor):

S. 151. A bill to amend title 38, United States Code, to require an annual plan on outreach activities of the Department of Veterans Affairs; to the Committee on Veterans’ Affairs.

Mr. COLEMAN. Mr. President, today I am pleased to introduce the Veterans Benefits Outreach Act of 2005 with my good friend and colleague, Senator Mark Pryor of Arkansas.

The idea for this legislation emanated from a very troubling story I read in my hometown paper, the Saint Paul Pioneer Press entitled, “Wounded and Forgotten.”

The article reported that nearly 600,000 veterans are eligible for benefits but not receiving them simply because they don’t know they are eligible.

It is clear that we need to do a better job of reaching out to veterans so they get the benefits they have earned. Our bill will do this by requiring the Veterans Administration to develop an annual plan to identify veterans who are eligible for but not receiving their benefits and an outreach plan to enroll them.

Pretty simply really: matching benefits with people who have earned them, and often through a lot of sacrifice for us and the freedoms we enjoy every day.

I hope the Senate will be able to act on this important legislation early this year so my hometown newspaper can report that our veterans are always remembered.

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

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

S. 151

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Veterans Benefits Outreach Act of 2005.”

SEC. 2. ANNUAL PLAN ON OUTREACH ACTIVITIES.

(a) ANNUAL PLAN REQUIRED.—Subchapter II of chapter 5 of title 38, United States Code, is amended by inserting after section 523 the following new section:

“§ 523A. Annual plan on outreach activities

“(a) ANNUAL PLAN REQUIRED.—The Secretary shall prepare each year a plan for the outreach activities of the Department for the following year.

“(b) ELEMENTS.—Each annual plan under subsection (a) shall include the following:

“(1) Plans for efforts to identify veterans who are not enrolled or registered with the Department for benefits or services under the programs administered by the Secretary.

“(2) Plans for efforts to identify veterans and their dependent obligations of the benefits and services under the programs administered by the Secretary, including eligibility for membership in veterans’ care and services.

“(c) COORDINATION IN DEVELOPMENT.—In developing an annual plan under subsection (a), the Secretary shall consult with the following:

“(1) Directors or other appropriate officials of organizations recognized by the Secretary under section 522 of this title.

“(2) Directors or other appropriate officials of State and local education and training programs.

“(3) Representatives of non-governmental organizations that carry out veterans outreach programs.

“(4) Representatives of State and local veterans employment organizations.

“(5) Businesses and professional organizations.

“(6) Other individuals and organizations that assist veterans in adjusting to civilian life.

“(d) INCORPORATION OF RECOMMENDATIONS TO IMPROVE OUTREACH AND AWARENESS.—In developing an annual plan under subsection (a), the Secretary shall incorporate the recommendations of the improvement of veterans outreach and awareness activities included in the report submitted to Congress by the Secretary pursuant to section 886 of the Veterans Benefits Improvement Act of 2004 (Public Law 108–454).”

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of this chapter is amended by inserting after the item relating to section 523 the following new item:

“§ 523A. Annual plan on outreach activities.”

By Mrs. FEINSTEIN (for herself and Mrs. Boxer):

S. 153. A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce this bill today along with Senator Boxer to direct the Interior Secretary to conduct a study to evaluate the suitability and feasibility of expanding the Santa Monica National Recreation Area to include the Rim of the Valley Corridor.

The Rim of the Valley Corridor encircles the San Fernando Valley, La Crescenta, Simi, Conejo, and Santa Clarita Valleys, consisting of parts of the Santa Monica Mountains, Santa Susanna Mountains, San Gabriel Mountains, Verdugo Mountains, San Rafael Hills and connects to the adjacent Los Padres and San Bernardino National Forests.

This parcel of land is unique because of its rare Mediterranean ecosystem and wildlife corridor that stretches north from the Monicas. With the population growth forecasted to multiply exponentially over the next several decades, the need for parks to balance out the expected population growth has become critical in California.

Since the creation of the Santa Monica Recreation Area in 1978, Federal, State, and local authorities have worked successfully together to create and maintain the highly successful Santa Monica Mountains National Recreation Area, the world’s largest urban park, hemmed in on all sides by development.

Park and recreational lands provide people with a vital refuge from urban life while preserving valuable habitat and wildlife. With the passage of this legislation, Congress will hold true to its original commitment to preserve the scenic, natural, and historic setting of the Santa Monica Mountains Recreation Area.

With the inclusion of the Rim of the Valley Corridor in the Santa Monica Mountains Recreation Area, greater ecological health and diversity will be secured that particularly for larger animals like mountain lions, bobcats, and the golden eagle. By creating a single contiguous Rim of the Valley Trail, people will enjoy greater access to existing trails in the Recreation Area.

After the study called for in this bill is complete, the Secretary of the Interior and Congress will be in a key position to determine whether all or portions of the Rim of the Valley Corridor warrant national park status.

This bill enjoys strong support from local and State officials and I hope that it will have as much strong bipartisan support this Congress, as it did last Congress. Congressman Adam Schiff plans to introduce companion legislation for this bill in the House and I applaud his commitment to this issue.

I urge my colleagues to support this legislation and I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 153

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Rim of the Valley Corridor Study Act”.

SEC. 2. DEFINITIONS.

In this Act:

(1) CORRIDOR.—The term “Corridor” means the land, water, and interests of the area in the State known as the “Rim of the Valley Corridor.”

(2) RECREATION AREA.—The term “Recreational Area” means the Santa Monica Mountains National Recreation Area in the State.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of California.

SEC. 3. RESOURCE STUDY OF THE RIM OF THE VALLEY CORRIDOR, CALIFORNIA.

(a) IN GENERAL.—The Secretary shall conduct a resource study of the Corridor to evaluate various alternatives for protecting the resources of the Corridor, including designating all or a portion of the Corridor as a unit of the Recreation Area.

(b) REQUIREMENT.—Conducting the study under subsection (a), the Secretary shall—
(1) seek to achieve the objectives of—
(A) protecting wildlife populations in the Recreation Area by preserving habitat linkages and wildlife movement corridors between large blocks of habitat in adjoining regional open space;
(B) establishing connections along the State-designated Rim of the Valley Trail System and the Recreation Area to canoe and other watercraft to the Rim of the Valley Trail System;
(C) preserving recreational opportunities;
(D) providing access to open space for a variety of recreational users;
(E) protecting—
(i) rare, threatened, or endangered plant and animal species; and
(ii) rare or unusual plant communities and habitats;
(F) protecting historically significant landscapes, districts, sites, and structures; and
(G) respecting the needs of communities in, or in the vicinity of, the Corridor;
(ii) respecting the potential impact of each alternative on staffing and other potential costs to Federal, State, and local agencies and other organizations; and
(iii) analyzing the potential impact that designating all or a portion of the Corridor as a unit of the Recreation Area would have on land in or bordering the area that is presently owned as of the date on which the study is conducted.
(b) CONSULTATION.—In conducting the study, the Secretary shall consult with appropriate Federal, State, county, and local government entities.
(c) APPLICABLE LAW.—Section 8(c) of Public Law 93–383 (16 U.S.C. 1a–8(c)) shall apply to the conduct and completion of the study required by subsection (a).

SEC. 4. REPORT.
(a) IN GENERAL.—Not later than 3 years after the date on which funds are first made available for the study, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Resources of the House of Representatives a report that describes the results of the study conducted under section 3.
(b) INCLUSION.—The report submitted under subsection shall include the concerns of private landowners within the boundaries of the Recreation Area.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, Mr. GRASSLEY, Mr. CORNYN, and Mr. KYL):
S. 155. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gang, to deter and punish violent street gang crime, to protect law-abiding citizens and families from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to join my good friend and colleague Senator ORRIN HATCH, to introduce the Gang Prevention and Effective Deterrence Act of 2005."

Gangs are spreading across our country, increasing in violence and power in every State. The growth and spread of these gangs illustrate the simple fact that they are no longer a local problem. They are a national problem, and require a national solution. This bill is designed to contribute to that solution by bringing together Federal, State and local efforts, providing them with the right legal tools, and providing authorization for funds to make this partnership effective.

First, let me illustrate the scope of the problem. In 2002, there were approximately 731,500 members and 21,500 gangs in the United States. Additionally, the FBI report on national crime statistics found that youth-gang homicides had jumped to more than 1,100 in 2002, up from 692 in 1999. According to a report commissioned by a coalition of big city police chiefs, gang-related killings skyrocketed by 50 percent from 1999 to 2002. In 2002, there were a little more than 16,000 homicides in the United States. It is estimated that 85 percent of those murders were gang-related. In Southern California alone there have been about 3,100 gang-related killings since 1999. 87 percent of U.S. cities with a population of more than 100,000 have reported gang-related crimes according to the Department of Justice.

The bottom line is that this is a major problem.

This legislation before us today squarely addresses these serious issues. Its main thrust is to create a new type of crime, by defining and criminalizing "Criminal Street Gangs." This recognizes the basic point of a street gang— it is more powerful, and more dangerous, than its individual members. Defeating gangs means recognizing what is so dangerous about them, and then making that conduct against the law.

This bill does exactly that. It makes illegal participation in a criminal street gang a federal crime. A "criminal street gang" is defined to mean a formal or informal group, club, organization or association of 3 or more persons who act together to commit gang crimes. This legislation makes it a crime for a member of a criminal street gang to commit, conspire or attempt to commit two or more predicate gang crimes; or to get another individual to commit a gang crime. The term "gang crime" is defined to include violent, serious State and Federal felony crimes such as: murder, maiming, manslaughter, kid-napping, arson, robbery, assault with a dangerous weapon, obstruction of justice, carjacking, distribution of a controlled substance, certain firearms offenses and money laundering. And it criminalizes violent crimes in furtherance of or in aid of criminal street gangs. These two provisions are at the heart of this legislation. Armed with this new law, Federal prosecutors, working in tandem with State and local law enforcement, will be able to take on gangs in much the same way that traditional Mafia families have been systematically destroyed by effective RICO prosecutions. The legislation also recognizes that the core changes, standing alone, are not sufficient.

The Gang Prevention and Effective Deterrence Act is a comprehensive bill to increase gang prosecution and prevention efforts against violent gangs including the funding of witness protection programs and for interdiction and intervention programs for at-risk youth. In support of this effort, the bill increases funding for Federal prosecutors and FBI agents to increase coordinated enforcement efforts against violent gangs.

Witness protection is particularly important—as an example, recent press reports from Boston show that gang members are distributing what is, in essence, a witness intimidation media kit, complete with graphics and CDs that warn that if witnesses testify that they will be killed—one CD depicts three bodies on its covers. In another incident, a witness's grand jury testimony was taped to his home—soon afterward he was killed.

The Act also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties to deter and punish illegal street gangs, proposes violent crime reforms needed to effectively prosecute gang members (proposes a limited reform of the juvenile justice system to facilitate Federal prosecution of 16 and 17 year old gang members who commit serious acts of violence—specifically it: Makes recruiting minors to join criminal street gangs a Federal crime and requires offenders to pay the costs associated with housing and treating any recruited minor who is prosecuted for their gang activity.

Makes murder and other violent crimes committed in conjunction with drug trafficking Federal crimes.

Creates a new offense of multiple interstate murders, where an individual crosses State lines and intends to cause the death of two or more people.

Allows for prosecution of gang members who cross State lines to obstruct justice, intimidate or retaliate against witnesses, jurors, informants, or victims.

Creates tougher laws for certain Federal crimes like assault, carjacking, manslaughter, conspiracy, and for specific types of crimes occurring in Indian country.

Requires that someone convicted of hiring another person to commit murder be punished with imprisonment, instead of a fine.

Makes sexual assault a predicate act under RICO and increases the maximum sentences for these RICO crimes.

Allows for detention of persons charged with gang participation who have been previously convicted of prior crimes of violence or serious drug offenses. Current law does not allow a prosecutor to
ask that a person be held without bail even if the person has previously been convicted of a crime of violence or a serious drug offense. This bill would allow prosecutors to make that request of a judge but would allow a criminal defendant the right to argue why he or she should not be held.

Makes it clear that in a death penalty case, the case can be tried where the murder, or related conduct, occurred.

Extends the time within which a violent crime case can be charged and tried. For violent crime cases, the time is extended from 5 years to 10 years after the offense occurred or the continuing offense was completed, and from 5 years to 8 years after the date on which the violation was first discovered.

Permits wiretaps to be used for new gang crimes created by this bill.

Allows for a murdered witness’s statements to be admitted at trial in cases where the defendant caused the witness’s death.

Makes clear where a case can be tried involving retaliation against a witness—in either the district where the case is being tried, or where the intimidation took place.

Increases penalties for criminal use of firearms in crimes of violence and drug trafficking.

Includes modified juvenile provisions. This bill will allow prosecutors to more easily charge 16 and 17 year olds who are charged with serious violent felonies. A judge will review every decision a prosecutor makes to charge a juvenile as an adult.

Creates and provides assistance for “High Intensity”- Interstate Gang Activity areas. This legislation requires the Attorney General to designate certain locations as “high intensity intersecting state gang activity areas” and provides assistance in the form of crime street gang enforcement teams made up of local, State and Federal law enforcement authorities to investigate and prosecute criminal street gangs in each high intensity interstate gang activity area.

Authorizes funding of $500 million for 2004 through 2008 to meet the goals of suppression and intervention: $50 million a year will be used to support the criminal gang enforcement teams. $50 million a year will be used to make grants available for community-based programs to provide for crime prevention and intervention services for gang members and at-risk youth in areas designated as high intensity interstate gang activity areas.

Authorizes $150 million over five years to support anti-gang efforts including: Expanding the Project Safe Neighborhood program to require U.S. Attorneys to identify and prosecute significant gangs within their district; coordinating such prosecutions among all local, State and Federal law enforcement; and coordinating criminal street gang enforcement teams in designated high intensity interstate gang activity areas. Supporting the Federal Bureau of Investigation’s Safe Streets Program. Creating and expanding witness protection programs, the hiring of additional State and local prosecutors, funding gang prevention and community prosecution programs and purchasing equipment to increase the accurate identification and prosecution of violent offenders.

The bottom line is that this legislation would provide the tools and the resources to begin that national task of destroying criminal street gangs. It is designed to emphasize and encourage Federal, State and local cooperation. It combines enforcement with prevention. It is a tough, effective and fair approach.

This is not a new bill. I have been working on it for almost ten years. In 1996, I joined Senator HATCH and others to develop the Federal Gang Violence Act, which would have increased criminal penalties for gang members, made recruiting persons into a criminal street gang a crime, and enhanced penalties for transferring a gun to a member or associate of a criminal gang.

The result is that provisions of that bill were incorporated into the 1999 Juvenile Justice bill, which was approved overwhelmingly (73-25) by the Senate in the 106th Congress. However, the Juvenile Justice bill stalled in conference, and those provisions were never signed into law.

In the years that followed we kept up our efforts, with Republicans and Democrats working together on this critical issue. In the 108th Congress a version of this bill was introduced, and eventually was co-sponsored by Senators HATCH and others. That bill was the subject of much discussion and debate. Some of my colleagues raised some valuable suggestions and criticisms, many of which were incorporated in the bill last year. The result was a bill that I am proud of, approved overwhelmingly by the Judiciary Committee last Fall, but was never considered by the full Senate.

The legislation today is the same as that which was approved by the Judiciary Committee, and I hope this year we will move quickly to pass it into law. That said, I understand that some of my colleagues are still concerned about certain aspects of the bill. My intention is to continue to negotiate in the weeks ahead. I am open to change, and welcome further discussion and analysis.

We all agree that gangs are a terrible and growing problem. We all agree that something needs to be done. I believe that this legislation is desperately needed, and I look forward to working with my colleagues on both sides of the aisle to take this bill and make it law.

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

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

S. 155
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE, TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Gang Prevention and Effective Deterrence Act of 2005”.

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

TITLE I—CRIMINAL STREET GANG ABATEMENT ACT

Sec. 101. Solicitation or recruitment of persons in criminal street gang activity.

Sec. 102. Criminal street gangs.

Sec. 103. Violent crimes in furtherance or in aid of criminal street gangs.

Sec. 104. Interstate and foreign travel to transport in aid of criminal street gangs.

Sec. 105. Amendments relating to violent crime in areas of exclusive Federal jurisdiction.

Sec. 106. Increased penalties for use of interstate commerce facilities in the commission of murder-for-hire and other felony crimes of violence.

Sec. 107. Increased penalties for violent crimes in aid of racketeering activity.

Sec. 108. Murder and other violent crimes committed during and in relation to a drug trafficking crime.

Sec. 110. Designation of and assistance for “high intensity”- interstate gang activity areas.

Sec. 111. Enhancement of project safe neighborhoods initiative to improve enforcement of criminal laws against violent gangs.

Sec. 112. Additional resources needed by the Federal Bureau of Investigation to investigate and prosecute violent criminal street gangs.

Sec. 113. Grants to State and local prosecutors to combat violent crime and to protect witnesses and victims of crimes.

Sec. 114. Reauthorize the gang resistance education and training projects program.

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME

Sec. 201. Multiple interstate murder.

Sec. 202. Expansion of rebuttable presumption against release of persons charged with firearms offenses.

Sec. 203. Venue in capital cases.

Sec. 204. Statute of limitations for violent crime.

Sec. 205. Predicate crimes for authorization of interception of wire, oral, and electronic communications.

Sec. 206. Clarification to hearsay exception for forfeiture by wrongdoing.

Sec. 207. Clarification of venue for retaliation against a witness.

Sec. 208. Amendment of sentencing guidelines relating to certain gang and violent crimes.

Sec. 209. Increased penalties for criminal use of firearms in crimes of violence and drug trafficking.
Sec. 101. SOLICITATION OR RECRUITMENT OF PERSONS IN CRIMINAL STREET GANG ACTIVITY.

(a) PROHIBITIONS.—It shall be unlawful for any person to recruit, employ, solicit, induce, command, or cause another person to be or remain as a member of a criminal street gang, or to conspire to do so, with the intent to cause that person to participate in an offense described in section 522(a).

(b) DEFINITION.—In this section:

(1) CRIMINAL STREET GANG.—The term ‘criminal street gang’ shall have the same meaning as in section 521(a) of this title.

(2) MINOR.—The term ‘minor’ means a person who is less than 18 years of age.

(3) PENALTIES.—Any person who violates subsection (a) shall—

(A) be imprisoned for not more than 10 years, fined under this title, or both; and

(B) at the discretion of the sentencing judge, be liable for any costs incurred by the Federal Government, or by any State or local government, for housing, maintaining, and treating the person until the person attains the age of 18 years.

