

772, a bill to amend the Internal Revenue Code of 1986 to expand workplace health incentives by equalizing the tax consequences of employee athletic facility use.

S. CON. RES. 4

At the request of Mr. NELSON of Florida, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution expressing the sense of the Congress that the Department of Defense should continue to exercise its statutory authority to support the activities of the Boy Scouts of America, in particular the periodic national and world Boy Scout Jamborees.

AMENDMENT NO. 316

At the request of Mr. NELSON of Florida, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of amendment No. 316 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 338

At the request of Ms. SNOWE, the names of the Senator from Wyoming (Mr. ENZI), the Senator from Maine (Ms. COLLINS) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of amendment No. 338 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 342

At the request of Mr. DEWINE, the names of the Senator from Illinois (Mr. OBAMA) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 342 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 387

At the request of Ms. MIKULSKI, the names of the Senator from South Dakota (Mr. THUNE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 387 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 393

At the request of Mr. KENNEDY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 393 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 399

At the request of Mr. DORGAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of amendment No. 399 proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 400

At the request of Mr. JEFFORDS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of amendment No. 400 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

AMENDMENT NO. 409

At the request of Mr. JEFFORDS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor

of amendment No. 409 intended to be proposed to H.R. 1268, making emergency supplemental appropriations for the fiscal year ending September 30, 2005, to establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, to ensure expeditious construction of the San Diego border fence, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL (for himself, Mr. CORNYN, and Mr. COBURN):

S. 783. A bill to repeal the sunset on the 2004 material-support enhancements, to increase penalties for providing material support to terrorist groups, to bar from the United States aliens who have received terrorist training, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the Material Support to Terrorism Prohibition Improvements Act of 2005.

Mr. Barry Sabin, the Chief of the Counterterrorism Section of the Justice Department's Criminal Division, testified as to the importance of the material support statute at a September 13 hearing before the Terrorism Subcommittee last year. He emphasized that:

a key element of the [Justice] Department's strategy for winning the war against terrorism has been to use the material support statutes to prosecute aggressively those individuals who supply terrorists with the support and resources they need to survive. The Department seeks to identify and apprehend terrorists before they can carry out their plans, and the material support statutes are a valuable tool for prosecutors seeking to bring charges against and incapacitate terrorists before they are able to cause death and destruction.

The bill that I introduce today expands current law's exclusion from the United States of persons who give material support to terrorism by training at a terrorist camp. The bill makes such persons inadmissible to the United States, they now only are deportable, and applies these exclusions to pre-enactment terrorist training. Mr. Sabin described at last year's hearing the threat posed by persons who have receive training at a terrorist camp:

A danger is posed to the vital foreign policy interests and national security of the United States whenever a person knowingly receives military-type training from a designated terrorist organization or persons acting on its behalf. Such an individual stands ready to further the malicious intent of the terrorist organization through terrorist activity that threatens the security of United States nationals or the national security of the United States.

My bill would ensure that such persons not only are removed from the United States once they are found

here, but also are prevented from entering this country in the first place.

Today's bill also repeals a 2006 sunset on several recent clarifications that were made to the material-support statute in order to address vagueness concerns expressed by some courts. At the September 13 Terrorism Subcommittee hearing, George Washington University law professor Jonathan Turley said of the original legislative proposal to clarify the statute: "[t]his proposal would actually improve the current federal law by correcting gaps and ambiguities that have led to recent judicial reversals. In that sense, the proposal can be viewed as a slight benefit to civil liberties by removing a dangerous level of ambiguity in the law."

There is no reason why this important provision, and other improvements to the material-support statute made in last year's 9/11 Commission bill, should be allowed to expire at the end of this Congress. This bill would make these improvements permanent.

I ask unanimous consent that the text of the bill and a section by section analysis be printed in the RECORD.

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

S. 783

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 "Material Support to Terrorism Prohibition Improvements Act of 2005".

SEC. 2. REPEAL OF SUNSET ON 2004 MATERIAL-SUPPORT ENHANCEMENTS.