(4) CRIMINAL STREET GANG ABATEMENT ACT.

SEC. 102. CRIMINAL STREET GANGS.

(a) DEFINITIONS.—As used in this chapter:

(1) CRIMINAL STREET GANG.—The term ‘criminal street gang’ means a formal or informal group, club, organization, or association of 3 or more individuals, who individually, jointly, or in combination, have committed or attempted to commit the direct or indirect benefit of, at the direction of, in furtherance of, or in association with the group, club, organization, or association, at least 2 separate offenses of which 1 is a predicate gang crime, 1 of which occurs after the date of enactment of the Gang Prevention and Effective Deterrence Act of 2004 and the last of which occurs not later than 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime, and 1 predicate gang crime is a crime of violence or involves manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) provided that the activities of the criminal street gang affect interstate or foreign commerce, or involve the use of any facility of, or travel in, interstate or foreign commerce.

(2) PREDA嵯E GANG CRIME.—The term ‘predicate gang crime’ means—

(A) any act, threat, conspiracy, or attempted act, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year involving—

(i) murder;

(ii) manslaughter;

(iii) maiming;

(iv) assault resulting in serious bodily injury;

(v) murder;

(vi) kidnapping;

(vii) robbery;

(viii) extortion;

(ix) arson;

(x) obstruction of justice;

(xii) tampering with or retaliating against a witness, victim, or informant;

(xiii) burglary;

(xiv) sexual assault (which means any offense that involves conduct that would violate chapter 109A if the conduct occurred in or adjacent to a housing facility or at an educational institution, or if the conduct involves the victimizing of a participant at a sporting event); and

(xv) manufacturing, importing, distributing, possessing with intent to distribute, or otherwise dealing in a controlled substance or listed chemicals (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

(C) for the direct or indirect benefit of the criminal street gang, or in association with the criminal street gang;

(2) to employ, use, command, counsel, persuade, induce, entice, or coercce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime;

(A) in furtherance or in aid of the activities of a criminal street gang;

(B) for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

(C) for the direct or indirect benefit of the criminal street gang, or in association with the criminal street gang.

(c) PENALTIES.—Whoever violates paragraph (1) or (2) of subsection (b)—

(1) shall be fined under this title, imprisoned for not more than 30 years, or both; and

(2) if the violation is based on a predicate gang crime for which the maximum penalty includes life imprisonment, shall be fined under this title, imprisoned for any term of years or for life, or both.

(d) FORFEITURE.—

(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

(2) section 841 (relating to explosive materials);

(3) section 922(g)(1) (where the underlying conviction is a violent felony (as defined in section 924(e)(2)(B) of this title) or a serious drug offense (as defined in section 924(e)(2)(A) of this title));

(4) subsection (a)(2), (b), (c), (g), or (h) of section 924 (relating to receipt, possession, and transfer of firearms);

(5) sections 1028 and 1029 (relating to fraud and related activity in connection with identification documents or access devices);

(6) section 1503 (relating to obstruction of justice);

(7) section 1510 (relating to obstruction of criminal investigations);

(8) section 1512 (relating to tampering with a witness, victim, or informant); and

(9) State and local prosecutors, in hearings empowered to order the defendant to forfeit any property, real or personal, derived from the predicate gang crime.

(2) If the property is real property, the court shall determine the fair market value of the property and order the defendant to forfeit the fair market value of the property.

(3) If the property is personal property, the court shall determine the fair market value of the property and order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, if the property is of a type that cannot be readily liquidated into money.

(4) If the property is liquidated, the court shall determine whether the property should be forfeited in full or in part, and order the defendant to forfeit the property in full or in part, as the court finds appropriate.

(5) If the property is personal property that is of a type that cannot be readily liquidated into money, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(6) If the property is real property, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(7) If the property is personal property that is of a type that can be readily liquidated into money, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(8) If the property is real property, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(9) If the property is personal property that is of a type that cannot be readily liquidated into money, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(10) If the property is real property, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(11) If the property is personal property that is of a type that can be readily liquidated into money, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(12) If the property is real property, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(13) If the property is personal property that is of a type that cannot be readily liquidated into money, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(14) If the property is real property, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.

(15) If the property is personal property that is of a type that can be readily liquidated into money, the court shall order the defendant to forfeit a sum of money in an amount equal to the fair market value of the property, and the property shall be liquidated and the proceeds shall be used to satisfy the judgment of the court.
SEC. 104. INTERSTATE AND FOREIGN TRAVEL OR TRANSPORTATION IN AID OF RACKETEERING ENTERPRISES AND CRIMINAL STREET GANGS.

Section 1952 of title 18, United States Code, is amended—

(1) by inserting at the beginning of subsection (a)—

(A) by striking ‘‘and thereafter performs or attempts to perform’’ and inserting ‘‘and thereafter performs, or attempts or conspires to perform’’;

(B) by striking ‘‘6 years’’ and inserting ‘‘10 years’’;

and

(C) by inserting ‘‘punished by death or’’ after ‘‘if death results shall be’’;

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively;

(3) by inserting after subsection (a) the following:

‘‘(b) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with the intent to, force, influence, intimidate, or threaten any person, to delay or influence the testimony of, or prevent from testifying in a proceeding and thereafter performs or attempts or conspires to perform, an act described in this subsection, shall—

(1) if he first violates this title, imprisoned for any term of years, or both; and

(2) if death results, be punished by death or imprisonment for any term of years or for life.;’’;

(4) in subsection (c)(2), as redesignated by section 102, by inserting ‘‘in intimidation of, or retaliation against, a witness, victim, juror, or informant,’’ after ‘‘extortion, bribery.’’;

SEC. 105. AMENDMENTS RELATING TO VIOLENT CRIMES IN AREAS OF EXCLUSIVE FEDERAL JURISDICTION.

(a) Assault Within Maritime and Territorial Jurisdiction of United States.—Section 115(a)(3) of title 18, United States Code, is amended by striking ‘‘with intent to do bodily harm, and without just cause or excuse.’’

(b) Manslaughter.—Section 1112(b) of title 18, United States Code, is amended by—

(1) striking ‘‘ten years’’ and inserting ‘‘twenty years’’; and

(2) striking ‘‘six years’’ and inserting ‘‘ten years’’.

(c) Offenses Committed Within Indian Country.—Section 1519(a) of title 18, United States Code, is amended by inserting an offense for which the maximum statutory term of imprisonment under section 1983 is greater than 5 years, after ‘‘a felony under chapter 109a.’’;

(d) Racketeer Influenced and Corrupt Organizations.—Section 1961(a) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting ‘‘or would have been so chargeable if the act or threat (other than lawful forms of gambling) had not been committed in the United States (as defined in section 1513) or in any other area of exclusive federal jurisdiction’’;

(2) in subparagraph (C), by striking ‘‘section 1122 relating to multiple interstate murder’’ after ‘‘section 1084 relating to the transmission of wagering information’’;

(3) in section 1963 of title 18, United States Code, is amended by striking ‘‘with the intent to cause death or serious bodily injury’’;

(4) Clarification of Illegal Gun Transfers To Commit Drug Trafficking Crime or Crimes of Violence.—Section 924(b) of title 18, United States Code, is amended to read as follows:

‘‘(b) Illegal Transfers.—Whoever knowingly transfers or attempts to transfer a firearm knowing that the firearm will be used to commit, or possessed in furtherance of, a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime, shall be imprisoned for not more than 10 years, fined under this title, or both.’’;

(g) Amendment of Special Sentencing Provision.—Section 3582(d) of title 18, United States Code, is amended—

(1) by striking ‘‘chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations)’’;

(2) by striking ‘‘in aid of criminal street gangs’’;

and

(3) by inserting ‘‘before an ‘illegal enterprise’’;

(h) Conforming Amendment Relating to Orders for Restitution.—Section 3663(c)(4) of title 18, United States Code, is amended by striking ‘‘chapter 46 or chapter 96 of this title’’ and inserting ‘‘section 521, under chapter 46 or 96.’’;

(i) Special Provision for Indian Country.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to section 3559(e) of title 18, United States Code, for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1153 of such title 18) and which occurs within the boundaries of such Indian country unless the governing body of such Indian tribe elects to subject the persons under the criminal jurisdiction of the tribe to section 3559(e) of such title 18.

SEC. 106. INCREASED PENALTIES FOR USE OF INTERSTATE COMMERCE FACILITIES IN THE COMMISSION OF MURDER-FOR-HIRE AND OTHER FELONY CRIMES OF VIOLENCE.

Section 1958 of title 18, United States Code, is amended—

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

‘‘1958. Use of interstate commerce facilities in the Commission of murder-for-hire and other felony crimes of violence’’; and

(2) by amending subsection (a) to read as follows:

‘‘(a) Any person who travels in or causes another (including the intended victim) to cause to travel in interstate commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with the intent that a murder or other felony crime of violence be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so—

(1) may be fined under this title and shall be imprisoned for not more than 30 years; and

(2) if personal injury results, may be fined not more than $250,000, and shall be punished by death or imprisoned for any term of years or for life, or both.’’;

SEC. 107. INCREASED PENALTIES FOR VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a) of title 18, United States Code, is amended—

(1) by striking ‘‘and international transportation’’;

(2) by adding at the end the following:

‘‘(a) Any person who, for the purpose of maintaining or increasing position in, or in furtherance or in aid of, or for the direct or indirect benefit of, or in association with a criminal street gang, or as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value or from or to a criminal street gang, murders, assaults with a dangerous weapon, or as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, or who conspires to do so—

(1) may be fined under this title; and

(2) if personal injury results, may be fined not more than $250,000, and shall be punished by death or imprisoned for any term of years or for life, or both.’’.
promise or agreement to pay, anything of pecu-
niary value from an enterprise engaged in
racketeering activity, or for the purpose of
obtaining or maintaining or increasing
enterprise status or influence through
racketeering activity, or in furtherance or in
aid of an enterprise engaged in racketeering
activity, murders, kidnaps, sexual assaults
(which would result in death), or an attempt
that involves conduct which would violate
chapter 109A if the conduct occurred in the
special maritime and territorial jurisdiction,
maims, assaults with a dangerous weapon, com-
mitting a crime resulting in serious bodily injury
upon, or threatens to commit a crime of violence
against any individual in violation of the
laws of the United States; or attempts or
conspires to do so, shall be pun-
ished, in addition and consecutive to the
punishment provided for any other violation
of this chapter.

(1) for murder, by death or imprisonment
for any term of years or for life, a fine under
this title, or both;

(2) for kidnapping or sexual assault, by
imprisonment for any term of years or for life,
a fine under this title, or both;

(3) for maiming, by imprisonment for
any term of years or for life, a fine under
this title, or both;

(4) for assault with a dangerous weapon or
assault resulting in serious bodily injury, by
imprisonment for not more than 30 years,
a fine under this title, or both;

(5) for threatening to commit a crime of
violence, by imprisonment for not more than
10 years, a fine under this title, or both;

(6) for attempting or conspiring to com-
mit murder, kidnapping, maiming, or sexual
assault, by imprisonment for not more than
30 years, a fine under this title, or both;

(7) for threatening or conspiring to com-
mits murder, kidnapping, maiming, or sexual
assault which would result in serious bodily
injury, by imprisonment for not more than
20 years, a fine under this title, or both.

SEC. 108. MURDER AND OTHER VIOLENT CRIMES
COMMITTED DURING AND IN RELA-
TION TO A DRUG TRAFFICKING
CRIME.
(a) In General.—Part D of the Controlled
Substances Act (21 U.S.C. 841 et seq.) is
amended by adding at the end the following:

“MURDER AND OTHER VIOLENT CRIMES
COMMITTED DURING AND IN RELATION TO
A DRUG TRAFFICKING CRIME.

(b) General Definition.—Any
person who, during and in relation to any drug
trafficking crime, murders, kidnaps, sexual
assaults (which means any offense that
involved conduct which would violate
chapter 109A if the conduct occurred in the
special maritime and territorial jurisdiction),
maims, assaults with a dangerous weapon,
comits assault resulting in serious bodily
injury upon, commits any other crime of vio-
ence or threatens to commit a crime of vio-
ence against any individual, or attempts or
conspires to do so, shall be punished. In ad-
dition and consecutive to the punishment pro-
vided for the drug trafficking crime—

(1) in the case of murder, by death or im-
prisonment for any term of years or for life,
a fine under title 18, United States Code, or
both;

(2) in the case of kidnapping or sexual
assault or attempted kidnapping or sexual
assault, a fine under title 18, United States
Code, or both;

(3) in the case of maiming, by imprison-
ment for any term of years or for life, a fine
under title 18, United States Code, or
both;

(4) in the case of a dangerous weapon or
assault resulting in serious bodily
injury, by imprisonment not more than
30 years, a fine under title 18, United
States Code, or both;

(5) in the case of committing any other
crime of violence, by imprisonment for not
more than 20 years, a fine under this title, or
both;

(6) in the case of threatening to commit
a crime of violence specified in paragraphs
(1) through (5) that involves conduct which
would violate chapter 109A if the conduct
occurred in the special maritime and terri-
torial jurisdiction, a fine under title 18, a
fine under title 18, United States Code, or
both;

(7) in the case of attempting or conspiring
to commit a crime involving assault with a
dangerous weapon or assault resulting in
se-
rious bodily injury, by imprisonment for not
more than 20 years, a fine under title 18, or
both;

(8) in the case of attempting or conspiring
to commit a crime involving assault with

Subtitle B—Increased Federal Resources To
Suppress, Deter, and Prevent At-Risk
Youth From Joining Illegal Street Gangs
SEC. 110. DESIGNATION OF AND ASSISTANCE
FOR HIGH INTENSITY INTERSTATE
GANG ACTIVITY AREAS.
(a) Definitions.—In this section the fol-
lowing definitions shall apply:

(1) Governor.—The term “Governor”
means a Governor of a State or the Mayor
of the District of Columbia.

(2) High Intensity Interstate Gang Activity
Area.—The term “high intensity inter-
state gang activity area” means an area
within a State that is designated as a high
intensity interstate gang activity area under
subsection (b)(1).

(3) State.—The term “State” means a State
of the United States, the District of
Columbia, and any Commonwealth, territory,
or possession of the United States. The
term “State” shall include an “Indian tribe” as
defined by section 102 of the Federally
Recognized Indian Tribe Act of 1994 (25

(b) High Intensity Interstate Gang Activity
Areas.—

(1) Designation.—The Attorney General,
after consultation with the Governors of ap-
propriate States, may designate as high in-
tensity interstate gang activity areas, spe-
cific areas that are located within 1 or more
States. To the extent that the goals of a high
intensity interstate gang activity area (HIIGAA)
overlap with the goals of a high inten-
sity trafficking area (HISTA), the
Attorney General may merge the 2 areas to
serve as a dual-purpose entity. The Attorney
General may not make the final designation
as a high intensity interstate gang activity
area without first consulting with and re-
ceiving comment from local elected officials

representing communities within the State
of the proposed designation.

(2) Assistance.—In order to provide Fed-
eral assistance to high intensity interstate
gang activity areas, the Attorney General
shall—

(A) establish criminal street gang enforce-
ment teams, consisting of Federal, State,
local, and tribal law enforcement authorities, for
the coordinated investigation, disruption,
prehension, and prosecution of criminal
street gangs and offenders in each high
intensity interstate gang activity area;

(B) direct the reassignment or detailing
from any Federal department or agency (sub-
ject to the approval of the head of that de-
partment or agency, in the case of the Depart-
ment of Justice) of personnel to each criminal
street gang enforcement team; and

(C) provide all necessary funding for the
operation of the criminal street gang enforce-
ment team in each high intensity inter-
state gang activity area.

(3) Composition of Criminal Street Gang
Enforcement Team.—The team established
pursuant to paragraph (2)(A) shall consist of
agents and officers, where feasible, from—

(A) the Bureau of Alcohol, Tobacco, Fire-
arms, and Explosives;

(B) the Department of Homeland Security;

(C) the Department of Housing and Urban
Development;

(D) the Drug Enforcement Administration;

(E) the Internal Revenue Service;

(F) the Federal Bureau of Investigation;

(G) the United States Marshals Service;

(H) the United States Postal Service;

(I) State and local law enforcement;

(J) Federal, State and local prosecutors.

(4) Periodic Review of Designation.—In consid-
ering an area for designation as a high inten-
sity interstate gang activity area under this
section, the Attorney General shall con-
sider—

(A) the current and predicted levels of gang
crime activity in the area;

(B) the extent to which violent crime in the
area appears to be related to criminal
street gang activity, such as drug
trafficking, murder, robbery, assaults,
carjacking, arson, kidnapping, extortion, and
other criminal activity;

(C) the extent to which State and local law
enforcement agencies have committed re-
sources to—

(i) respond to the gang crime problem; and

(ii) participate in a gang enforcement
team;

(D) the extent to which a significant in-
crease in the allocation of Federal resources
would enhance local response to the gang
crime activities in the area; and

(E) any other criteria that the Attorney
General considers to be appropriate.

(5) Authorization of Appropriations.—

(1) In General.—There are authorized to be
appropriated $100,000,000 for each of the fiscal
years 2005 to 2009 to carry out this section.

(2) Use of Funds.—Of amounts made avail-
able under paragraph (1) in each fiscal year—

(A) 50 percent shall be used to carry out sub-
section (b)(1); and

(B) 50 percent shall be used to make grants
available for community-based programs to
provide crime prevention, research, and
intervention services that are designed for
gang members and at-risk youth in areas
designated pursuant to this section as high
intensity interstate gang activity areas.

(3) Reimbursements.—By Feb-
ruary 1st of each year, the Attorney General
shall provide a report to Congress which de-
scribes, for each designated high intensity
interstate gang activity area—

(A) the specific long-term and short-term
goals and objectives;
SEC. 111. ENHANCEMENT OF PROJECT SAFE NEIGHBORHOODS INITIATIVE TO IMPROVE ENFORCEMENT OF CRIMINAL LAWS AGAINST VIOLENT GANGS.

(a) In General.—While maintaining the focus of Project Safe Neighborhoods as a comprehensive, strategic approach to reducing gun violence in America, the Attorney General is directed to expand the Project Safe Neighborhoods program to require each United States attorney to—

(1) identify, investigate, and prosecute significant criminal street gangs operating within their district;

(2) coordinate the identification, investigation, and prosecution of criminal street gangs among Federal, State, and local law enforcement agencies; and

(3) coordinate and establish criminal street gang enforcement teams, established under section 110(b), in high intensity interstate criminal gang activity areas within a United States attorney’s district.

(b) Additional Staff for Project Safe Neighborhoods.

(1) In General.—The Attorney General may hire Assistant United States attorneys, non-attorney coordinators, or paralegals to carry out the provisions of this section.

(2) Authorization of Appropriations.—There are authorized to be appropriated $7,500,000 for each of the fiscal years 2005 through 2009 to carry out this subtitle.

SEC. 112. ADDITIONAL RESOURCES NEEDED BY THE FEDERAL BUREAU OF INVESTIGATION TO INVESTIGATE AND PROSECUTE VIOLENT CRIMINAL STREET GANGS.

(a) Responsibilities of Attorney General.—The Attorney General is authorized to require the Federal Bureau of Investigation to—

(1) increase funding for the Safe Streets Program; and

(2) support the criminal street gang enforcement teams, established under section 110(b), in designated high intensity interstate criminal gang activity areas.

(b) Authorization of Appropriations.—

(1) In General.—In addition to amounts otherwise authorized, there are authorized to be appropriated to the Attorney General $5,000,000 for each of the fiscal years 2005 through 2009 to carry out the Safe Streets Program.

(2) Availability.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 113. GRANTS TO PROSECUTORS AND LAW ENFORCEMENT TO COMBAT VIOLENT CRIME AND TO PROTECT WITNESSES AND VICTIMS OF CRIMES.

(a) In General.—Section 31702 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13862) is amended—

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

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

(3) by adding at the end the following:

“(B) allow more cases to be prosecuted; and

“(C) reduce backlogs;”

(b) Definition.—The term “grant” means grants, technology, equipment, and training for prosecutors and law enforcement in order to increase accurate identification of gang members and violent offenders, and to maintain databases with such information to facilitate coordination among law enforcement and prosecutors; and

“(7) to counteract the drug and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.”.

(b) Authorization of Appropriations.—Section 31707 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13867) is amended to read as follows:

“(a) In General.—There are authorized to be appropriated $20,000,000 for each of the fiscal years 2005 through 2009 to carry out this subtitle.

“(b) Use of Funds.—Of the amounts made available under subsection (a), in each fiscal year 60 percent shall be used to carry out section 31702(7) to create and expand victim and victim protection programs to prevent threats, intimidation, and retaliation against victims of, and witnesses to, violent crimes.”.

SEC. 114. REAUTHORIZED THE GANG RESISTANCE EDUCATION AND TRAINING PROGRAM.

Section 32406(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(b)) is amended by striking paragraphs (1) through (6) and inserting the following:

“(1) $20,000,000 for fiscal year 2005;

“(2) $20,000,000 for fiscal year 2006;

“(3) $20,000,000 for fiscal year 2007;

“(4) $20,000,000 for fiscal year 2008;

“(5) $20,000,000 for fiscal year 2009.”.

TITLE II—VIOLENT CRIME REFORMS NEEDED TO DETER AND PREVENT ILLEGAL GANG CRIME

SEC. 201. MULTIPLE INTERSTATE MURDER.

Chapter 51 of title 18, United States Code, is amended by adding at the end of the new section:

“1123. Multiple murders in furtherance of common scheme of purpose

“(a) In General.—Whoever, having committed murder in violation of the laws of any State or the United States, moves or travels in interstate or foreign commerce with the intent to commit one or more murders in violation of the laws of any State or the United States, commits one or more murders in violation of the laws of any State or the United States in furtherance of a common scheme or purpose, or who conspires to do so.

“(1) shall be fined under this title, imprisoned for not more than 30 years, or both, for each murder; and

“(2) if death results, may be fined not more than $250,000 under this title, and shall be punished for any noncapital felony, crime of violence (as defined in section 16), including any racketeering activity or gang crime which involves any violent crime, unless the indictment is found or the information is submitted by the later of—

“(A) 10 years after the date on which the alleged violation occurred; or

“(B) 10 years after the date on which the continuing offense was completed; or

“(C) 8 years after the date on which the alleged violation was first discovered.”.

SEC. 202. EXPANSION OF REBUTTABLE PRESUMPTION AGAINST RELEASE OF PERSONS CHARGED WITH FIREARMS OF-

(a) In General.—Section 3296 of title 18, United States Code, is amended by adding at the end the following:

“§ 3296. Violent crime offenses

“(a) Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence, or drug offense as defined in section 922(g)(1) where the underlying conviction is a serious drug, firearm, explosive, or destructive device offense; or

“(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, the importation or receipt of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.”.

SEC. 203. VENUE IN CAPITAL CASES.

Section 3235 of title 18, United States Code, is amended to read as follows:

“§ 3235. Venue in capital cases

“(a) The trial for any offense punishable by death shall be held in the district where the offense was committed or in any district in which the offense began, continued, or was completed.

“(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, the importation or receipt of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.”.

SEC. 204. STATUTE OF LIMITATIONS FOR VIOLENT CRIME.

(a) In General.—Chapter 214 of title 18, United States Code, is amended by adding at the end the following:

“§ 3297. Violent crime offenses

“(a) Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any noncapital felony, crime of violence, or drug offense as defined in section 922(g)(1) where the underlying conviction is a serious drug, firearm, explosive, or destructive device offense; or

“(b) If the offense, or related conduct, under subsection (a) involves activities which affect interstate or foreign commerce, the importation or receipt of an object or person into the United States, such offense may be prosecuted in any district in which those activities occurred.”.

SEC. 205. PREDICATE CRIMES FOR AUTHORIZATION OF INTERCEPTION OF WIRE, ORAL, AND ELECTRONIC COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (q), by striking “‘or’”; and

(2) by redesignating paragraph (r) as paragraph (u) and

(3) by inserting after paragraph (q) the following:

“(r) any violation of section 424 of the Controlled Substances Act (relating to murder and other violent crimes in furtherance of a drug trafficking crime);”.

SEC. 206. CLARIFICATION TO HEARSAY EXCEPTION FOR FORFEITURE BY WRONGDOING.

Rule 804(b)(6) of the Federal Rules of Evidence is amended to read as follows:

“(6) Forfeiture by wrongdoing. A statement offered against a party that has engaged, acquiesced, or conspired, in wrongdoing that was intended to, and did, procure
(a) **IN GENERAL.**—Section 924(e) of title 18, United States Code, is amended to read as follows:

"(e)(1) In the case of a person who violates section 922(g) of this title and has previously been convicted by any court referred to in section 922(y)(1) for a violent felony or a serious drug offense:

(A) in the case of 1 such prior conviction, where a period of not more than 10 years has elapsed since the date of conviction or release from the period of imprisonment for that conviction, be subject to imprisonment for not more than 20 years, a fine under this title, or both; or

(B) in the case of 2 or more such prior convictions, committed on occasions different from one another, and where a period of not more than 10 years has elapsed since the date of conviction or release from the period of imprisonment for that conviction, be subject to imprisonment for not more than 20 years, a fine under this title, or both; or

(C) in the case of 3 such prior convictions, committed on occasions different from one another, be subject to imprisonment for not less than 15 years, a fine under this title, or both; or

(D) in the case of 3 or more such prior convictions, be subject to imprisonment for not less than 20 years, a fine under this title, or both; or

(2) Each such conviction determined under this paragraph shall be counted as a "serious drug offense", and the period of imprisonment shall be in addition to any other penalty provided by law for the offense; and

(3) In determining whether a prior convictionas described in this paragraph as a "serious drug offense" and the duration of the period of imprisonment, Federal and State convictions shall be counted.

(4) For purposes of the immediately preceding sentence, a prior conviction for a violation of section 922(g) of this title, and the term "serious drug offense", shall be determined in accordance with section 924(i)(2).

(5) The purpose of the amendments made by this section shall be to implement the provisions of the Sentencing Act of 1984 and the Violent Crime Control and Law Enforcement Act of 1994, and to clarify the definition of a "serious drug offense", as such term is defined in section 924(i)(2)."

**SEC. 211. CONFORMING AMENDMENT.**—The matter before paragraph (1) in section 922(d) of title 18, United States Code, is amended by inserting " transfers", after "sell"."
(C) with respect to a juvenile 13 years and older alleged to have committed an act after his thirteenth birthday which if committed by an adult would be a felony that is the crime of violence under section 1151, and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction.

(2) Factors.—

(A) IN GENERAL.—Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer under subparagraph (B) or (C) of paragraph (1), and paragraph (2) of subsection (d), would be in the interest of justice:

(i) The age and social background of the juvenile.

(ii) The nature of the alleged offense, including the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities.

(iii) Whether prosecution of the juvenile as an adult would protect public safety.

(iv) The extent and nature of the juvenile’s prior delinquency record.

(v) The juvenile’s present intellectual development and psychological maturity.

(vi) The nature of past treatment efforts and the juvenile’s response to such efforts.

(vii) The availability of programs designed to treat the juvenile’s behavioral problems.

(B) NATURE OF THE OFFENSE.—In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms.

(C) The court shall not order the transfer of a juvenile under this subsection if the juvenile is alleged to have committed, conspired, solicited or attempted to commit, or otherwise influenced other persons to take part in, an offense described in paragraphs (A) or (B).

(3) Reviewability.—Except as otherwise provided by this subsection, a determination of whether the juvenile should be transferred to adult jurisdiction shall be a final appealable order.

(4) PROSECUTION.—(A) In any prosecution of a juvenile under this subsection, upon motion of the defendant, the court in which the charge was filed shall have the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.

(5) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall not be a final order for the purposes of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court rendered upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.

(6) MANDATORY TRANSFER OF JUVENILE 16 OR OLDER.—A juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense, that has an element thereof the use, threatened use, or threatened force of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another, may be used in committing the offense or would be an element thereof, makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2)

(7) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall not be a final order for the purposes of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court rendered upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.

(8) PROCEEDINGS.—

(1) DEFENSE.—(A) A juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense, that has an element thereof the use, threatened use, or threatened force of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another, may be used in committing the offense or would be an element thereof, makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2)

(2) ORDER.—An order of the court made in ruling on a motion by a defendant to transfer a defendant to juvenile status under this subsection shall not be a final order for the purposes of enabling an appeal, except that an appeal by the United States shall lie to a court of appeals pursuant to section 3731 of this title from an order of a district court rendered upon receipt of a notice of appeal of an order under this paragraph, a court of appeals shall hear and determine the appeal on an expedited basis. The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous, and the court of appeals shall review de novo the district court’s application of the law to the facts.

(3) PROCEEDINGS.—

(1) DEFENSE.—(A) A juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense, that has an element thereof the use, threatened use, or threatened force of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another, may be used in committing the offense or would be an element thereof, makes a motion to transfer the criminal prosecution on the basis of the alleged act in the appropriate district court of the United States and the court finds, after hearing, such transfer would be in the interest of justice as provided in paragraph (2)
to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

(2) Any statement made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal proceedings except for impeachment or in connection for perjury or making a false statement.

(3) FURTHER PROCEEDINGS.—Whenever a juvenile transferred to district court under subsection (b) or (c) is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged, juvenile court, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

(4) RECEIPT OF RECORDS.—A juvenile shall not be transferred to adult prosecution under subsection (b) nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile record is unavailable and why it is unavailable.

(5) SPECIFIC ACTS DESCRIBED.—Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile’s official record.

(g) STATE.—For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(b) CONFORMING AMENDMENT.—The analysis for chapter 403 of title 18, United States Code, is amended by striking the item relating to section 5032 and inserting the following:

“5032. Delinquency proceedings in district courts; juveniles tried as adults; transfer for criminal prosecution.”

SEC. 302. NOTIFICATION AFTER ARREST.

Section 5034 of title 18, United States Code, is amended in the first sentence, by striking “immediately notify the Attorney General and” and inserting “immediately, or as soon as practicable, notify the Attorney General and shall promptly take reasonable steps to notify”.

SEC. 303. RELEASE AND DETENTION PRIOR TO IMPOSITION OR ALLOWANCE OF SENTENCE.

(a) DUTIES OF MAGISTRATE JUDGE.—Section 5034 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph, by striking “The magistrate judge shall ensure” and inserting the following:

“a. In General.—

(1) DETENTION BY COUNSEL.—The magistrate judge shall ensure”;

(2) in the second undesignated paragraph, by striking “The magistrate judge may appoint” and inserting the following:

“b. Guardian Ad Litem.—The magistrate judge may appoint”;

(3) in the third undesignated paragraph, by striking “If the juvenile” and inserting the following:

“b. Release Prior to Disposition.—Except as provided in subsection (c), if the juvenile”;

and

(4) by adding at the end the following:

“c. Release of Certain Juveniles.—

(1) In General.—A juvenile, who is to be tried as an adult pursuant to section 5032, shall be released pending trial in accordance with the applicable provisions of chapter 207.

(2) CONDITIONS.—A release under paragraph (1) shall be conducted in the same manner, and shall be subject to the same terms, conditions, and sanctions for violation of a condition of release, as provided for an adult under chapter 207.

(3) PENALTY FOR AN OFFENSE COMMITTED WHILE ON RELEASE.—

(a) IN GENERAL.—A juvenile alleged to have committed, while on release under this section, an offense that, if committed by an adult, would be a Federal criminal offense, shall be subject to prosecution under section 5032.

(b) APPLICABILITY OF CERTAIN PENALTIES.—Section 3147 shall apply to a juvenile pursuant to section 5032, or for purposes of section 5032 for an offense committed while on release under this section.”.

(b) DETENTION PRIOR TO DISPOSITION.—Section 5035 of title 18, United States Code, is amended—

(1) by striking “A juvenile” and inserting the following:

“a. In General.—Except as provided in subsection (b), a juvenile”;

and

(2) by adding at the end the following:

“b. Detention Prior to Disposition.—A juvenile who is to be tried as an adult under section 5032 shall be subject to detention in accordance with chapter 207.”.

SEC. 304. SPEEDY TRIAL.

Section 5036 of title 18, United States Code, is amended to read as follows:

“5036, Speedy trial

(a) In General.—If an alleged delinquent, who is to be proceeded against as a juvenile pursuant to section 5032 and who is in detention pending trial, is not brought to trial pursuant to its rules and regulations and in accordance with chapter 207, the trial shall be dismissed on motion of the alleged delinquent.

(b) Periods of Exclusion.—The periods of exclusion under section 316(b) shall apply to this section.

(c) Judicial Considerations.—In determining whether an information should be dismissed with or without prejudice, the court shall consider—

(1) the seriousness of the alleged act of juvenile delinquency;

(2) the facts and circumstances of the case that led to the dismissal; and

(3) the impact of a reprosecution on the administration of justice.”

SEC. 305. FEDERAL SENTENCING GUIDELINES.

(a) APPLICATION OF GUIDELINES TO CERTAIN JUVENILE DEFENDANTS.—Section 994(b) of title 28, United States Code, is amended by inserting “, or in which the defendant is a juvenile who is tried as an adult,” after “old or older.”

(b) GUIDELINES FOR JUVENILE CASES.—Section 994 of title 28, United States Code, is amended by adding at the end the following:

“(2) GUIDELINES FOR JUVENILE CASES.—Not later than May 1, 2006, the Commission, pursuant to its rulemaking authority and consistent with all pertinent provisions of any Federal statute, shall promulgate and distribute, to all courts of the United States and to the United States Probation System, guidelines, as described in this section, for use by a sentencing court in determining the sentence to be imposed in a criminal case if the defendant committed the offense as a juvenile, and is tried as an adult pursuant to section 5032 of title 18.”.

Mr. HATCH. Mr. President, I rise today to introduce with my colleagues, Senators Feinstein, Grassley, Kyl, and Collins, and to support the bipartisan bill to increase gang prosecution and prevention efforts. The bill I introduce today is identical to S. 1735 that was favorably reported by the Senate Judiciary Committee in the 108th Congress.

This legislation, “The Gang Prevention and Effective Deterrence Act of 2005,” authorizes approximately $650 million over the next five years to support law enforcement and efforts to prevent youngsters from joining gangs. Of that, $450 million would be used to support Federal, State and local law enforcement efforts to fight violent gangs, and $200 million would be used for intervention and prevention programs for at-risk youth. The bill increases funding for the Federal prosecutors and Federal Bureau of Investigation (FBI) agents needed to conduct coordinated enforcement efforts against violent gangs.

This bill also creates new criminal gang prosecution offenses, enhances existing gang and violent crime penalties, strengthens responsibility for law enforcement, expands gang prosecution offenses, increases violent crime reforms needed to prosecute effectively gang members, and implements a limited re-form of the juvenile justice system to facilitate Federal prosecution of 16- and 17-year-old gang members who commit serious violent felonies.

The problem of gang violence in America is not a new one, nor is it a problem that is limited to major urban areas. Once thought to be only a problem in our Nation’s largest cities, gangs have invaded smaller communities. In Salt Lake County result in significant measure from the influence of gangs existing in Los Angeles, Chicago, but with local mutations. Constituents frequently mention to me their extreme concern about gang violence in Utah. According to the Salt Lake Area Gang Project, a multi-jurisdictional task force created in 1989 to fight gang crime in the Salt Lake area, there are at least 250 identified gangs in Utah with over 3,500 members. In Utah, there are street gangs that are ethnically oriented, such as Hispanic gangs, as well as those affiliated with street gangs from other cities, such as the Crips and Bloods, Folks and People, motorcycle gangs, Straight Edge gangs, Animal Liberation Front, Skinheads, Varrio Loco Town, Oquírrh Shadow Boys, Salt Lake Peso, and the list goes on. Some of these gangs are racist; some are extremist. And what I find particularly troubling is that over one-third of the total membership is made up of juveniles. Thus, these crimes have a particular impact on youths.

Gangs now resemble organized crime syndicates which readily engage in gun violence, illegal gun trafficking, illegal drug trafficking, carjacking and vicious crimes. All too often we read in the headlines about gruesome and tragic stories of rival gang members gunned down, innocent bystanders—adults, teenagers and children—caught in the cross fire of gangland shootings, and family members crying out in grief as they lose loved ones to the gang wars plaguing our communities.
Recent studies confirm that gang violence is an increasing problem in all of our communities. Based on the latest available National Youth Gang Survey, it is now estimated that there are more than 25,000 gangs, and over 750,000 gang members who are active in more than 500 communities across the United States. The most current reports indicate that in 2002 alone, after five years of decline, gang membership has spiked nationwide.

I have been—and remain—committed to successful State and local task forces as a model for effective gang enforcement strategies. Working together, these task forces have demonstrated that they can make a difference in the community. In Salt Lake City, the Metro Gang Multi-Jurisdiction Task Force stands out as a critical player in fighting gang violence in Salt Lake City. We need to reassure our communities that there will be adequate resources available to expand and fund these critical task force operations to fight gang violence.