Section 6603(g) of the Intelligence Reform and Terrorism Prevention Act of 2004 (18 U.S.C. 2332b note) is repealed.

SEC. 3. BARRING ENTRY TO THE UNITED STATES FOR REPRESENTATIVES AND MEMBERS OF TERRORIST GROUPS AND ALIENS WHO HAVE RECEIVED MILITARY-TYPE TRAINING FROM TERRORIST GROUPS.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)—

(A) in subclause (IV), by amending item (aa) to read as follows:

"(aa) a terrorist organization as defined in clause (vi), or";

(B) by striking subclause (V) and inserting the following:

"(V) is a member of a terrorist organization—

"(aa) described in subclause (I) or (II) of clause (vi); or

"(bb) described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization";

(C) in subclause (VI), by striking "or" at the end;

(D) in subclause (VII), by inserting "or" at the end; and

(E) by inserting after subclause (VII) the following:

"(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from, or on behalf of,

any organization that, at the time the training was received, was a terrorist organization."; and

(2) in clause (vi), by striking "clause (i)(VI)" and inserting "subclauses (VI) and (VIII) of clause (i)".

SEC. 4. EXPANDED REMOVAL FROM THE UNITED STATES OF ALIENS WHO HAVE RECEIVED MILITARY-TYPE TRAINING FROM TERRORIST GROUPS.

Section 237(a)(4)(E) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(E)) is amended to read as follows:

"(E) RECIPIENT OF MILITARY-TYPE TRAINING.—Any alien who has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in section 212(a)(3)(B)(vi)), is deportable."

SEC. 5. BARRING ENTRY TO AND REMOVING TERRORIST ALIENS FROM THE UNITED STATES BASED ON PRE-ENACTMENT TERRORIST CONDUCT.

The amendments made by sections 3 and 4 of this Act shall apply to—

(1) all aliens subject to removal, deportation, or exclusion at any time; and

(2) acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after the date of enactment of this Act.

SEC. 6. INCREASED PENALTIES FOR PROVIDING MATERIAL SUPPORT TO TERRORIST GROUPS.

(a) PROVIDING MATERIAL SUPPORT TO TERRORISTS.—Section 2339A(a) of title 18, United States Code, is amended by striking "imprisoned not more than 15 years," and all that follows through "life," and inserting "and imprisoned for not less than 5 years and not more than 25 years, and, if the death of any person results, shall be imprisoned for not less than 15 years or for life."

(b) PROVIDING MATERIAL SUPPORT OR RESOURCES TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS.—Section 2339B(a) of title 18, United States Code, is amended by striking "or imprisoned not more than 15 years," and all that follows through "life," and inserting "and imprisoned for not less than 5 years and not more than 25 years, and, if the death of any person results, shall be imprisoned for not less than 15 years or for life."

(c) RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.—Section 2339D of title 18, United States Code, is amended by striking "or imprisoned for ten years, or both," and inserting "and imprisoned for not less than 3 years and not more than 15 years."

Section 1. Bill Title. "Material Support to Terrorism Prohibition Improvements Act of 2005."

Section 2. Repeal of Sunset on 2004 Material-Support Enhancements. Section 6603 of the Intelligence Reform and Terrorism Prevention Act of 2004 (the 9/11 Commission Act) includes important provisions that expand and clarify the material-support statutes (18 U.S.C. §§ 2339A & 2339B). These provisions clarify the definitions of the terms "personnel", "training", and "expert advice or assistance," in order to correct void-for-vagueness problems identified by the Ninth Circuit; expand the jurisdictional bases for material-support offenses; clarify the definition of "material support;" and clarify that the United States need only show that a defendant knew that the organization to which he gave material support either engaged in terrorism or was designated as a terror

group—thus overruling the Ninth Circuit's conclusion that the United States also must show that the defendant knew of the particular terrorist activity that caused an organization to be designated as a terror group. All of these changes are set to expire on December 31, 2006, pursuant to subsection 6603(g) of the 9/11 Commission Act. This section of this Act repeals subsection (g), making the 2004 material-support enhancements permanent.