In my study of this problem, it has become clear that the government needs to work with communities to meet this problem head-on and defeat it. If we really want to reduce gang violence, we must ensure that law enforcement has adequate resources and legal tools, and that our communities have the ability to implement proven intervention and prevention strategies, so that young men who are removed from the community are not simply replaced by the next generation of new gang members.

In closing, I want to commend my colleagues—Senators Feinstein, Grassley, Kyl and Cornyn. They have worked very closely with me as we considered these issues last Congress and I look forward to working with them and others as we proceed this year. I urge my colleagues to join with us in promptly passing this important legislation.

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

S. 156. A bill to designate the Ojoito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I am proud to introduce the “Ojoito Wilderness Act”. This bill was passed in various forms by both the Senate and the House of Representatives in the 106th Congress. I am pleased that the senior Senator from New Mexico, Mr. DOMENICI, is cosponsoring this bill.

The support for this proposal truly is impressive. It has been formally endorsed by the Governor of New Mexico; the local Sandoval County Commission and the neighboring Bernalillo County Commission; the Albuquerque City Council; New Mexico House of Representatives Energy and Natural Resources Committee Chairman James Roger Madalena; the Governors of the Pueblos of Zia, Santa Ana, Santo Domingo, Cochiti, Tesuque, San Ildefonso, Pojoaque, Nambe, Santa Clara, San Juan, Sandia, Laguna, Acoma, Isleta, Picuris, and Taos; the National Congress of American Indians; the Hopi Tribe; the Wilderness Society; the New Mexico Wilderness Alliance; the Coalition for New Mexico Wilderness, on behalf of more than 375 businesses and organizations; the Rio Grande Chapter of the Sierra Club; the National Parks Conservation Association; the Albuquerque Convention and Visitors Bureau; 1000 Friends of New Mexico; and numerous individuals.

The Ojito provides a unique wilderness area that is important not only to its local stewards, but also to the nearby residents of Albuquerque and Santa Fe, as well as visitors from across the country. It is an outdoor geology laboratory, offering a spectacular and unique opportunity to view from a single location some of the geology of the southwestern margin of the Rocky Mountains, the Colorado Plateau, and the Rio Grande Rift, along with the volcanic necks of the Rio Puerco Fault. Its rugged terrain offers a rewarding challenge to hikers, backpackers, and photographers. It shelters ancient Puebloan ruins and an endemic endangered plant, solitude and inspiration.

Designating Ojito as a wilderness area ensures that the beauty of this special place will be protected and enjoyed for years to come.

I have made a number of changes to this bill in order clarify a number of issues and to facilitate its enactment, and I hope that it will be enacted quickly.

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

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

S. 156

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

SECTION 1. SHORT TITLE. This Act may be cited as the “Ojito Wilderness Act”.

SEC. 2. DEFINITIONS. In this Act:

(1) MAP.—The term “map” means the map entitled “Ojito Wilderness Act” and dated October 1, 1996.

(2) PUEBLO.—The term “Pueblo” means the Pueblo of Zia.

(3) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(4) STATE.—The term “State” means the State of New Mexico.

SEC. 3. DESIGNATION OF THE OJITO WILDERNESS.

(a) IN GENERAL.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), there is hereby designated as wilderness, and the component of the National Wilderness Preservation System, certain land in the Albuquerque District-Bureau of Land Management, New Mexico, which comprises approximately 11,183 acres, as generally depicted on the map, and which shall be known as the “Ojito Wilderness”.

(b) MAP AND LEGAL DESCRIPTION.—The map and a legal description of the wilderness area designated by this Act shall:

(1) be filed by the Secretary with the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives as soon as practicable after the date of enactment of this Act;

(2) have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in the legal description and map; and

(3) be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(c) MANAGEMENT OF WILDERNESS.—Subject to valid existing rights, the wilderness area designated by this Act shall be managed by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to the wilderness area designated by this Act, any reference in the Wilderness Act to the effective date of this Act shall be deemed to be a reference to the date of enactment of this Act.

(d) MANAGEMENT OF NEWLY ACQUIRED LAND.—If acquired by the United States, the following land shall become part of the wilderness area designated by this Act and shall be managed in accordance with this Act and other applicable law:

(1) Section 12 of township 15 north, range 01 west, New Mexico Principal Meridian.

(e) MANAGEMENT OF LANDS TO BE ADDED.—The lands generally depicted on the map as “Lands to be Added”, shall be managed by the Secretary in accordance with this Act, except that, with respect to the wilderness area designated by this Act if the United States acquires, or alternative adequate access is available to, section 12 of township 15 north, range 01 west, New Mexico Principal Meridian, the following land shall become part of the wilderness area designated by this Act:

(f) RELEASE.—The Congress hereby finds and directs that the lands generally depicted on the map as “Lands to be Released” have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782) and no longer are subject to the requirement of section 603(c) of such Act (43 U.S.C. 1782(c)) pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

(g) GRAZING.—Grazing of livestock in the wilderness area designated by this Act, when established before the enactment of this Act, shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)) and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H.Rep. 101-480).

(h) FISH AND WILDLIFE.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this section shall be construed as affecting the jurisdiction or responsibilities of the State with respect to fish and wildlife in the State.

(i) WATER RIGHTS.

(1) FINDINGS.—Congress finds that

(A) the land designated as wilderness by this Act is arid in nature and is generally not suitable for use or development of new water resource facilities; and

(B) because of the unique nature and hydrology of the desert land designated as wilderness by this Act, it is possible to provide for proper management and protection of the wilderness and other values of lands in ways different from those used in other legislation.

(2) STATUTORY CONSTRUCTION.—Nothing in this Act—
(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this Act;

(B) shall affect any water rights in the State existing on the date of enactment of this Act, including any water rights held by the United States; and

(C) shall be construed as establishing a precedent with regard to any future wilderness designations;

(D) shall affect the interpretation of, or any designation made pursuant to, any other Act; or

(E) shall be construed as limiting, altering, modifying, extending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State and other States.

(b) STATE WATER LAW.—The Secretary shall follow the procedural and substantive requirements of the law of the State in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the wilderness area designated by this Act.

(4) NEW PROJECTS.—

(A) WATER RESOURCE FACILITY.—As used in this subsection, the term “water resource facility” means:

(i) irrigation and pumping facilities, reservoirs, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(ii) does not include wildlife guzzlers.

(B) RESTRICTION ON NEW WATER RESOURCE FACILITIES.—Except as otherwise provided in this Act, on and after the date of enactment of this Act, neither the President nor any other officer, employee, or agent of the United States, nor any other person, shall issue or authorize, or issue a license or permit for the development of any new water resource facility within the wilderness area designated by this Act.

(c) WITHDRAWAL.—Subject to valid existing rights, the wilderness area designated by this Act, the lands to be added under subsection (e), and lands identified on the map as the “BLM Lands Authorized to be Acquired by the Pueblo of Zia” are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(d) EXCHANGE.—Not later than 3 years after the date of enactment of this Act, the Secretary shall seek to complete an exchange for State land within the boundaries of the wilderness area designated by this Act.

SEC. 4. LAND HELD IN TRUST.

(a) IN GENERAL.—Subject to valid existing rights and the conditions under subsection (d), all right, title, and interest of the United States in and to the lands (including improvements, appurtenances, and mineral rights to the lands) generally depicted on the map as “BLM Lands Authorized to be Acquired by the Pueblo of Zia” shall, on receipt of consideration under subsection (c) and adoption and approval of regulations under subsection (d), be declared by the Secretary to be held in trust for the United States for the Pueblo and shall be part of the Pueblo’s Reservation.

(b) DESCRIPTION OF LANDS.—The boundary of the lands held in trust by this section shall be that boundary established under the Rio Pueblo Resources Management Plan that is in effect on the date of the grant.

(c) CONSIDERATION.—In consideration for the conveyance authorized under subsection (a), the Secretary shall pay to the Pueblo the amount that is equal to the fair market value of the land conveyed, as subject to the terms and conditions in subsection (d), as determined by an independent appraisal.

(d) APPRAISAL.—To determine the fair market value, the Secretary shall conduct an appraisal paid for by the Pueblo that is performed in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(3) AVAILABILITY.—Any amounts paid under paragraph (1) shall be available to the Secretary, without further appropriation and until expended, for the acquisition from willing sellers of land or interests in land in the State.

(e) PUBLIC ACCESS.—

(1) IN GENERAL.—Subject to paragraph (2), the declaration of trust and conveyance under subsection (a) shall be subject to the continuing right of the public to access the land for recreational, scenic, scientific, educational, paleontological, or cultural uses, subject to any regulations for land management and the preservation, protection, and enjoyment of the natural characteristics of the land as provided by the Secretary and approved by the Secretary; Provided that the Secretary shall ensure that the rights provided for in this paragraph are protected and that a process for resolving any complaints by an aggrieved party is established.

(2) CONDITIONS.—Except as provided in subsection (a),—

(A) the land conveyed under subsection (a) shall be maintained as open space and the natural characteristics of the land shall be preserved in perpetuity; and

(B) the use of motorized vehicles (except on existing roads or as is necessary for the maintenance and repair of facilities used in connection with grazing operations), mineral extraction, housing, gaming, and other commercial enterprises shall be prohibited within the boundaries of the land conveyed under subsection (a).

(f) JUDICIAL RELIEF.—

(1) IN GENERAL.—To enforce subsection (d), any person may bring a civil action in the United States District Court for the District of New Mexico seeking declaratory or injunctive relief.

(2) SOVEREIGN IMMUNITY.—The Pueblo shall not assert sovereign immunity as a defense or bar to a civil action brought under paragraph (1).

(3) EFFECT.—Nothing in this section—

(A) authorizes a civil action against the Pueblo for money damages, costs, or attorneys fees; or

(B) except as provided in paragraph (2), abrogates the sovereign immunity of the Pueblo.

By Mr. KOHL.

S. 157. A bill to amend the Internal Revenue Code of 1986 to permit interest on Federally guaranteed water, wastewater, and essential community facilities loans to be tax exempt; to the Committee on Finance.

Mr. KOHL. Mr. President, I’m introducing a bill today that is aimed at helping rural communities build or improve essential community facilities such as shelters, nursing homes, hospitals, medical clinics, and fire and rescue-type projects. My bill would make it possible for project sponsors to accept certain USDA loan guarantees without risking the tax exempt status that enables them to finance these initiatives.

Clarification of existing tax rules, as proposed in this bill, will provide certainty for project sponsors, help lower project costs for rural communities, and help deal with a backlog of loan applications for small communities.

The needs are great in many rural communities. This measure will help communities help themselves and I look forward to working with the Senate Finance Committee on this important topic.

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

Without objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 157

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

SECTION 1. TAX-EXEMPT INTEREST ON FEDERALLY GUARANTEED WATER, WASTEWATER, AND essenTIAL COMMUNITY FACILITIES LOANS.

(a) IN GENERAL.—Section 149(b)(3)(A) of the Internal Revenue Code of 1986 (relating to certain insurance programs) is amended by striking “or” at the end of clause (ii), by striking period at the end of clause (iii) and inserting “; and” and by adding at the end the following new clause:

“(iv) any guarantee by the Secretary of Agriculture pursuant to section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1)) to finance water, wastewater, and essential community facilities.”

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of issuance or renewal of the bonds issued after the date of the enactment of this Act.

By Mr. LIEBERMAN (for himself, Mrs. CLINTON, Mr. DODD, and Mr. SCHUMER):

S. 158. A bill to establish the Long Island Sound Stewardship Initiative; to the Committee on Environment and Public Works.
Mr. LIEBERMAN. Mr. President, I rise today to re-introduce legislation that would establish a new system to preserve the environmental quality of Long Island Sound by identifying, protecting, and enhancing sites within the Long Island Sound ecosystem that have significant ecological, educational, open space, public access, or recreational value.

With this legislation, we hope to preserve the natural beauty and ecological wonder of this iconic estuarine waterway between New York and Connecticut, which my New York and Connecticut colleagues and I have worked hard together to improve. We have come a long way in restoring the Sound and its rich biodiversity over the past several decades, but our progress may be in jeopardy if we do not take measures now to protect remaining sites of biological diversity. Despite our best efforts, we are continuing to lose unprotected open sites along the shore. That is why this Act is so important.

One of the important features of the Stewardship Act I am introducing is that it will use new approaches to address an old problem, the proper conservation of our resources. The legislation incorporates the best conservation techniques that are designed to accomplish their goals at the least cost. First, it involves purchasing property or property rights or entering into binding legal agreements with property owners, but does so through a process that is voluntary and that explicitly respects the interests and rights of private property owners. It also uses established scientific methods for identifying potential coastal sites. Finally, it incorporates a flexible management system that institutionalizes learning and ensures efficiency in the identification and acquisition of conservation and recreation sites.

The value of this legislation, which was adopted by unanimous consent during the last Congress, is clear. I look forward to working with my co-sponsors from Connecticut and New York, Senators DODD, CLINTON, and SCHUMER, and a bipartisan group of our Connecticut and New York House colleagues to enact this legislation and ensure that we can take necessary common-sense steps to protect and preserve Long Island Sound for generations to come.

I do not have an objection to the text of the bill being printed in the RECORD. There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

SEC. 1. SHORT TITLE.
This Act may be referred to as the “Long Island Sound Stewardship Act of 2005”.

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:
(a) ADAPTIVE MANAGEMENT.—The term “adaptive management” means a scientific process—
(A) for—
(i) developing predictive models;
(ii) making management policy decisions based upon those models;
(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 an ongoing process of learning.

(b) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency, or a designee of the Administrator.

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

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

(e) STATES.—The term “States” means the States of Connecticut and New York.

(f) STEWARDSHIP SITE.—The term “stewardship site” means a site that—
(A) qualifies for identification by the Committee under section 3(a); 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.

(g) 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 verifiable, 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.

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—
(1) those portions of the Sound that contain coastal wetlands and shallow marine areas, as described on the map entitled the “Long Island Sound Stewardship Region” and dated April 21, 2001; and
(2) the Peconic Estuary, as described on the map entitled “Peconic Estuary Program Area Boundaries”, included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

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.—The Committee shall consist of at least nine members, to be appointed by the Chairperson from the following groups:
(A) STATE OFFICIALS.—The Committee shall include representatives of State, local, and tribal governments of the States the Long Island Sound Stewardship Initiative Region.
(B) REPRESENTATIVES.—The Committee shall include representatives of organizations that—
(i) Federal, State, and local government interests;
(ii) the interests of nongovernmental organizations;
(iii) academic interests; and
(iv) private interests.

(2) VACANCIES.—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.—The term of a member of the Committee shall be—
(A) 3 years; and
(B) not affect the powers of the Committee.

(e) REAPPOINTMENT.—The Chairperson of the Committee may reappoint members from the original appointment, but only one reappointment is authorized for any member during any single term of office.

(f) SESSIONS.—The Committee shall meet at least three times each year, and at such other times as the Chairperson deems necessary, but may meet in any location where a majority of the members are physically present and may hold virtual meetings.

(g) QUORUM.—A quorum shall be comprised of not less than a majority of the members of the Committee.

(h) DUTIES.—The Committee shall—
(1) develop and adopt a mission, goals, and financial plan for the Region;
(2) establish operating and reporting procedures for the Committee;
(3) establish and maintain a Web site for the Region;
(4) ensure that the Regional Advisory Committee established by section 3(a) is functioning and conducting its business in accordance with the requirements of this Act.

SEC. 6. ADAPTIVE MANAGEMENT PLANNING PROCESS.
(a) ESTABLISHMENT.—The Administrator shall adopt a process for implementing the adaptive management plans adopted under section 3(a).

(b) CONTENT.—The adaptive management plan shall—
(1) identify and assess the current and predicted conditions that threaten the ecological, economic, and public use values of the Region;
(2) develop and implement an adaptive management plan to address the threats identified in section 6(a)(1);
(3) provide an annual report to the Committee on the progress of adaptive management activities; and
(4) provide an annual report to the Congress on the progress of adaptive management activities.

SEC. 7. OTHER PROVISIONS.
(a) PROHIBITIONS.—This Act shall not—
(1) authorize the acquisition of any property or the assumption of any liability;
(2) authorize any expenditure of funds provided in this Act for the purchase or acquisition of any property or the assumption of any liability;
(3) authorize or require any action that would result in the encroachment or diminution of any State or local government right or interest;
(4) authorize or require any action that would result in the loss or diminution of any State, local, or tribal government interest; or
(5) authorize or require any action that would result in the destruction or diminution of any State, local, or tribal government interest.

(b) IMPLEMENTATION.—Nothing in this Act shall prevent or encourage any State or local government, or any tribal government, from taking any action that the State or local government, or tribal government, deems necessary and proper with respect to any site within the Region.

(c) AUTHORITY.—Nothing in this Act shall be construed as affecting the powers of the Committee; and

(d) VACANCIES.—Nothing in this Act shall authorize the filling of any vacancy in the Committee before such vacancy occurs; but in the event of a vacancy during the term of any member of the Committee, such vacancy shall be filled in the same manner as the original appointment was made.
The Committee shall hold the initial meeting of the Committee have been appointed, the Chairperson to the Committee.

(i) the Committee shall be considered an employee of the Committee.

(ii) PROHIBITION ON DISCLOSURE.—Information requested 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, or to a representative of the Committee 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.

(1) are natural resource-based recreation areas; or

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

(3) best promote the purposes of this Act.

(a) INITIAL SITES.—

(1) N ATURAL RESOURCE -BASED RECREATION AREAS.—The Committee shall identify 20 initial Long Island Sound stewardship sites that the Committee has determined—

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

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

(b) APPLICATION FOR IDENTIFICATION AS A STEWARDSHIP SITE.—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.

(c) IDENTIFICATION.—The Committee shall review applications submitted by owners of potential stewardship sites to determine whether the sites should 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;
grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—

(A) acquisition 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 request due diligence to recommend the 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 determines 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; and

(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 interests in 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) vests 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.—(1) Approval of the Long Island Sound Stewardship Initiative Region does not create any liability, or have any effect on, or any other law relating to, any person injured on the private property.

(2) 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 modifies the authority of private property owners with respect to any person injured on the private property.

(e) EFFECT OF ESTABLISHMENT.—(1) IN GENERAL.—The boundaries approved by the Administrator 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, by any management entity, except for such property rights as may be purchased from or donated by the owner of the property (including Federal Government or a State or local government, if applicable).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—(1) There is authorized to be appropriated in each of fiscal years 2006 through 2013, for each of the purposes described in paragraphs (2) through (10) of section 12—

(E) the Secretary of Agriculture and the Forest Service and the public with the consolidation of checkerboard lands and the protection and enhanced management of extensive forest and grasslands. The communities of Flagstaff, Williams, and Camp Verde will also benefit in terms of economic development and protection of water supplies and other important purposes.

While facilitating the exchange of public and private lands is a very important objective of this legislation, and indeed, was the original purpose of the bill which began its journey several years ago, I now consider the provisions concerning water management even more crucial. Since introducing the original legislation in April 2003, I have heard from hundreds of Arizonans and learned firsthand the significance of water issues raised by the transfer of Federal land into private ownership. We have modified the bill to take into account many of the concerns raised during meetings held in Northern Arizona by those involved in water management in Northern Arizona by limiting water usage on exchanged lands and removing certain lands entirely from the exchange.

There is growing recognition throughout Arizona of the need to face the crucial challenge of wise management of limited water supplies, particularly with the extended drought coupled with rapid population growth. Earlier this month, I had the opportunity to participate in an Arizona Water Conservation Forum which was attended by educators, business leaders, and State and local officials. I think the majority of us came away more aware of the management measures needed to provide for a more secure water future.

This legislation is the product of many years of negotiation and compromise. It provides a sound framework for a fair and equal value exchange of 50,000 acres of private and public land in Northern Arizona. The bill also addresses water issues associated with the change of lands located within the Verde River Basin and the protection of the upper watershed by limiting water usage on certain exchanged lands and supporting the development of a collaborative science-based water resource planning and management entity for the Verde River Basin watershed. After countless hours of deliberation and discussion by all parties, I believe that the compromise reached on the bill is both balanced and foresighted in addressing the various issues raised by the exchange. I want to thank Senator KYL and his staff, as well as Senators DOMENICI and BINGAMAN, and their staffs on the Senate Energy and Natural Resources Committee, for their tireless efforts in reaching this agreement at the end of the 108th Congress. I also want to recognize the work of Congressmen RENZI and HAYWORTH who have championed this legislation in the House of Representatives. Representative BINGAMAN is planning to introduce a companion bill in the House this week.

The Arizona delegation is strongly supportive of the legislation because it will offer significant benefits for all parties. Benefits will accrue to the U.S. Forest Service and the public with the consolidation of checkerboard lands and the protection and enhanced management of extensive forest and grasslands. The communities of Flagstaff, Williams, and Camp Verde will also benefit in terms of economic development and protection of water supplies and other important purposes.
the Sierra Vista subwatershed of Arizona. In my view, the establishment of a similar, cooperative body in the Verde Basin will be a vital step in assuring the wise use of our limited water resources. I look forward to the expeditious passage of this legislation in this Congress and again thank all of the parties involved with this effort during the past several years. I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 161

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

TITLE I—NORTHERN ARIZONA LAND EXCHANGE

SEC. 101. DEFINITIONS.


The term ‘‘cities’’ means the cities of Flagstaff, Williams, and Camp Verde, Arizona.

The term ‘‘Federal land’’ means the land described in section 104.

The term ‘‘Federal land’’ means the land described in section 104.

The term ‘‘Federal Land’’ means the Secretary of Agriculture.


SEC. 102. LAND EXCHANGE.

(a) In General.—(1) Upon the conveyance by Yavapai Ranch of title to the non-Federal land identified in section 104, the Secretary shall simultaneously convey to Yavapai Ranch title to the Federal land identified in section 104.

(2) Title to the lands to be exchanged shall be in a form acceptable to the Secretary and Yavapai Ranch.

(b) The Federal and non-Federal lands to be exchanged under this title may be modified prior to the exchange as provided in this title.

(4) By mutual agreement, the Secretary and Yavapai Ranch may make minor and inadvertent legal and technical corrections to the descriptions of the lands and interests therein in exchanged or retained under this title, including changes, if necessary to conform to surveys approved by the Bureau of Land Management.

(b) In the case of any discrepancy between a map and legal description of the map shall prevail unless the Secretary and Yavapai Ranch agree otherwise.

(b) Exchange Process.—(1) Except as otherwise provided in this title, the land exchange under subsection (a) shall be undertaken in accordance with section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716).

(2) Before completing the land exchange under this title, the Secretary shall perform all necessary land surveys and appraisals, including those relating to hazardous materials, threatened and endangered species, cultural and historic resources, and wetlands and flood plains.

(c) Equal Value Exchange.—(1) The value of the Federal land and the non-Federal land shall be equal, as determined by the Secretary by the acreage of the Federal land in accordance with paragraph (2).

(2) If the final appraised value of the Federal land exceeded the appraised value of the non-Federal land, prior to making other adjustments, the Federal lands shall be adjusted by deleting all or part of the parcels or portions of the parcels in the following order:

(A) A portion of the Camp Verde parcel described in section 104(a)(4), comprising approximately 314 acres, located in the Prescott National Forest, and more particularly described as lots 1, 5, and 6 of section 26, the NE\(^4\)SE\(^4\) of section 26 and the SW\(^\frac{1}{4}\)SE\(^\frac{1}{4}\) of section 27, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(B) A portion of the Camp Verde parcel described in section 104(a)(4), comprising approximately 314 acres, located in the Prescott National Forest, and more particularly described as lots 1, 5, and 6 of section 26, the SE\(^4\)NE\(^4\) of section 26, and the SW\(^\frac{1}{4}\)SE\(^\frac{1}{4}\) of section 27, Township 14 North, Range 4 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona.

(C) Beginning at the south boundary of section 31, Township 20 North, Range 5 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, and sections 33 and 35, Township 20 North, Range 6 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, by adding to the non-Federal land to be conveyed to the United States in \(\frac{3}{4}\)-section increments (E-W 64th line) while deleting from the conveyance to Yavapai Ranch Federal land in the same incremental portions of sections 32, Township 20 North, Range 5 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, and sections 33 and 35, Township 20 North, Range 6 West, Gila and Salt River Base and Meridian, Yavapai County, Arizona, to establish a linear and continuous boundary that runs east-to-west across the sections.

(D) Any other parcels, or portions thereof, agreed to by the Secretary and Yavapai Ranch.

(3) If any parcel of Federal land or non-Federal land is not conveyed because of any reason, that parcel of land, or portion thereof, shall not be exchanged, and the remaining lands shall be adjusted as provided in this subsection.

(4) If the value of the Federal land exceeds the value of the non-Federal land by more than $50,000, the Secretary and Yavapai Ranch shall, by mutual agreement, delete Federal lands from the exchange until the value of the Federal land and non-Federal land is, to the maximum extent practicable, equal.

APRAISALS.—(1) The value of the Federal land and non-Federal land shall be determined by appraisals prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

(2) After the Secretary has reviewed and approved the final appraised values of the Federal land and non-Federal land to be exchanged, the Secretary shall not be required to recognize or update the final appraised values before the completion of the land exchange.

(3) During the appraisal process, the appraiser shall determine the value of each non-Federal land and Federal land parcel (including the contributory value of each individual section of the intermingled Federal and non-Federal land of the property described in sections 104(a)(4) and 104(a)(4)(1) as an assembled transaction.

(4)(A) To ensure the timely and full disclosure to the public of the final appraised values of the Federal land and non-Federal land, the Secretary shall provide public notice of any appraisals approved by the Secretary and a copy of such appraisals shall be available for public inspection in appropriate offices of the Prescott, Coconino, and Kaibab National Forests.

(B) The Secretary shall also provide copies of any approved appraisals to the cities and the owners of the camps described in section 101.

(5) Contracting.—(1) If the Secretary lacks adequate staff or resources to complete the exchange by the date specified in section 106(c), Yavapai Ranch, subject to the agreement of the Secretary and Yavapai Ranch, may make minor and inadvertent third-party contractors to carry out any work necessary to complete the exchange by that date.

(B) If in accordance with this subsection, Yavapai Ranch contracts with an independent third-party contractor to carry out any work that would otherwise be performed by the Secretary, the Secretary shall reimburse Yavapai Ranch for the costs for the third-party contractors.

(6) Easements.—The exchange of non-Federal and Federal land under this title shall be subject to any easements, rights-of-way, utility lines, and any other valid encumbrances in existence at the date of enactment of this Act, including acquired easements for water pipelines as generally depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, YRLP Acquired Easements for Water Lines’’ dated August 2004, and any other reservations that may be agreed to by the Secretary and Yavapai Ranch.

(2) Upon completion of the land exchange under this title, the Secretary and Yavapai Ranch shall grant each other at no charge reciprocal easements for access and utilities access and, through:

(A) The routes depicted on the map entitled ‘‘Yavapai Ranch Land Exchange, Road and Trail Easements, Yavapai Ranch Area’’ dated August 2004; and

(B) Any relocated routes that are agreed to by the Secretary and Yavapai Ranch.
(3) An easement described in paragraph (2) shall be unrestricted and non-exclusive in nature and shall run with and benefit the land.

g. CONVEYANCE OF FEDERAL LAND TO CITIES AND CAMPS.—(1) Prior to the completion of the land exchange between Yavapai Ranch and the Secretary, the cities and the owners of the lands may enter into an agreement with Yavapai Ranch whereby Yavapai Ranch, upon completion of the land exchange, will convey to the cities or the owners of the lands the applicable parcel of Federal land or portion thereof.

(2) If Yavapai Ranch and the cities or camp owners have not entered into agreements in accordance with paragraph (1), the Secretary shall, on notification by the cities or owners of the camps no later than 30 days after the date the relevant approved appraisal is made publicly available, delete the applicable parcel or portion thereof from the land exchange between Yavapai Ranch and the United States as follows:

(A) Upon request of the City of Flagstaff, Arizona, the parcels, or portion thereof, as described in section 104(a)(2).

(B) Upon request of the City of Williams, Arizona, a portion of the parcel described in section 104(a)(4), comprising approximately 514 acres located southeast of Verde, Arizona, the parcels, or portion thereof, as described in section 104(a)(3).

(C) Upon request of the City of Camp Verde, Arizona, a portion of the parcel described in section 104(a)(4), comprising approximately 35,000 acres of privately-owned land within the boundaries of the Prescott National Forest, as generally depicted on the map entitled “Yavapai Ranch Land Exchange, Non-Federal Lands”, dated August 2004.

(d) EASEMENTS.—(1) The conveyance of non-Federal land to the United States under section 102 shall be subject to the reservation of the right to run with and benefit the land retained by Yavapai Ranch for—

(i) the use of the property for maintenance, repair, improvement, development, and replacement of not more than 3 wells in existence on the date of enactment of this Act; and

(ii) related storage tanks, valves, pumps, and hardware; and

(iii) pipelines to point of use; and

(b) easements for reasonable access to accomplish the purposes of the easements described in subparagraph (A).

(2) Each easement for an existing well referred to in paragraph (1) shall be 40 acres in area, and shall not be for any other use, parcel or portion thereof, the terms of conveyance described in subsection (a)(4) on current and future holders of water rights in existence on the date of enactment of this Act and the Public Law and National Forest System lands retained by the United States, the United States shall limit in perpetuity the use of water on the parcel by reserve conservation easements that run through the parcel.

(A) run with the land;

(B) prohibit golf course development on the parcel;

(C) require that any public park or greenbelt on the parcel be watered with treated wastewater;

(D) limit total post-exchange water use on the parcel to not more than 300 acre-feet of water per year;

(E) provide that any water supplied by municipalities or private water companies shall be used towards the purpose of replacing the total of or any portion thereof, the terms of conveyance described in subsection (a)(4), or any portion thereof, the terms of conveyance described therein shall include a recorded and binding agreement of the quantity of water available for use on the land conveyed, as determined by Yavapai Ranch, except that total water use on the Camp Verde parcel may not exceed the amount specified in paragraph (1)(D).

(2) If Yavapai Ranch conveys the Camp Verde parcel described in subsection (a)(4), or any portion thereof, the terms of conveyance described therein shall include a recorded and binding agreement of the quantity of water available for use on the land conveyed, as determined by Yavapai Ranch, except that total water use on the Camp Verde parcel may not exceed the amount specified in paragraph (1)(D).

The Secretary may enter into a memorandum of understanding with the State or political subdivision of the State to enforce the terms of the conservation easement.

SEC. 105. STATUS AND MANAGEMENT OF LAND AFTER EXCHANGE.

(a) IN GENERAL.—Land acquired by the United States under this title shall become part of the Prescott National Forest and shall be managed in accordance with this title and the laws applicable to the National Forest System.

(b) GRAZING.—Where grazing on non-Federal land acquired by the United States under this title occurs prior to the date of enactment of this Act, the Secretary may manage the land to allow for continued grazing use, in accordance with the laws generally applicable to domestic livestock grazing on National Forest System land.

(c) TIMBER HARVESTING.—(1) After completion of the land exchange under this title, except as provided in paragraph (2), commercial timber harvesting shall be prohibited on the non-Federal land acquired by the United States.

(2) Timber harvesting may be conducted on the non-Federal land acquired under this title if the Secretary determines that such harvesting is necessary—

(A) to prevent or control fires, insects, and disease through forest thinning or other forest management techniques or forest pest control;

(B) to protect or enhance grassland habitat, watershed values, native plants and wildlife species; or

(C) to improve forest health.

sec. 106. MISCELLANEOUS PROVISIONS.

(a) REVOCATION OF ORDERS.—Any public orders withdrawing any of the Federal land
from appropriation or disposal under the public land laws are revoked to the extent necessary to permit disposal of the Federal land.

(b) **WITHDRAWAL OF FEDERAL LAND.**—Subject to valid existing rights, the Federal land is withdrawn from all forms of entry and appropriation under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing and geothermal leasing laws, until the date on which the land exchange is completed.

(c) **EXTRACTION OF EXCHANGE.**—It is the intent of Congress that the land exchange authorized and directed under this title be completed not later than 18 months after the date of enactment of this Act.

**SEC. 107. CONVEYANCE OF ADDITIONAL LAND.**

(a) **IN GENERAL.**—The Secretary shall convey to a person that represents the majority of landowners with encroachments on the lot described in subsection (b), by quitclaim deed the parcel of land described in subsection (b).

(b) **DESCRIPTION OF LAND.**—The parcel of land referred to in subsection (a) is lot 8 in section 11, T. 21 N., R. 7 E., Gila and Salt River Base and Meridian, Coconino County, Arizona.

(c) **AMOUNT OF CONSIDERATION.**—In exchange for the land described in subsection (b), the person acquiring the land shall pay to the Secretary consideration in the amount of—

- (1) $2500; plus
- (2) any costs of re-monumenting the boundary of the land.

(d) **TIMING.**—(1) Not later than 90 days after the date on which the Secretary receives a power of attorney executed by the person acquiring the land, the Secretary shall convey to the person the land described in subsection (b).

- (2) If, by the date that is 270 days after the date of enactment of this Act, the Secretary does not receive the power of attorney described in paragraph (1)—
  - (A) the authority provided under this section shall terminate; and
  - (B) any conveyance of the land shall be made under Public Law 97–465 (16 U.S.C. 521c et seq.).

**TITLE II—VERDE RIVER BASIN PARTNERSHIP**

**SEC. 201. PURPOSE.**

The purpose of this title is to authorize assistance for a collaborative and science-based Partnership planning and management partnership for the Verde River Basin in the State of Arizona, consisting of members that represent—

- (1) Federal, State, and local agencies; and
- (2) economic, environmental, and community water interests in the Verde River Basin.

**SEC. 202. DEFINITIONS.**

In this title:

- (1) **DIRECTOR.**—The term “Director” means the Director of the Arizona Department of Water Resources.

- (2) **PARTNERSHIP.**—The term “Partnership” means the Verde River Basin Partnership.

- (3) **PLAN.**—The term “plan” means the plan for the Verde River Basin required by section 204(a)(1).

- (4) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

- (5) **STATE.**—The term “State” means the State of Arizona.

**VERDE RIVER BASIN.**—The term “Verde River Basin” means the land area designated by the Arizona Department of Water Resources as encompassing surface water and groundwater resources, including drainage and recharge areas with a hydrologic connection to the Verde River.

**WATER BUDGET.**—The term “water budget” means the accounting of—

- (A) the quantities of water leaving the Verde River Basin—
  - (i) as discharge to the Verde River and tributaries;
  - (ii) as subsurface outflow;
  - (iii) as evapotranspiration by riparian vegetation;
  - (iv) as surface evaporation;
  - (v) for irrigation purposes;
  - (vi) for human consumption; and

- (B) the quantities of water replenishing the Verde River Basin by precipitation, infiltration, and subsurface inflows.

**SEC. 203. VERDE RIVER BASIN PARTNERSHIP.**

(a) **IN GENERAL.**—The Secretary may participate in the establishment of a partnership, to be known as the “Verde River Basin Partnership”, made up of Federal, State, local governments, and other entities with responsibilities and expertise in water to cooperate and coordinate in the identification and implementation of comprehensive science-based policies, projects, and management activities relating to the Verde River Basin.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—On establishment of the Partnership, there are authorized to be appropriated to the Secretary and the Secretary of the Interior such sums as are necessary to carry out the activities of the Partnership for each of fiscal years 2006 through 2010.

**SEC. 204. VERDE RIVER BASIN STUDIES.**

(a) **STUDIES.**—

- (1) **IN GENERAL.**—The Partnership shall prepare a plan for conducting water resource studies in the Verde River Basin that identifies—
  - (A) the primary study objectives to fulfill water resource planning and management needs for the Verde River Basin; and
  - (B) the water resource studies, hydrologic models, surface and groundwater monitoring networks, and other analytical tools helpful in the identification of long-term water supply management options within the Verde River Basin.

- (2) **REQUIREMENTS.**—At a minimum, the plan shall—
  - (A) include a list of specific studies and analyses that are needed to support Partnership planning and management decisions;
  - (B) identify and complete water resource or riparian studies that are relevant to water resource planning and management for the Verde River Basin;
  - (C) describe the estimated cost and duration of the proposed studies and analyses; and
  - (D) designate as a study priority the compilation of the water budget analysis for the Verde Valley.

(b) **VERDE VALLEY WATER BUDGET ANALYSIS.**—

- (1) **IN GENERAL.**—Subject to the availability of appropriations, not later than 14 months after the date of enactment of this Act, the Director of the U.S. Geological Survey, in cooperation with the Director, shall prepare and submit to the Partnership a report that provides a water budget analysis of the portion of the Verde River Basin within the Verde Valley.

- (2) **COMPONENTS.**—The report submitted under paragraph (1) shall include—
  - (A) a summary of the information available on the hydrologic flow regime for the portion of the Middle Verde River from the Clarkdale streamgaging station to the city of Camp Verde at United States Geological Survey Stream Gauge 09009900;
  - (B) with respect to the portion of the Middle Verde River described in subparagraph (A), estimates of—
    - (i) the imperial units of outflow of surface water and groundwater;
    - (ii) annual consumptive water use; and

- (C) an analysis of the potential long-term consequences of various water use scenarios on groundwater levels and Verde River flows.