Section 3. Barring Entry to the United States for Representatives and Members of Terrorist Groups and Aliens Who Have Received Military-Type Training from Terrorist Groups. This section bars entry to the United States for any alien who has received military-type training from a either a terrorist group that is designated as such by the Secretary of State, or from an undesignated terrorist group. (These groups are defined in 8 U.S.C. § 1182(a)(3)(B)(vi). An undesignated terrorist group is a group that commits or incites terrorist activity with the intent to cause serious bodily injury, prepares or plans terrorist activity, or gathers information on potential targets for terrorist activity.) This section would correct a deficiency in current law, which makes aliens who receive military-type terror training deportable but does not make them inadmissible. Aliens who receive training in violent activity from a terrorist group are not allowed to remain in the United States—they should not be permitted to enter the United States in the first place. This section also bars entry to the United States for aliens who are representatives or members of either designated or undesignated terrorist organizations, though members of undesignated terror groups may avoid exclusion if they can show by clear and convincing evidence that they did not know, and should not reasonably have known, that the organization to which they belonged was a terrorist organization.

Section 4. Expanded Removal from the United States of Aliens Who Have Received Military-Type Training from Terrorist Groups. Under current law, an alien is deportable if he has received military-type training from a terrorist group that is designated as such by the Secretary of State. See 8 U.S.C. § 1227(a)(4)(E). This section also makes deportable an alien who has received military-type training from an undesignated terrorist group. (See Section 3 above for definition of undesignated terror group.)

Section 5. Barring Entry to and Removing Terrorist Aliens from the United States Based on Pre-Enactment Terrorist Conduct. This section makes clear that the terrorist-alien deportation and exclusion provisions in sections 3 and 4 of this Act apply to terrorist activity that the alien engaged in before the enactment of this Act. Congress indisputably has the authority to bar and remove aliens from the United States based on past terrorist conduct. See *Lehmann v. U.S. ex rel. Carson*, 353 U.S. 685, 690 (1957) ("It seems to us indisputable, therefore, that Congress was legislating retrospectively, as it may do, to cover offenses of the kind here involved." (emphasis added; citations omitted)). Under this section, an alien who received military-type training from a terrorist group in Afghanistan in 2001 would be barred from entering or remaining in the United States.

Section 6. Increased Penalties for Providing Material Support to Terrorist Groups. Under current law, providing material support to a terrorist group is a criminal offense that is punishable by zero to 15 years' imprisonment, or zero to life if death results. Receiving military-type training from a terrorist group is punishable by zero to 10

years in prison. Under the Supreme Court's recent decision in *United States v. Booker*, 125 S.Ct. 738 (January 12, 2005), the federal sentencing guidelines' prescriptions no longer are mandatory—district judges now have discretion to impose little or no jail time for material-support offenses. Booker/Fanfan also limits the appellate courts' ability to correct a district judge's failure to impose jail time for a material-support offense. This section increases the penalties for material-support offenses to 5–25 years' imprisonment, with 15 years to life if death results, and raises the military-type-training penalty to 3–15 years' imprisonment. These enhanced penalties reflect both the gravity of the offense of providing material support to a terrorist group, and the heightened importance, since the terrorist attacks of September 11, 2001, of deterring individuals from providing aid and comfort to terrorist organizations.

By Mr. THOMAS (for himself and Mrs. LINCOLN):

S. 784. A bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the medicare program, and for other purposes; to the Committee on Finance.

Mr. THOMAS. Mr. President, I am pleased to rise today to introduce the "Seniors Mental Health Access Improvement Act of 2005" with my distinguished colleague from Arkansas, Mrs. LINCOLN. Specifically, the "Seniors Mental Health Access Improvement Act of 2005" permits mental health counselors and marriage and family therapists to bill Medicare for services provided to seniors. This will result in an increased choice of mental health providers for seniors and enhance their ability to access mental health services in their communities.

This legislation is especially crucial to rural seniors who are often forced to travel long distances to utilize the services of mental health providers currently recognized by the Medicare program. Rural communities have difficulty recruiting and retaining providers, especially mental health providers. In many small towns, a mental health counselor or a marriage and family therapist is the only mental health care provider in the area. Medicare law—as it exists today—compounds the situation because only psychiatrists, clinical psychologists, clinical social workers and clinical nurse specialists are able to bill Medicare for their services.

It is time the Medicare program recognized the qualifications of mental health counselors and marriage and family therapists as well as the critical role they play in the mental health care infrastructure. These providers go through rigorous training, similar to the curriculum of masters level social workers, and yet are excluded from the Medicare program.

Particularly troubling to me is the fact that seniors have disproportionately higher rates of depression and suicide than other populations. Additionally, 75 percent of the 518 nationally designated Mental Health Professional Shortage Areas are

located in rural areas and one-fifth of all rural counties have no mental health services of any kind. Frontier counties have even more drastic numbers as 95 percent do not have a psychiatrist, 68 percent do not have a psychologist and 78 percent do not have a social worker. It is quite obvious we have an enormous task ahead of us to reduce these staggering statistics. Providing mental health counselors and marriage and family therapists the ability to bill Medicare for their services is a key part of the solution.

Virtually all of Wyoming is designated a mental health professional shortage area and will greatly benefit from this legislation. Wyoming has 174 psychologists, 37 psychiatrists and 263 clinical social workers for a total of 474 Medicare eligible mental health providers. Enactment of the "Seniors Mental Health Access Improvement Act of 2005" will more than double the number of mental health providers available to seniors in my State with the addition of 528 mental health counselors and 61 marriage and family therapists currently licensed in the State.

I believe this legislation is critically important to the health and well-being of our Nation's seniors and I strongly urge all my colleagues to become a co-sponsor.

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. 784

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 "Seniors Mental Health Access Improvement Act of 2005".

SEC. 2. COVERAGE OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES UNDER PART B OF THE MEDICARE PROGRAM.

(a) COVERAGE OF SERVICES.—

(1) IN GENERAL.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) in subparagraph (Y), by striking "and" after the semicolon at the end;

(B) in subparagraph (Z), by inserting "and" after the semicolon at the end; and

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

"(AA) marriage and family therapist services (as defined in subsection (bbb)(1)) and mental health counselor services (as defined in subsection (bbb)(3));"

(2) DEFINITIONS.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

"Marriage and Family Therapist Services; Marriage and Family Therapist; Mental Health Counselor Services; Mental Health Counselor

"(bbb)(1) The term 'marriage and family therapist services' means services performed by a marriage and family therapist (as defined in paragraph (2)) for the diagnosis and treatment of mental illnesses, which the marriage and family therapist is legally au-

thorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

"(2) The term 'marriage and family therapist' means an individual who—

"(A) possesses a master's or doctoral degree which qualifies for licensure or certification as a marriage and family therapist pursuant to State law;

"(B) after obtaining such degree has performed at least 2 years of clinical supervised experience in marriage and family therapy; and

"(C) in the case of an individual performing services in a State that provides for licensure or certification of marriage and family therapists, is licensed or certified as a marriage and family therapist in such State.

"(3) The term 'mental health counselor services' means services performed by a mental health counselor (as defined in paragraph (4)) for the diagnosis and treatment of mental illnesses which the mental health counselor is legally authorized to perform under State law (or the State regulatory mechanism provided by the State law) of the State in which such services are performed, as would otherwise be covered if furnished by a physician or as incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services.

"(4) The term 'mental health counselor' means an individual who—

"(A) possesses a master's or doctor's degree in mental health counseling or a related field;

"(B) after obtaining such a degree has performed at least 2 years of supervised mental health counselor practice; and

"(C) in the case of an individual performing services in a State that provides for licensure or certification of mental health counselors or professional counselors, is licensed or certified as a mental health counselor or professional counselor in such State."