**SEC. 205. VERDE RIVER BASIN PARTNERSHIP FINAL REPORT.**

Not later than 4 years after the date of enactment of this Act, the Partnership shall submit to the Secretary and the Governor of Arizona a final report that includes a summary of the results of any water resource assessments conducted under this title in the Verde River Basin;

- (2) identifies any areas in the Verde River Basin that are determined to have groundwater deficits or other current or potential water supply problems;

- (3) identifies long-term water supply management options for communities and water resources within the Verde River Basin; and

- (4) identifies water resource analyses and monitoring needed to support the implementation of management options.

**SEC. 206. MEMORANDUM OF UNDERSTANDING.**

The Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior shall enter into a memorandum of understanding authorizing the United States Geological Survey to access Forest Service land (including stream gauges, weather stations, wells, or other points of data collection on the Forest Service land) to carry out this title.

**SEC. 207. EFFECT.**

Nothing in this title diminishes or expands State or local jurisdiction, responsibilities, or rights with respect to water resource management or control.

Mr. KYL. Mr. President, today, I am pleased to join with Senator MCCAIN to introduce the Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005. This bill facilitates a large and complex land exchange of over 50,000 acres of Federal and private land in Arizona to consolidate the largest remaining checkerboard ownership in the State. It also encourages the formation of a partnership between Federal, State, and local stakeholders to facilitate sound water resource planning and management in the Verde River Basin. This bill is the product of two years of discussions and compromise between the Arizona delegation, United States Forest Service,
Camp Verde General Crook parcel, has two key features: First, it establishes a use restriction of 700 acre feet a year. This provision sets an important precedent for responsible water issues in the long term. Such a collaborative approach would be authorized to receive federal assistance to develop the scientific and technical data needed to make sound water-management decisions.

Second, and most recently, Senator McCain and I added Title II to the bill. This title facilitates and encourages the creation of the Verde River Basin Partnership to examine water issues. The agency estimates that the partnership will cost half as much as the administrative alternative—resulting in potential savings to the taxpayers in excess of $500,000.

This land exchange is a unique opportunity to preserve the area’s natural resources, accommodate the state’s tremendous growth, and plan for the future. I intend to work with my colleagues to ensure that we pass this important legislation this year.

By Mr. ROCKEFELLER:

S. 162. A bill to amend chapter 99 of title 26 of the Internal Revenue Code of 1986 to clarify that certain coal industry health benefits may not be modified or terminated; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing legislation to make very clear that Congress fully protected the health insurance benefits of retired coal miners and families when we passed the Coal Act in 1992. This legislation is identical to S. 3004 which I introduced last session, but unfortunately, it is necessary, because we have recently seen bankruptcy courts disregard the Coal Act and absolve companies of their obligations to provide health benefits for workers and retirees. This is unacceptable. And the bill I am introducing today reiterates that the bankruptcy code does not supercede the Coal Act.

Last fall, another company abandoned promises it made to workers and retirees in West Virginia. Horizon Natural Resources sought and received a court ruling that released it from its contracts with union miners and allowed it to avoid honoring health care benefit obligations for over 2,300 retired miners. This is a morally bankrupt corporate strategy, and is inconsistent with the Coal Act passed by Congress in 1992.

The Coal Act was needed in 1992 to prevent some companies from walking away from their clear contractual obligations to retirees and monetize that claim at a fraction of the value.

Mr. BENNETT. Mr. President, I rise today to re-introduce the National Mormon Pioneer Heritage Area Act. The story behind and about the Mormon pioneers’ 1,400-mile trek from Illinois to the Great Salt Lake Valley is one of the most compelling and captivating in our Nation’s history. This legislation would designate as a National Heritage Area an area that spans some 250 miles along Highway 89 and encompasses outstanding examples of historical, cultural, and natural resources that demonstrate the colonization of the western United States, and the experience and influence of the Mormon pioneers in furthering that colonization.

The landscape, architecture, artisan skills, and events along Highway 89...
convey in a very real way the legacy of the Mormon pioneers' achievements. The community of Panquitch for example, has an annual Quilt Day celebration to commemorate the sacrifice and fortitude of its pioneers whose efforts saved the town from starvation in 1864. The celebration is in remembrance of the Quilt Walk, a walk in which a group of men from Panquitch used quilts to form a path that would bear their weight across the snow. This quilt walk enabled these men to cross over the mountains to procure food for their community, which was facing starvation as it experienced its first winter in Utah.

Another example of the tenacity of pioneers can be seen today at the Hole-in-the-Rock. Here, in 1880, a group of 250 people, 80 wagons, and 1,000 head of cattle upon the Colorado River Gorge. Finding no pathways down to the river, the pioneers decided to use a narrow crevice leading down to the bottom of the canyon. The crevice was big enough to accommodate wagons, the pioneers spent 6 weeks enlarging the crevice by hand, using hammers, chisels, and blasting powder. They then attached large ropes to the wagons as they descended down the steep incline. It is because of such tenacity and innovation on the part of pioneers that the western United States was shaped the way it was and much of that has contributed to the way the landscape still found in the West today.

The National Mormon Pioneer Heritage Area will serve as a special recognition of the people and places that have contributed greatly to our Nation's development. It will allow for the conservation of historical and cultural resources, the establishment of interpretive exhibits, will increase public awareness of the surviving skills and crafts of those living along Highway 89 and specifically allows for the preservation of historic buildings. In light of the benefits associated with preserving the rich heritage of the founding of many of the communities along Highway 89, my legislation has broad support from Sanpete, Sevier, Piute, Garfield, and Kane counties and is a locally based, locally supported undertaking.

Since the introduction of this legislation in the 108th Congress, I am pleased that the local counties, who have been unanimously supportive of this legislation, have come together to outline in a Memorandum of Understanding, with the local coordinating entity identified in the legislation, the cooperative relationship the coordinating entity enjoys with the elected officials of the local counties. This legislation passed the Senate both in the 107th and 108th Congresses as part of packages agreed upon by the committees of jurisdiction. Unfortunately, both times the packages were not able to be considered by the other body prior to adjournment. I reintroduce this bill today with the hope that during this session of Congress we might achieve success in this body early enough to be considered by the House.

By Mr. BENNETT:

S. 164. A bill to provide for the acquisition of certain property in Washington County, Utah; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, today I am re-introducing a bill which is intended to bring to a close the Federal acquisition of an important piece of privately held land, located within the federally designated desert tortoise reserve in Washington County, UT.

As some of you are aware, this is not the first time legislation has been introduced in an attempt to resolve this issue. Most recently, on December 7, 2004, at the conclusion of the 108th Congress, the Senate passed by unanimous consent an amendment in the nature of a substitute to H.R. 620, which adopted as title XVI agreed upon provisions of S. 1209. Unfortunately, the House of Representatives adjourned sine die before it had time to act upon H.R. 620. The legislation I am introducing today is the same as the language earlier adopted by the Senate, except for a technical clarification regarding management of the acquired lands.

I want to personally express my appreciation to Senator Domenici and his staff for their leadership and assistance on this issue. I would also like to thank the ranking minority member, Mr. Bingaman, the Department of the Interior, and their respective staffs, for their assistance and support of this measure.

Earlier in July of 2000, I introduced S. 2873, which was referred to and reported favorably by the Senate Committee on Energy and Natural Resources. In addition, similar legislation was twice approved by the House of Representatives, both in the 106th and 107th Congresses. For over a decade, the private property addressed by this bill has been under Federal control and the Federal Government has enjoyed the benefits of the private property without fulfilling its constitutional obligation to compensate the landowner.

The government's failure to timely acquire the landowner's private property has forced the landowner into bankruptcy. It is now time for us to finally resolve this issue.

In March of 1991, the desert tortoise was listed as an endangered species under the Endangered Species Act. Government and environmental researchers determined that the land immediately north of St. George, UT, was prime desert tortoise habitat. Consequently, in February 1996, nearly 5 years after the listing, the United States Fish and Wildlife Service, USFWS, issued Washington County a Section 10 permit under the Endangered Species Act which paved the way for the adoption of a habitat conservation plan, HCP, and an implementation agreement. Under the Plan and Agreement, the Bureau of Land Management, BLM, committed to acquire all private lands in the designated habitat area for the formation of the Red Cliffs Reserve for the protection of the desert tortoise.

Once of the private land owners within the reserve is Environmental Land Technology, Ltd., ELT, which began acquiring lands from the State of Utah in 1981 for residential and recreational development several years prior to the listing of the species. Moreover, in the years preceding the listing, the desert tortoise and the adoption of the habitat conservation plan, ELT completed appraisals, cost estimates, engineering studies, site plans, surveys, utility layouts, and right-of-way negotiations. ELT staked out golf courses, and obtained water rights for the development of this land. Prior to the adoption of the HCP, it was not clear which lands the Federal and local governments would set aside for the desert tortoise, although it was not until 1996 that there were sufficient surrounding Federal lands to provide adequate habitat. However, when the HCP was adopted in 1996, the decision was made to include ELT's lands within the boundaries of the reserve primarily because of the high concentrations of tortoises. The tortoises on ELT land also appeared to be one of, if not the only population without an upper respiratory disease that afflicted all of the other populations. As a consequence of the inclusion of the ELT lands, ELT's development efforts were halted.

With assurances from the Federal Government that the acquisition of the ELT development lands was a high priority, the owner negotiated with, and entered into, an assembled land exchange agreement with an anticipation of intrastate land exchanges. The private land owner then began a costly process of identifying comparable Federal lands within the State that would be suitable for an exchange for his lands in Washington County. Over the last 7 years, BLM and the private land owners, including ELT, have completed several exchanges, and the Federal Government has acquired, through those exchanges or direct purchases, nearly all of the private property located within the reserve, except for approximately 1,516 acres of the ELT development land. However, with the unforeseen creation of the Grand Staircase-Escalante National Monument in September 1996, and the subsequent land exchange between the State of Utah and the Federal Government to consolidate Federal lands within that monument, there are no longer sufficient comparable Federal lands within Utah to complete the originally contemplated intrastate exchanges for the remainder of the ELT land.

Faced with this problem, and in light of the high priority the Department of the Interior has placed on acquiring
these lands, BLM officials recommended that the ELT lands be acquired by direct purchase. During the FY 2000 budget process, BLM proposed that $30 million be set aside to begin acquiring the remaining lands in Washington County. Unfortunately, because this project involves endangered species habitat and the USFWS is responsible for administering activities under the Endangered Species Act, the Office of Management and Budget shifted the $30 million from the BLM budget request to the USFWS’s Cooperative Endangered Species Conservation Fund budget request. Ultimately, however, none of those funds was made available for BLM acquisitions within the Federal section of the reserve. Instead, the funds in that account were made available on a matching basis for the use of individual States to acquire wildlife habitat. The result of this bureaucratic fumbling has resulted in extreme financial hardship for ELT.

The lands within the Red Cliffs Reserve are ELT’s only asset. The establishment of the Washington County HCP has effectively taken this property and prevented ELT from developing it, disposing of the property. ELT has been brought to the brink of financial ruin as it has exhausted its resources in an effort to hold the property while awaiting the compensation to which it is entitled. ELT has its remaining assets, and the private land owner has also had to sell his personal assets, including his home, to simply hold the property. This has become a financial crisis for the landowner. It is simply wrong for the Federal Government to force the landowner to continue to bear the cost of the government’s efforts to provide habitat for an endangered species. That is the responsibility of the Federal Government. Moreover, while the landowner is bearing the cost of continuing to pay taxes on the property, this situation is made more egregious by the failure of the Department of the Interior to request any acquisition funding for FY 2004 or FY 2005, even though this acquisition has been designated a high priority by the agency. Over the past several years, ELT has pursued all possible avenues to complete the acquisition of these lands. The private land owner has spent millions of dollars pursuing state and interstate land exchanges and has worked cooperatively with the Department of the Interior. Unfortunately, all of these efforts have thus far been fruitless.

The bill that I am introducing today will finally bring this acquisition to a close. In my view, a legislative taking should be an action of last resort. But, if ever a case warranted legislative condemnation, this is it. This bill will transfer to the Federal Government all right, title, and interest in the ELT-developed, owned by ELT adjacent to the land within the reserve. Subject to existing law, the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards and Practices for Appraisal Professionals, USPAP, a United States Court of competent jurisdiction shall determine the value for the land. The bill includes language to allow, as part of the legislative taking, for the landowner to recover reasonable costs, interest, and damages, if any, as determined by the court. It is important to note that while Federal acquisitions should be completed on the basis of fair market value, when the Federal Government makes the commitment to acquire private land, the landowner should not have to be driven into financial ruin while waiting upon the Federal Government to discharge its obligation. While the Federal Government has never disputed its obligation to acquire the property, it has had the benefit of the private land for all these years without having to pay for it. The private landowner should not have to bear the costs of this Federal foot-dragging.

This legislation is consistent with the high priority the Department of the Interior has repeatedly placed on this land acquisition, and is a necessary final step towards an equitable resolution. The time for pursuing other options has long since expired and it is unfortunate that it requires legislative action. Without commenting on the merits of the dispute, one would seem that if it is the government’s objective to provide habitat for the benefit of an endangered species, then the government ought to bear the costs, rather than forcing them upon the landowner. It is also time to address this issue so that the Federal agencies may be single-minded in their efforts to recover the desert tortoise which remains the aim of the creation of the reserve. This legislation simply codifies the status quo by enabling the private land owner to obtain the compensation to which he is constitutionally entitled. It is time to right this wrong and get on with the efforts to recover the species and I encourage my colleagues to again support the immediate enactment of this important legislation.

By Mr. COLEMAN:
S. 165. A bill for the relief of Tchisou Tho; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, today I am introducing a private relief bill for an outstanding young man from my State of Minnesota, Tchisou Tho.

This legislation would allow Tchisou, a Hmong immigrant, to stay in this country by adjusting his status to permanent resident. Not only would this allow him to stay in the country he has lived in since he was 5 years old, but it will make him eligible for in-State tuition at the University of Minnesota.

Tchisou’s family came to the United States 14 years ago on a visitor’s visa from France after fleeing Communist rule in Laos in 1975. He was 5 years old at the time. They moved to Minnesota in 1993 to find work and to give their children an opportunity to receive a quality education.

Tchisou was an all-American high school student. He was home-belonged out at the mall with his friends and attended prom. He was an honor roll student, active in his community, church, and school. Tchisou was going to be the first member of his family to graduate from high school, and he was getting ready to begin his junior year on a scholarship to the University of Minnesota.

But in May 2003, just as Tchisou was getting ready to graduate from high school, his family met with immigration officials to request changes to their immigration status. Instead, they received a deportation order.

Tchisou’s parents acknowledged that they had broken the law by over-staying their visas, and agreed to leave the country. But the Thos were told they did not have to have the chance to graduate with his high school class. Legislation I introduced last year allowed Tchisou to stay. And thanks to the compassion of the immigration authorities, Tchisou’s sophomore year was allowed in the country just long enough to see their son walk in his high school graduation ceremony.

Shortly thereafter, Tchisou’s parents and siblings and sisters returned to France as they promised, where they live today.

Still focused on his educational goals and now living with his married sister in St. Paul, Tchisou enrolled at the University of Minnesota as an international student. However, he was required to pay out-of-State tuition and unfortunately had to drop out after one semester when he ran out of money.

Determined to finish college, Tchisou is currently driving a forklift at the loading docks of a home improvement store to save money for college while his immigration status is being sorted out. He was recently named employee of the month. Tchisou hopes to re-enroll at the University of Minnesota.

I acknowledge that Tchisou’s parents broke the law. They overstayed their visas to remain in this country, which they should not have done. And they have since been deported. But I think it would be unfair to punish Tchisou for the actions of his parents. This private relief bill would allow Tchisou the chance to live the American dream.

With the help of my good friend and colleague, the senior Senator from Georgia, Chairman CHAMBLES, we were able to pass this legislation last year. I hope the Senate will be able to act on this important legislation early this year so that Tchisou may enroll at the University of Minnesota, graduate, and be an asset to our community.

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

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:
SECTION 1. PERMANENT RESIDENT STATUS FOR TCHISOU THO.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act (8 U.S.C. 1151), Tchisou Thom shall be eligible for the issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act (8 U.S.C. 1154) or for adjustment of status to lawful permanent resident.

(b) PERMANENCE OF STATUS.—If Tchisou Thom enters the United States before the filing deadline specified in subsection (c), Tchisou Thom shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply to an application for issuance of an immigrant visa or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Tchisou Thom, the Secretary shall instruct a proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) or, if applicable, the total number of immigrant visas made available to natives of the country of the aliens' birth under section 202(e) of that Act (8 U.S.C. 1152(e)).

By Mr. SMITH (for himself and Mr. WYDEN):

S. 166. A bill to amend the Oregon Resource Conservation Act of 1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. SMITH. Mr. President, today I am introducing legislation, cosponsored by my colleague from Oregon, to reauthorize participation by the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. SMITH. Mr. President, today I am introducing legislation, cosponsored by my colleague from Oregon, to reauthorize participation by the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes; to the Committee on Energy and Natural Resources.

The Deschutes River Conservancy, formerly known as the Deschutes Resources Conservancy, was originally authorized in 1996 as a pilot project. It was so successful it was reauthorized by the 106th Congress. The Conservancy is designed to achieve local consensus for on-the-ground projects to improve ecosystem health in the Deschutes River Basin.

The Deschutes River is truly one of Oregon’s greatest resources. It drains Oregon’s high desert along the eastern front of the Cascades, eventually flowing into the Columbia River. It is the State’s most intensively used recreational river. It provides water to both irrigation projects and to the city of Bend, which is one of Oregon’s fastest-growing cities. The Deschutes Basin also contains hundreds of thousands of acres of productive forest and rangelands, serves the treaty fishing and water rights of the Confederated Tribes of Warm Springs, and has Oregon’s largest non-Federal hydroelectric project.

By all accounts, the Deschutes River Conservancy has been a huge success. It has brought together diverse interests within the Basin, including irrigators, environmentalists, an investor-owned utility, local businesses, as well as local elected officials and representatives of State and Federal agencies. Together, the Conservancy board members have been able to develop project criteria and identify a number of water quality, water quantity, fish passage and habitat improvement projects that could be funded. Over the years, projects have been selected by consensus, and there have been joint Federal, State and local partnerships.