(3) PROVISION FOR PAYMENT UNDER PART B.—Section 1832(a)(2)(B) of the Social Security Act (42 U.S.C. 1395k(a)(2)(B)) is amended by adding at the end the following new clause:

"(v) marriage and family therapist services and mental health counselor services;"

(4) AMOUNT OF PAYMENT.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking "and (V)" and inserting "(V)"; and

(B) by inserting before the semicolon at the end the following: ", and (W) with respect to marriage and family therapist services and mental health counselor services under section 1861(s)(2)(AA), the amounts paid shall be 80 percent of the lesser of the actual charge for the services or 75 percent of the amount determined for payment of a psychologist under subparagraph (L)".

(5) EXCLUSION OF MARRIAGE AND FAMILY THERAPIST SERVICES AND MENTAL HEALTH COUNSELOR SERVICES FROM SKILLED NURSING FACILITY PROSPECTIVE PAYMENT SYSTEM.—Section 1888(e)(2)(A)(ii) of the Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(ii)) is amended by inserting "marriage and family therapist services (as defined in section 1861(bbb)(1)), mental health counselor services (as defined in section 1861(bbb)(3))," after "qualified psychologist services,".

(6) INCLUSION OF MARRIAGE AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS AS PRACTITIONERS FOR ASSIGNMENT OF CLAIMS.—Section 1842(b)(18)(C) of the Social Security Act (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clauses:

“(vii) A marriage and family therapist (as defined in section 1861(bbb)(2)).

“(viii) A mental health counselor (as defined in section 1861(bbb)(4)).”

(b) COVERAGE OF CERTAIN MENTAL HEALTH SERVICES PROVIDED IN CERTAIN SETTINGS.—

(1) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.—Section 1861(aa)(1)(B) of the Social Security Act (42 U.S.C. 1395x(aa)(1)(B)) is amended by striking “or by a clinical social worker (as defined in subsection (hh)(1)),” and inserting “, by a clinical social worker (as defined in subsection (hh)(1)), by a marriage and family therapist (as defined in subsection (bbb)(2)), or by a mental health counselor (as defined in subsection (bbb)(4)).”

(2) HOSPICE PROGRAMS.—Section 1861(dd)(2)(B)(i)(III) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(B)(i)(III)) is amended by inserting “or one marriage and family therapist (as defined in subsection (bbb)(2))” after “social worker”.

(c) AUTHORIZATION OF MARRIAGE AND FAMILY THERAPISTS TO DEVELOP DISCHARGE PLANS FOR POST-HOSPITAL SERVICES.—Section 1861(ee)(2)(G) of the Social Security Act (42 U.S.C. 1395x(ee)(2)(G)) is amended by inserting “marriage and family therapist (as defined in subsection (bbb)(2)),” after “social worker.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished on or after January 1, 2006.

By Mr. SANTORUM:

S. 786. A bill to clarify the duties and responsibilities of the National Weather Service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. SANTORUM. Mr. President, I rise to introduce the National Weather Services Duties Act of 2005 to clarify the responsibilities of the National Weather Service (NWS) within the National Oceanic and Atmospheric Association, NOAA. This legislation modernizes the statutory description of NWS roles in the national weather enterprise so that it reflects today's reality in which the NWS and the commercial weather industry both play important parts in providing weather products and services to the Nation.

Back in 1890 when the current NWS organic statute was enacted, and all the way through World War II, the public received its weather forecasts and warnings almost exclusively from the Weather Bureau, the NWS's predecessor. In the late 1940s, a fledgling weather service industry began to develop. From then until December 2004, the NWS has had policies sensitive to the importance of fostering the industry's expansion, and since 1948 has had formal policies discouraging its competition with industry. Fourteen years ago the NWS took the extra step of carefully delineating the respective roles of the NWS and the commercial weather industry, in addition to pledging its intention not to provide products or services that were or could be

provided by the commercial weather industry. This longstanding non-competition and non-duplication policy has had the effect of facilitating the growth of the industry into a billion dollar sector and of strengthening and extending the national weather enterprise, now the best in the world.