Over the past 8 years, they have been very successful at finding cooperative, market-based solutions to enhance the ecosystem in the basin. The Conservancy has used this approach to restore over ninety cubic-feet-per-second of streamflow in the Deschutes Basin. In addition, by planting over 100,000 trees, installing miles of riparian fencing, removing beavers and reconstructing stream beds, the Conservancy has helped improve fish habitat and water quality along one hundred miles of the Deschutes River and its tributaries.

The existing authorization provides for up to two million dollars each year for projects. This bill would continue that annual authorization ceiling for 10 years. Funds are provided through the Bureau of Reclamation, the group’s lead Federal agency.

The Deschutes River Conservancy enjoys widespread support in Oregon. It has very committed board members who represent diverse interests in the Basin. The high caliber of their work, and their pragmatic approach to ecosystem restoration have been recognized by others outside the region.

I am convinced that Federal participation in this project needs to continue. This organization has helped to avoid the conflicts over water that we have seen in too many watersheds in the western United States. I urge my colleagues to support this project. Not only is it important to central Oregon, but the Deschutes River Conservancy can serve as a national model for cooperative watershed restoration at the local level.

By Mr. HATCH (for himself, Mr. LEAHY, Mr. CORNYN, and Mrs. FEINSTEIN):

S. 167. A bill to provide for the protection of intellectual property rights, and for other purposes; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise today to introduce the Family Enter-
being distributed illegally via the Internet before they are even made available for sale to the public severely undercuts the ability of copyright holders to receive fair and adequate compensation for their works.

Title I of the Family Movie Act of 2005 (the FMA), resolves some ongoing disputes about the legality of so-called “jump-and-skip” technologies that companies like Clearplay in my home State of Utah have developed to permit family-friendly viewing of films that may contain objectionable content. The FMA creates a narrowly defined safe-harbor clarifying that distributors of such technologies will not face liability for copyright or trademark infringement, provided that they comply with the requirements of the Act. I have been working with my colleagues in the Senate and several leaders in the House—including, most importantly Chairmen Smith and Sensenbrenner—for the past couple of years to resolve this issue. The FMA will help to end aggressive litigation threatening the viability of small companies like Clearplay which are busy creating innovative technologies for consumers that allow them to tailor their experience to their own individual or family preferences.

The Family Movie Act creates a new exemption in section 110(11) of the Copyright Act for skipping and muting audio and video content in motion pictures during performances of an authorized copy of the motion picture taking place in the course of a private viewing in a household. The version passed last year by the House explicitly excluded from the scope of the new section 110(11) exemption to apply to “ad-skipping” technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed, played before, during, or after the performance of the motion picture. This provision was included on the House floor to address the concerns of some Members who were concerned that a court might misread the new section 110(11) exemption to apply to “ad-skipping” cases, such as in the recent litigation involving ReplayTV.

In the Senate, however, some expressed concern that the inclusion of such explicit language could create unnecessary contumacy with respect to the merits of the legal positions at the heart of recent “ad-skipping” litigation. Those issues remain unsettled in the courts, and it was never the intent of this legislation to resolve or affect those issues in any way. Indeed, the Copyright Act contains literally scores of similar exemptions, and none of those exemptions have been or should be construed to imply anything about the legality of conduct falling outside their scope. As a result, the Copyright Office advised that such explicit exclusion is unnecessary to achieve the desired outcome, which is to avoid application of this new exemption in potential future cases involving ad-skipping devices. In order to avoid unnecessary controversy, the Senate bill omits the exclusionary language with the understanding that doing so does not in any way change the scope of the bill.

That this change in no way affects the scope of the exemption is clear when considering that the new section 110(11) exemption protects the “making imperceptible . . . limited portions of audio or video content of a motion picture . . . .” An advertisement, under the Copyright Act, is itself a “motion picture,” and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase “limited portions” is intended to refer to portions that are both quantitatively and qualitatively inessential in relation to the work as a whole. Where any substantial part of a complete work, such as a broadcast or dissemination made imperceptible, the new section 110(11) exemption would not apply. The limited scope of this exemption does not, however, imply or show that such conduct or a technology that enables such conduct would be infringing. This legislation does not in any way deal with that issue. It means simply that such conduct and products enabling such conduct are not immunized from liability by this exemption.

This bill differs from the version passed by the House last year in that it adds two “savings clauses.” The copyright savings clause makes clear that there should be no spillover effect from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The trademark savings clause clarifies that an in-vehicle, in-flight, or other similar person or company who fails to qualify for the exemption from trademark infringement found in this provision is therefore liable for trademark infringement.

Title III of this Act, the National Film Preservation Act of 2004, will reauthorize the National Film Preservation Board and the National Film Preservation Foundation. These entities have worked successfully to recognize and preserve our important and historically significant films—often by providing the grants and expertise that enable local historical societies to protect and preserve historically significant films for the local communities for which they are most important. This film work will ensure that the history of the 20th century will be preserved and available to future generations.

As a conservative Senator from a socially conservative state, I occasionally take a few swings at the movie industry for the quality and content of the motion pictures they are currently creating, but I will note for the record that I commend efforts to ensure that important artistic, cultural, and historically significant films are preserved for future generations. I commend my friend from Vermont for his perseverance in reauthorizing Federal funds to continue this important effort.

Title IV of this act, the “Preservation of Orphan Works Act,” also ensures the preservation of valuable historical records by correcting a technical error that unnecessarily narrows a limitation on the copyright law applicable to librarians and archivists. This will strengthen the ability of librarians and archivists to better meet the needs of both researchers and ordinary individuals and will result in greater accessibility of important works. I applaud my colleague in the House—Representative Howard Berman of California—for his efforts on this bill and am pleased to see it included in this Senate package.

Just to conclude, I will again thank Representatives Democratic Member Leahy, Senator Cornyn, Chairmen Sensenbrenner and Smith, as well as Mr. Conyers and Mr. Berman for their bicameral, bipartisan approach to these bills and to intellectual property issues generally.

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

There being no objection, the text of the bill is hereunto submitted for printing in the RECORD, as follows:

S. 167
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—ARTISTS’ RIGHTS AND THIEF PREVENTION

SEC. 101. SHORT TITLE.
This Act may be cited as the “Family Entertainment and Copyright Act of 2005”.

SEC. 102. CRIMINAL PENALTIES FOR UNAUTHORIZED RECORDING OF MOTION PICTURES IN A MOTION PICTURE EXHIBITION FACILITY.

(a) In General.—Chapter 113 of title 18, United States Code, is amended by adding after section 2318A the following new section:

“§ 2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility

(1) Offense.—Any person who, without the authorization of the copyright owner, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under title 17, or any part thereof, from a performance of such work in a motion picture exhibition facility, shall be punished:—

(1) be imprisoned for not more than 3 years, fined under this title, or both; or

(2) if the offense is a second or subsequent offense, be imprisoned for not more than 6 years, fined under this title, or both.

The possession by a person of an audiovisual recording device in a motion picture exhibition facility may be considered as evidence in a proceeding to determine whether that person committed an offense under this subsection, but shall not, by itself, be sufficient
to support a conviction of that person for such offense.

“(b) FORFEITURE AND DESTRUCTION.—When a person is convicted of a violation of subsection (a), the court, in its judgment of conviction shall, in addition to any penalty provided, order the forfeiture and destruction or other disposition of all unauthorized copies of motion picture or other audiovisual works protected under title 17, or parts thereof, and any audiovisual recording devices or other equipment used in connection with the offense.

“(c) AUTHORIZED ACTIVITIES.—This section does not prevent any lawfully authorized investigative, protective, or intelligence activity by an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or by a person acting under a contract with the United States, a State, or a political subdivision of a State.

“(d) IMMUNITY FOR THEATERS.—With reasonable cause, the owner or lessee of a motion picture exhibition facility where a motion picture or other audiovisual work is being exhibited, the authorized agent or employee of such owner or lessee, the licensor of the motion picture or other audiovisual work, or the agent or employee of such licensor—

“(1) may detain, in a reasonable manner and for a reasonable time, any person suspected of a violation of this section with respect to the motion picture or audiovisual work for the purpose of questioning or summoning a law enforcement officer; and

“(2) shall not be held liable in any civil or criminal action arising out of a detention under paragraph (1).

“(e) VICTIM IMPACT STATEMENT.—

“(1) In subsection (b), in determining the preparation of the present report under rule 32(c) of the Federal Rules of Criminal Procedure, victims of an offense under this section shall be permitted to submit to the probation officer a victim impact statement that identifies the victim of the offense and the extent and scope of the injury and loss suffered by the victim, including the estimated economic impact of the offense on that victim.

“(2) CONTENTS.—A victim impact statement submitted under this subsection shall include—

“(A) producers and sellers of legitimate works affected by conduct involved in the offense;

“(B) holders of intellectual property rights in the works described in subparagraph (A); and

“(C) the legal representatives of such producers or sellers to the extent that they have learned of the infringement,

“(f) STATE LAW NOT PREEMPTED.—Nothing in this section may be construed to annul or limit any rights or remedies under the laws of any State.

“(g) DEFINITIONS.—In this section, the following definitions shall apply:

“(1) Title 17 Definitions.—The terms ‘motion picture’, ‘work’, ‘copy’, ‘copyright owner’, ‘motion picture exhibition facility’, and ‘transmit’ have, respectively, the meanings given those terms in section 101 of title 17.

“(2) Audiovisual Recording Device.—The term ‘audiovisual recording device’ means a digital or analog photographic or video camera, or any other technology or device capable of enabling the recording or transmission of a copyrighted motion picture or other audiovisual work, or any part thereof, regardless whether the audiovisual recording is the sole or primary purpose of the device.

“(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 17, United States Code, is amended by inserting after the item relating to section 2319A the following:

“2319B. Unauthorized recording of motion pictures in a motion picture exhibition facility.”.

“(c) DEFINITION.—Section 101 of title 17, United States Code, is amended by inserting after the definition of “motion pictures” the following: “The term ‘motion picture exhibition facility’ means a movie theater, or other place where motion pictures are being shown, that is used primarily for the exhibition of a copyrighted motion picture, if such exhibition is open to the public or is made to an assembled group of a normal circle of a family and its social acquaintances.”.

SEC. 103. CRIMINAL INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PROHIBITED ACTS.—Section 506(a) of title 17, United States Code, is amended to read as follows:

“(a) PROHIBITED ACTS.—

“(1) In general.—Any person who willfully infringes a copyright shall be punished as provided under section 2319 of title 18, if the infringement was committed—

“(A) for purposes of commercial advantage or private financial gain;

“(B) by the reproduction or distribution, including by electronic means, during any 30-day period more than one phonorecord of a copyrighted work that is being exhibited, the authorized agent or employee of such licensor

“(1) to have, respectively,

“(A) a motion picture exhibition facility where a motion picture or other audiovisual work have not been commercially distributed, or

“(B) a motion picture, if, at the time of unauthorized distribution, the motion picture—

“(i) has been made available for viewing in a motion picture exhibition facility; and

“(ii) has not been made available in copies for sale to the general public in the United States in a format intended to permit viewing outside a motion picture exhibition facility.

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

“(C) by adding at the end the following:

“(1) shall be imprisoned not more than 6 years, fined under this title, or both, if the offense was committed for purposes of commercial advantage or private financial gain; and

“(4) shall be imprisoned not more than 10 years, fined under this title, or both, if the offense is a second or subsequent offense; and

“(5) the term ‘financial gain’ has the meaning given the term in section 101 of title 17; and

“(6) the term ‘work being prepared for commercial distribution’ has the meaning given the term in section 506(a) of title 17.”.

SEC. 104. CIVIL REMEDIES FOR INFRINGEMENT OF A WORK BEING PREPARED FOR COMMERCIAL DISTRIBUTION.

(a) PREREGISTER.—Section 408 of title 17, United States Code, is amended by adding at the end the following:

“(f) PREREGISTER OF WORKS BEING PREPARED FOR COMMERCIAL DISTRIBUTION.—

“(1) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Register of Copyrights shall issue regulations to establish procedures for preregistration of a work that is being prepared for commercial distribution and has not been published.

“(2) CLASS OF WORKS.—The regulations established under paragraph (1) shall permit preregistration for any work that is in a class of works that the Register determines has had a history of infringement prior to authorized commercial distribution.

“(b) APPLICATION FOR REGISTRATION.—Not later than 3 months after the first publication of a work preregistered under this subsection, the applicant shall submit to the Copyright Office—

“(A) an application for registration of the work;

“(B) a deposit; and

“(C) the applicable fee.

“(3) EFFECT OF UNTIMELY APPLICATION.—An application under this section for preregistration of a work preregistered under this subsection, in a case in which the infringement commenced no later than 2 months after the first publication of the work, shall be deemed if the items described in paragraph (3) are not submitted to the Copyright Office in proper form within the earlier of—

“(A) 3 months after the first publication of the work; or

“(B) 1 month after the copyright owner has learned of the infringement.”.

“(b) INFRINGEMENT ACTIONS.—Section 406(a) of title 17, United States Code, is amended by inserting “preregistration or after” shall be instituted until”.

“(c) EXCLUSION.—Section 412 of title 17, United States Code, is amended by inserting after “section 106A(a)” the following: “a an action for infringement of the copyright of a work that has been preregistered under section 408(b) before the commencement of the infringement and that has an effective date of registration not later than the earlier of 3 months after the first publication of the work or 1 month after the copyright owner has learned of the infringement.”.

SEC. 105. FEDERAL SENTENCING GUIDELINES.

(a) REVIEW AND AMENDMENT.—Not later than 180 days after the date of enactment of this section, the United States Commission, pursuant to its authority under section 994 of title 28, United States Code, and
in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property crimes, including any offense under—
(1) section 506, 1201, or 1202 of title 17, United States Code; or
(2) 2319A, 2319B, or 2320 of title 18, United States Code.
(b) AUTHORIZATION.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.
(c) RESPONSIBILITIES OF UNITED STATES SENTENCING COMMISSION.—In carrying out this section, the United States Sentencing Commission shall—
(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;
(2) determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, reproduction, or distribution of limited portions of audio or video content that the performance of the motion picture is altered from the performance intended by the director or copyright holder, or in any other media format; and
(3) determine whether the scope of “uploading” set forth in application note 3 of section 2303 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and
(4) in subsection (b), the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed.

TITLE II.—EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES

SEC. 201. SHORT TITLE.
This title may be cited as the “Family Movie Access Act of 2005.”

SEC. 202. EXEMPTION FROM INFRINGEMENT FOR SKIPPING AUDIO AND VIDEO CONTENT IN MOTION PICTURES.
(a) In General.—Section 110 of title 17, United States Code, is amended—
(1) in paragraph (9), by striking “and” after the semicolon at the end; and
(2) by inserting at the end of section 110 of title 17, United States Code, the following:

“TITEL III—NATIONAL FILM PRESERVATION

Subtitle A—Reauthorization of the National Film Preservation Act

SEC. 201. SHORT TITLE.
This subtitle may be cited as the “National Film Preservation Act of 2005.”

SEC. 202. REAUTHORIZATION AND AMENDMENT.
(a) DUTIES OF THE LIBRARY OF CONGRESS.—Section 103 of the National Film Preservation Act of 1996 (2 U.S.C. 179m) is amended—
(1) in subsection (b)—
(A) by striking “film copy” each place that term appears and inserting “film or other approved copy”; and
(B) by striking “film copies” each place that term appears and inserting “film or other approved copies”;
and
(C) in the third sentence, by striking “copyrighted” and inserting “copyrighted, mass distributed, broadcast, or published”; and
(2) by adding at the end the following:

“(c) COORDINATION OF PROGRAM WITH OTHER COLLECTION, PRESERVATION, AND ACCESSIBILITY ACTIVITIES.—In carrying out the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, the Librarian, in consultation with the Advisory Committee established pursuant to section 104, shall—

“(1) carry out activities to make films included in the National Film Registry more easily accessible to the public for educational, cultural, and other purposes, and to generate public awareness and support of the Registry and the comprehensive national film preservation program;

“(2) review the comprehensive national film preservation plan, and amend it to the extent necessary to ensure that it addresses technological advances in the preservation and storage of, and access to, film collections in multiple formats; and

“(3) wherever possible, undertake expanded initiatives to ensure that the preservation of the moving image heritage of the United States, including film, videotape, television, and born digital moving image formats, by support the work of the National Audio-Visual Conservation Center of the Library of Congress, and other appropriate nonprofit archival and preservation organizations.”;

(b) NATIONAL FILM PRESERVATION BOARD.—Section 104 of the National Film Preservation Act of 1996 (2 U.S.C. 179n) is amended—

(1) in subsection (a)(1) by striking “20” and inserting “22”;
(2) in subsection (a)(2) by striking “three” and inserting “five”;
(3) in subsection (d) by striking “11” and inserting “12”; and
(4) by striking subsection (e) and inserting the following:

“(e) REIMBURSEMENT OF EXPENSES.—Members of the Board shall serve without pay, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.”;

(c) NATIONAL FILM REGISTRY.—Section 106 of the National Film Preservation Act of 1996 (2 U.S.C. 179p) is amended by adding at the end the following:

“(c) NATIONAL AUDIO-VISUAL CONSERVATION CENTER.—The Librarian shall utilize the National Audio-Visual Conservation Center of the Library of Congress at Culpeper, Virginia, to ensure that preserved films included in the National Film Registry are stored in a proper manner, and disseminated to researchers, scholars, and the public as may be appropriate in accordance with—

(1) title 17, United States Code; and
(2) the terms of any agreements between the Librarian and persons who hold copyrights to such audiovisual works.”;

(d) USE OF SEAL.—Section 107 (a) of the National Film Preservation Act of 1996 (2 U.S.C. 179q) is amended by adding at the end the following:

Subtitle B—Reauthorization of the National Film Preservation Foundation

SEC. 311. SHORT TITLE.
This subtitle may be cited as the “National Film Preservation Foundation Reauthorization Act of 2005.”
Mr. LEAHY. Mr. President, today I join my colleagues, Senators HATCH, FEINSTEIN, and CORNYN, introducing an important piece of bipartisan intellectual property legislation. The provisions of the “Family Entertainment and Copyright Act of 2005” are virtually identical to those in the bill we passed in the waning days of the 108th Congress. Unfortunately, that package of intellectual property bills was hijacked in an effort to use it as a vehicle to pass unrelated legislation. The effort failed, and so did Congress: we were not able to send to the President the Anti-counterfeiting Amendments Act, a version of Senator Biden’s legislation that my friend from Delaware has championed for several years. Both laws are important, but our task was not complete.