Regrettably, the parent agency of the NWS, NOAA, repealed the 1991 non-competition and non-duplication policy in December 2004. Its new policy only promises to “give due consideration” to the abilities of private sector entities. The new policy appears to signal the intention of NOAA and the NWS to expand their activities into areas that are already well served by the commercial weather industry. This detracts from NWS's core missions of maintaining a modern and effective meteorological infrastructure, collecting comprehensive observational data, and issuing warnings and forecasts of severe weather that imperils life and property.

Additionally, NOAA's action threatens the continued success of the commercial weather industry. It is not an easy prospect for a business to attract advertisers, subscribers, or investors when the government is providing similar products and services for free. This bill restores the NWS non-competition policy. However, the legislation leaves NWS with complete and unfettered freedom to carry out its critical role of preparing and issuing severe weather warnings and forecasts designed for the protection of life and property of the general public. I believe it is in the best interest of both the government and NWS to concentrate on this critical role and its other core missions. The beauty of a highly competent private sector is that services that are not inherently involved in public safety and security can be carried out with little or no expenditure of taxpayer dollars. At a time of tight agency budgets, the commercial weather industry's increasing capabilities offer the Federal Government the opportunity to focus its resources on the governmental functions of collecting and distributing weather data, research and development of atmospheric models and core forecasts, and on ensuring that NWS meteorologists provide the most timely and accurate warnings and forecasts of life-threatening weather.

The National Weather Service Duties Act also addresses the potential misuse of insider information. Currently, NOAA and the NWS are doing little to safeguard the NWS information that could be used by opportunistic investors to gain unfair profits in the weather futures markets, in the agriculture and energy markets, and in other business segments influenced by government weather outlooks, forecasts, and warnings. No one knows who may be taking advantage of this information. In recent years there have been various examples of NWS personnel providing such information to specific TV stations and others that enable those

businesses to secure an advantage over their competitors. The best way to address this problem is to require that NWS data, information, guidance, forecasts and warnings be issued in real time and simultaneously to all members of the public, the media and the commercial weather industry. This bill imposes just such a requirement, which is common to other Federal agencies. The responsibilities of the commercial weather industry as the only private sector producer of weather information, services and systems deserve this definition to ensure continued growth and investment in the private sector and to properly focus the government's activities.

We have every right to expect these agencies to minimize unnecessary, competitive, and commercial-type activities, and to do the best possible job of warning the public about impending flash floods, hurricanes, tornadoes, tsunamis, and other potentially catastrophic events. I encourage my colleagues to support this important piece of legislation.

By Mr. DURBIN:

S. 793. A bill to establish national standards for discharges from cruise vessels into the waters of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. DURBIN. 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. 793

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 “Clean Cruise Ship Act of 2005”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Prohibitions and conditions regarding the discharge of sewage, graywater, or bilge water.
- Sec. 5. Effluent limits for discharges of sewage and graywater.
- Sec. 6. Inspection and sampling.
- Sec. 7. Employee protection.
- Sec. 8. Judicial review.
- Sec. 9. Enforcement.
- Sec. 10. Citizen suits.
- Sec. 11. Alaskan cruise vessels.
- Sec. 12. Ballast water.
- Sec. 13. Funding.
- Sec. 14. Effect on other law.

SEC. 2. FINDINGS AND PURPOSES.

- (a) FINDINGS.—Congress finds that—
- (1) cruise vessels carry millions of passengers each year, and in 2001, carried 8,400,000 passengers in North America;
 - (2) cruise vessels carry passengers to and through the most beautiful ocean areas in the United States and provide many people in the United States ample opportunities to relax and learn about oceans and marine ecosystems;
 - (3) ocean pollution threatens the beautiful and inspiring oceans and marine wildlife

that many cruise vessels intend to present to travelers;

- (4) cruise vessels generate tremendous quantities of pollution, including—
 - (A) sewage (including sewage sludge);
 - (B) graywater from showers, sinks, laundries, baths, and galleys;
 - (C) oily water;
 - (D) toxic chemicals from photo processing, dry cleaning, and paints;
 - (E) ballast water;
 - (F) solid wastes; and
 - (G) emissions of air pollutants;

(5) some of the pollution generated by cruise ships, particularly sewage discharge, can lead to high levels of nutrients that are known to harm and kill coral reefs and which can increase the quantity of pathogens in the water and heighten the susceptibility of many coral species to scarring and disease;

(6) laws in effect as of the date of enactment of this Act do not provide adequate controls, monitoring, or enforcement of certain discharges from cruise vessels into the waters of the United States; and

(7) to protect coastal and ocean areas of the United States from pollution generated by cruise vessels, new Federal legislation is needed to reduce and better regulate discharges from cruise vessels, and to improve monitoring, reporting, and enforcement of discharges.

(b) PURPOSES.—The purposes of this Act are—

(1) to prevent the discharge of any untreated sewage or graywater from a cruise vessel entering ports of the United States into the waters of the United States;

(2) to prevent the discharge of any treated sewage, sewage sludge, graywater, or bilge water from cruise vessels entering ports of the United States into the territorial sea;

(3) to establish new national effluent limits and management standards for the discharge of treated sewage or graywater from cruise vessels entering ports of the United States into the exclusive economic zone of the United States in any case in which the discharge is not within an area in which discharges are prohibited; and

(4) to ensure that cruise vessels entering ports of the United States comply with all applicable environmental laws.

SEC. 3. DEFINITIONS.

In this Act:

(1) **COMMANDANT.**—The term “Commandant” means the Commandant of the Coast Guard.

(2) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(3) **TERRITORIAL SEA.**—The term “territorial sea”—

(A) means the belt of the sea measured from the baseline of the United States determined in accordance with international law, as set forth in Presidential Proclamation number 5928, dated December 27, 1988; and

(B) includes the waters lying seaward of the line of ordinary low water and extending to the baseline of the United States, as determined under subparagraph (A).

(4) **EXCLUSIVE ECONOMIC ZONE.**—The term “exclusive economic zone” means the Exclusive Economic Zone of the United States established by Presidential Proclamation number 5030, dated March 10, 1983.

(5) **WATERS OF THE UNITED STATES.**—The term “waters of the United States” means the waters of the territorial sea, the exclusive economic zone, and the Great Lakes.

(6) **GREAT LAKE.**—The term “Great Lake” means—

- (A) Lake Erie;
- (B) Lake Huron (including Lake Saint Clair);

- (C) Lake Michigan;
 - (D) Lake Ontario; and
 - (E) Lake Superior.
- (7) **CRUISE VESSEL.**—The term “cruise vessel”—
- (A) means a passenger vessel (as defined in section 2101(22) of title 46, United States Code), that—

- (i) is authorized to carry at least 250 passengers; and
 - (ii) has onboard sleeping facilities for each passenger; and
- (B) does not include—
- (i) a vessel of the United States operated by the Federal Government; or
 - (ii) a vessel owned and operated by the government of a State.

(8) **PASSENGER.**—The term “passenger”—

(A) means any person on board a cruise vessel for the purpose of travel; and

- (B) includes—
 - (i) a paying passenger; and
 - (ii) a staffperson, such as a crew member, captain, or officer.

(9) **PERSON.**—The term “person” means—

- (A) an individual;
- (B) a corporation;
- (C) a partnership;
- (D) a limited liability company;
- (E) an association;
- (F) a State;
- (G) a municipality;
- (H) a commission or political subdivision of a State; and
- (I) an Indian tribe.

(10) **CITIZEN.**—The term “citizen” means a person that has an interest that is or may be adversely affected by any provision of this Act.

(11) **DISCHARGE.**—The term “discharge”—

(A) means a release of any substance, however caused, from a cruise vessel; and

(B) includes any escape, disposal, spilling, leaking, pumping, emitting or emptying of any substance.

(12) **SEWAGE.**—The term “sewage” means—

- (A) human body wastes;
- (B) the wastes from toilets and other receptacles intended to receive or retain human body wastes; and
- (C) sewage sludge.