It is time to enact the remaining components of the Family Entertainment and Copyright Act, to finish off the work of the 108th Congress as we begin the 109th. Title I of the bill contains the “Artists’ Rights and Theft Prevention Act,” better known as the ART Act. This provision passed the Senate as a standalone bill in June of 2004, and again as part of the PECA bill at the end of the last Congress. The bill will make important inroads in the fight against movie piracy by criminalizing the use of camcorders to piller movies from the big screen. It will also direct the Register of Copyrights to create a registry of orphan works in order to better address the problem of movie-theft before these works are offered for legal distribution.

The next title of the bill is the Family Movie Act, which will preserve the right of families to watch motion pictures in the manner they see fit. At the same time, the Act protects the rights of directors and copyright holders to maintain the artistic vision and integrity of their works. A version of this legislation passed the House chamber in September of 2004, and it passed the Senate as part of the FECA bill at the end of the 108th Congress.

Title III of the bill is the Film Preservation Act, legislation that I sponsored in the last Congress. A version of this bill, too, was part of the FECA bill that passed the Senate last Congress. The Film Preservation Act will allow the Library of Congress to continue its important work in preserving America’s film treasures. These works preserved by this important program include silent-era films, avant-garde works, ethnic films, newreels, and home movies that are in many ways more illuminating on the question of local and family history than the Hollywood sound features kept and preserved by major studios. What’s more, the bill will assist libraries, museums, and archives in preserving films, and in making those works available to researchers and the public.

Finally, the bill contains the Preservation of Orphan Works Act. This provision corrects for a drafting error in the Sonny Bono Copyright Term Extension Act. Correction of this error will allow libraries to create copies of certain copyrighted works, such as films and musical compositions that are in the last 20 years of their copyright term, are no longer commercially exploited, and are not available at a reasonable price. Again, this provision ensures that important works, by definition lost to history.

Anytime we enact a package of legislation as large as the “Family Entertainment and Copyright Act,” building consensus is difficult. However, this is a chamber built on collegiality and compromise, and while I may have crafted specific components of this package differently, I believe that the final result we have is one worthy of enactment. The components of this package have already passed the Senate at least once, and I have received assurances from the other chamber that the bill will receive swift consideration once it is approved in this body.

The legislative process is functioning well when we work with our colleagues across the aisle, and it is at its best when we work on a bipartisan basis with our friends in the other chamber. This bill has benefited from both. The agenda of the 109th Congress promises many issues that divide us, but this is not such a bill: It has garnered broad support, and I believe we can finally move to swiftly enact it.

Mr. CORNYN. Mr. President, in the fall of 2003, I introduced S. 1932, the Artists’ Rights and Theft Prevention Act of 2003, along with my friend from Delaware, Senator Biden. As introduced, the ART Act was a modest but necessary first step to combat the rampant piracy plaguing the motion picture, recording and general content industries. The Bill focuses on the most egregious forms of copyright piracy plaguing the entertainment industry today—the piracy of films, movies, and other copyrighted materials before copyright owners have had the opportunity to market fully their products.

Now, as part of a comprehensive package, “the Family Entertainment and Copyright Act of 2005,” it is even more significant. This package contains a number of targeted, important reforms that help strengthen our intellectual property laws. I rise to express my strong support for the bill and ask my colleagues to move it expeditiously.

Intellectual property laws and the American businesses that rely on them deserve our strongest support. Our Nation was founded on a number of important ideas. One central one was that the sweat of a person should be recognized as that person’s property and should be protected. Protecting the creativity and capital that American innovators invest to make our lives richer is the right thing to do. Failure to do so not only would diminish the quality of our intellectual lives, but it would suffer too. Intellectual property-related industries are a central driver of our Nation’s economy and a staple of our international trade.

Copyright-based industries alone accounted for more than 5 percent of the U.S. GDP or $335,100,000,000 in 2001 and almost 6 percent of U.S. employment, and led all major industry sectors in foreign sales and exports in 2001, the last year for which we have figures.

As the Justice Department recently has pointed out:
Ideas and the people who generate them serve as critical resources both in our daily lives and in the stability and growth of America’s economy. The creation of intellectual property—from designs for new products to artistic creations—unleashes our Nation’s potential, brings ideas from concept to commerce, and drives future economic and productive growth and innovation. It is the engine of our economy. And intellectual property is the new coin of the realm.

As the DOJ IP Task Force Report notes, America’s economy relies more and more on ideas we create, not things we make. We need to protect our Nation’s innovative and creative works with strong laws and enforcement of those laws because doing so is vital to our national economic security.

Having noted and quoted the DOJ Report, I want to pause to thank the Justice Department and outgoing Attorney General John Ashcroft for taking on this issue from last Congress?

Before I relinquish my time, I do want to thank a number of people who have worked tirelessly on this bill. Allow me to thank David Jones and Tom Sydor of the staff of Chairman ORRIN HATCH, who is not only our previous Judiciary Committee Chairman, but a leader on copyright and intellectual property issues; Susan Daines and Dan Fine of Senator LEAHY’s staff, who also has long been a leader on intellectual property issues; and finally, David Hantman of Senator FEINSTEIN’s staff, a Senator with whom I have had the pleasure of working with to introduce the ART Act in the last Congress.

Having begun with the staff, who barely get mentioned as much as they deserve for the great work they do, let me also thank the Senators they work for, Senators Hatch and Feinstein for their co-sponsorship, as well as the Majority Leader, who has taken a personal interest in this legislation and worked to make it happen.

Mr. CORNYN. As the chairman knows, he and I and our other cosponsors have worked throughout last Congress on the provisions of the Family Entertainment and Copyright Act of 2005 that we have introduced today.

Mr. HATCH. I would be happy to yield for a quick question?

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Mr. HATCH. I thank my friend, the Senator from Texas, for that reminder. I would certainly have no objection to entering our previous colloquy into the RECORD again and ask unanimous consent that it appear after our remarks.
Mr. HATCH. Mr. President, Section 102 of the ART Act establishes a new provision of Title 18 entitled, “Unauthorized Recording of Motion Pictures in a Motion Picture Exhibition Facility.” I ask Senator CORNYN, what is the purpose of this provision?

Mr. CORNYN. Section 102 addresses a serious piracy issue facing the movie business: the use of camcorders in a motion picture theater. Sad to say, there are people who go to the movie theater, generally during pre-opening “screenings” or during the first weekend of theatrical release, and using sophisticated digital equipment, record the movie. They’re not trying to save $8.00 so they can see the movie again. Instead, they sell the camcorded version to a local production factory or to an overseas producer, where it is converted into DVDs or similar products and sold on the street for a few dollars per copy. This misuse of camcorders is a significant factor in the $1 billion piracy losses the movie industry suffers because of hard goods piracy. Even worse, these camcorded versions are posted on the Internet through “P2P” networks such as KaZaA, Grokster and Morpheus—and made available for millions to download. The goal of our bill is to provide a potent weapon in the arsenal of prosecutors to stem the piracy of commercially valuable motion pictures at its source.

Mr. HATCH. I have heard it said that this statute could be used against a salesperson or a customer at stores such as Best Buy or Circuit City if he or she were to point a video camera at a television screen showing a movie. Is this cause for concern?

Mr. CORNYN. Absolutely not. The offense is only applicable to transmitting or copying a movie in a motion picture exhibition facility, which has to be a theater or similar venue “that is being used primarily for the exhibition of a motion picture.” In the example of Best Buy—the store is being used primarily to sell electronic equipment, not to exhibit motion pictures. For the same reason, the statute would not cover a university student who records a short segment of a film being shown in film class, as the venue is being used primarily as a classroom, and not as a movie theater.

Mr. HATCH. Does the Senator from California agree with your colleague from Texas?

Mrs. FEINSTEIN. Absolutely on all points.

Mr. HATCH. I have also heard some say that this statute could be used to prosecute someone for camcording a DVD at his home. Is this a fair concern?

Mrs. FEINSTEIN. No, it is not. The definition of a motion picture exhibition facility includes the concept that the exhibition has to be “open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.” This definition makes clear that someone recording from a television in his home does not meet that definition. It is important to emphasize that the clause “open to the public” applies specifically to the exhibition, not to the facility. An exhibition of a moving picture to the public that is itself not made to the public is not the subject of this bill.

Thus, for example, a university film lab may be “open to the public.” However, a student who is watching a film in that lab for his or her own study or research and not the goal of an exhibition that is “open to the public.” Thus, if that student copied an excerpt from such an exhibition, he or she would not be subject to liability under the bill.

Mr. HATCH. Do the users of hearing aids, cell phones or similar devices have anything to fear from this statute?

Mrs. FEINSTEIN. Of course not. The statute covers only a person who is knowingly using an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under Title 17, or any part thereof. In other words, the defendant would have to be making an audiovisual work, or attempting to make, a copy that is itself an audiovisual work, or make, or attempt to make, a transmission embodying an audiovisual work, as that term is defined in Section 101 of Title 17. As such, the Act would not reach the conduct of a person who uses a hearing aid, a still camera, or a picture phone to capture an image or mere sound from the movie.

Mr. HATCH. It appears that there is no fair use exception to this provision. Is that correct?

Mrs. FEINSTEIN. This is a criminal provision under Title 18, not a copyright provision under Title 17. Accordingly, there is no fair use exception included. However, Federal prosecutors should use their discretion not to bring criminal prosecutions against activities within movie theaters that would constitute fair use under the copyright laws. The object of this legislation is to prevent the copying and distribution of motion pictures in a manner that causes serious commercial harm. This legislation is not intended to chill legitimate free speech.

Mr. HATCH. Does the Senator from Texas agree?

Mr. CORNYN. Yes, on all points.

Mr. CORNYN. Mr. President, would the chairman yield for a question?

Mr. HATCH. I would be happy to yield for a question from the distinguished Senator from Texas.

Mr. CORNYN. The chairman knows, he and I and our other co-sponsors have worked throughout this Congress on the provisions of the Family Entertainment and Copyright Act of 2004 that we have introduced today. I believe that I believe in our mutual understanding about the effect of certain provisions of the Family Movie Act. Title II of the Family Entertainment and Copyright Act of 2004 that we introduced today modifies slightly the Family Movie Act provisions of H.R. 4077 as passed by the House of Representatives. That bill created a new exemption in section 110(11) of the Copyright Act for skipping and muting audio and video content in motion pictures during performances that take place in the course of a private viewing in a household from an authorized copy of the motion picture. The camcorded version specifically excluded from the scope of the new copyright exemption computer programs or technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed before, during, or after the performance of the motion picture.

My understanding is that this provision reflected a “belt and suspenders” approach that was adopted to quiet the concerns of some Members in the House who were concerned that a court might misread the statute to apply to “ad-skipping” camcorders, but that in fact, however, expressed concern that the inclusion of such explicit language could create unwarranted inferences as to the “ad-skipping” issues at the heart of the recent litigation. Those issues remain unsettled, and the intent of the House that was adopted to quiet the unnecessary controversy, you are absolutely correct that this does not in any way change the scope of the bill. The bill protects the “making imperceptible . . . limited portions of audio or video content of a motion picture . . . .” An advertisement, under the Copyright Act, is not itself a “motion picture,” and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase “limited portions” is in the Copyright Act for skipping and muting audio and video content are both quantitatively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work, such as a commercial advertisement, is made imperceptible, then the new section 110(11) exemption would not apply.

The limited scope of this exemption does not, however, imply or show that
such a product would be infringing. This legislation does not in any way deal with that issue. It means simply that such a product is not immunized from liability by this exemption.

Mr. CORNYN. I thank the chairman. I am so happy to share a common understanding. If the chairman would yield for one more question about the Family Movie Act?

Mr. HATCH. Certainly.

Mr. CORNYN. This bill also differed from the House-passed version because it adds two “savings clauses.” As I understand it, the “copyright” savings clause makes clear that there should be no “spillover effect” from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The second, relating to trademark, clarifies that nothing in this provision shall be construed to allow a person or company who fails to qualify for the exemption from trademark infringement found in this provision is therefore liable for trademark infringement. Is that the chairman’s understanding now?

Mr. HATCH. Yes it is. Let me ask that a copy of the section-by-section analysis of the Family Movie Act as amended by the Senate be included in the RECORD. This section-by-section analysis contains a more complete analysis of the bill as proposed today in the Senate, including the limited changes made by the bill Senators LEAHY, CORNYN, BIDEN, and I offer today.

The analysis follows.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY MOVIE ACT OF 2004, AMENDED AND PASSED BY THE SENATE

OVERVIEW

Subsection (a) sets forth the short title of the bill as the Family Movie Act of 2004.

Subsection (b) is the Family Movie Act core provision and creates a new exemption at section 110(11) of the Copyright Act for the “making imperceptible” of limited portions of audio or video content of a motion picture during a performance in a private household. The version of the motion picture that the viewer chooses to skip or mute.

The making imperceptible must occur “during a performance in or transmitted to the household for private home viewing.” Thus, this provision does not exempt an unauthorized “public performance” of an altered version.

The making imperceptible must be “by or at the direction of a member of a private household.”

Thus, skipping and muting from an unauthorized copy of a motion picture.

No “of the altered version of the motion picture may be created by the computer program or other technology that makes imperceptible portions of the audio or video content of the motion picture.”

This provision makes clear that services or technologies that make a fixed copy of the altered version are not afforded the benefit of this exemption.

The “making imperceptible” of limited portions of a motion picture does not include the addition of audio or video content over existing content of any kind, including the skipping of technologies or other copy protection.

The bill makes clear that the “making imperceptible” of limited portions of audio or video content of a motion picture by a member of a private household. While this limitation does not require that the individual member of the private household exercise ultimate decision on what content is displayed over or in place of existing content in a motion picture. This is intended to allow the individual to prevent what has been expressed throughout the consideration of this legislation, which is that the Family Movie Act does not enable the addition of content of any kind, including the making imperceptible of audio or video content by replacing it or by superimposing other content over it. In other words, for purposes of section 110(11), “making imperceptible” refers solely to skipping scenes and portions of scenes or muting audio content during a performance of a limited version of the motion picture.

The bill also provides additional guidance, if not an exact definition, of what the term “making imperceptible” means. The bill provides specifically that the term “making imperceptible” does not include the addition of audio or video content over existing content of any kind, including the skipping of technologies or other copy protection.

The making imperceptible of limited portions of audio or video content of a motion picture during a performance in a private household, during which limited portions of audio or video content of the motion picture is performed. Similarly, an infringing performance of a motion picture, during which limited portions of audio or video content of the motion picture are made imperceptible.

It is also important to emphasize that the new section 110(11) exemption is targeted narrowly and specifically to the act of “making imperceptible” limited portions of audio or video content of a motion picture during a performance that occurs in, or is transmitted to, a private household. This section would not exempt from liability an otherwise infringing performance, or a transmission of a performance, consistent with the requirements of this new section, will not result in infringement liability. Similarly, an infringing performance in a household, or an infringing transmission of a performance that a household, are not rendered non-infringing by section 110(11) by virtue of the fact that limited portions of audio or video content of the motion picture being performed are made imperceptible during such performance or transmission in a manner consistent with that section.

The bill also provides additional guidance, if not an exact definition, of what the term “making imperceptible” means. The bill provides specifically that the term “making imperceptible” does not include the addition of audio or video content over existing content of any kind, including the skipping of technologies or other copy protection.

This legislation contemplates that any altered performances of the motion picture would be made either directly by the viewer or by a computer program or other technology that makes limited portions of audio or video content of the motion picture being performed are made imperceptible.

This limitation, however, would not allow an exemption, which are discussed in more detail below, consist of the following:

The making imperceptible must be “by or at the direction of a member of a private household.”

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in the actual motion picture will be skipped or muted at the direction of the viewer based on that viewer's desire to avoid seeing or hearing the action or sound in the motion picture or the creation or provision of technology that is designed to alter what is visible or audible when viewing the motion picture will be skipped or muted. The House-passed bill adopted a “belt and suspenders” approach to this question by adding exclusionary language in the statute itself. Ultimately that provision raised concerns that such a provision in the statute would result in an inference that the bill somehow expresses an opinion, or even decides, the unresolved legal questions contrary to those people who support the so-called “ad-skipping” devices. In the meantime, the Copyright Office also made clear that such exclusionary language is not necessary. The uncertain need for such a provision in the statute created unnecessary controversy without adding any needed clarity to the statute. Thus, the Senate amendment omits the exclusionary language while leaving the scope and application of the bill exactly as it was when it passed the House. The legislation does not provide a defense in cases involving so-called “ad-skipping” devices, and it also does not affect the legal issues underlying such litigation, one way or another. Consistent with the intent of the legislation to fix a narrow and specific copyright issue, this bill seeks very clearly to avoid unnecessarily interfering with current business models, especially with respect to advertising, promotional announcements, and the like. Simply put, the bill as amended in the Senate is narrowly targeted to the use of technological services that filter out content in movies that a viewer finds objectionable, and it in no way relates to or affects the legality of so-called “ad-skipping” technologies.

There are a number of companies currently providing the type of products and services covered by this Act. The Family Movie Act is intended to be the offering of such products and services, and it certainly creates no impediment to the technology employed by those companies. Indeed, it is important to note the fact that support for such technology and consumer offerings that is reflected in this legislation is driven in some measure by the desire for copyright protection and to ensure that technology is deployed in a way that supports the continued creation and protection of entertainment and information products and services that rightsholders depend on. This legislation reflects the firm expectation that those rights and the interests of viewers in their homes can work together in a context defined in this bill. Any suggestion that support for the exercise of viewer choice in modifying their viewing experience of copyrighted works requires violation of the copyright in the work or of the copy protection schemes that provide protection for such works should be rejected as counter to legislative intent or technological necessity. The House-passed bill included an explicit exclusion to the new section 110(11) exemption limits involving the making imperceptible of content and the use of derivate work or station promotional announcements. This provision was added on the House floor to respond to concerns expressed by Members during the House Judiciary Committee markup that the bill might be read somehow to exempt from copyright infringement liability devices that allow for skipping of advertisements in the playback of recorded television (so called “ad-skipping” devices). Such a reading is not consistent with the language of the bill or its intent.

The phrase “limited portions of audio or video content of a motion picture” applies only to the isolated and muting of scenes or dialog that are part of the motion picture itself, and not to the skipping of commercial advertisements. The phrase is considered motions pictures under the Copyright Right Act. It also should be noted that the phrase “limited portions” is intended to refer to a small but substantial and meaningful amount of content, not to a miniscule and subjectively insubstantial in relation to the work as a whole. Where any substantial part of a complete work (including a substantial portion of the copyright owner’s indicia of authorship) is made imperceptible, the section 110(11) exemption would not apply.