(13) **GRAYWATER.**—The term “graywater” means galley, dishwasher, bath, and laundry waste water.

(14) **BILGE WATER.**—The term “bilge water” means wastewater that includes lubrication oils, transmission oils, oil sludge or slops, fuel or oil sludge, used oil, used fuel or fuel filters, or oily waste.

(15) **SEWAGE SLUDGE.**—The term “sewage sludge”—

- (A) means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage;
- (B) includes—
 - (i) solids removed during primary, secondary, or advanced waste water treatment;
 - (ii) scum;
 - (iii) septage;
 - (iv) portable toilet pumpings;
 - (v) type III marine sanitation device pumpings (as defined in part 159 of title 33, Code of Federal Regulations); and
 - (vi) sewage sludge products; and
- (C) does not include—
 - (i) grit or screenings; or
 - (ii) ash generated during the incineration of sewage sludge.

(16) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. PROHIBITIONS AND CONDITIONS REGARDING THE DISCHARGE OF SEWAGE, GRAYWATER, OR BILGE WATER.

(a) **PROHIBITION.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2) and section 11, no cruise vessel

entering a port of the United States may discharge sewage, graywater, or bilge water into the waters of the United States.

(2) **EXCEPTION.**—A cruise vessel described in paragraph (1) may not discharge sewage, graywater, or bilge water into the exclusive economic zone but outside the territorial sea, or, in the case of the Great Lakes, beyond any point that is 12 miles from the shore unless—

(A)(i) in the case of a discharge of sewage or graywater, the discharge meets all applicable effluent limits established under this Act and is in accordance with all other applicable laws; or

(ii) in the case of a discharge of bilge water, the discharge is in accordance with all applicable laws;

(B) the cruise vessel meets all applicable management standards established under this Act; and

(C) the cruise vessel is not discharging in an area in which the discharge is otherwise prohibited.

(b) **SAFETY EXCEPTION.**—

(1) **SCOPE OF EXCEPTION.**—Subsection (a) shall not apply in any case in which—

(A) a discharge is made solely for the purpose of securing the safety of the cruise vessel or saving a human life at sea; and

(B) all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge.

(2) **NOTIFICATION OF COMMANDANT.**—

(A) **IN GENERAL.**—If the owner, operator, or master, or other individual in charge, of a cruise vessel authorizes a discharge described in paragraph (1), the individual shall notify the Commandant of the decision to authorize the discharge as soon as practicable, but not later than 24 hours, after authorizing the discharge.

(B) **REPORT.**—Not later than 7 days after the date on which an individual described in subparagraph (A) notifies the Commandant of an authorization of a discharge under the safety exception under this paragraph, the individual shall submit to the Commandant a report that includes—

(i) the quantity and composition of each discharge made under the safety exception;

(ii) the reason for authorizing each discharge;

(iii) the location of the vessel during the course of each discharge; and

(iv) such other supporting information and data as are requested by the Commandant.

SEC. 5. EFFLUENT LIMITS FOR DISCHARGES OF SEWAGE AND GRAYWATER.

(a) **EFFLUENT LIMITS.**—

(1) **IN GENERAL.**—Not later than 3 years after the date of enactment of this Act, the Commandant and the Administrator shall jointly promulgate effluent limits for sewage and graywater discharges from cruise vessels entering ports of the United States.

(2) **REQUIREMENTS.**—The effluent limits shall—

(A) require the application of the best available technology that will result in the greatest level of effluent reduction achievable, recognizing that the national goal is the elimination of the discharge of all pollutants in sewage and graywater by cruise vessels into the waters of the United States by 2015; and

(B) require compliance with all relevant water quality criteria standards.

(b) **MINIMUM LIMITS.**—The effluent limits under subsection (a) shall require, at a minimum, that treated sewage and graywater effluent discharges from cruise vessels shall, not later than 3 years after the date of enactment of this Act, meet the following standards:

(1) IN GENERAL.—The discharge satisfies the minimum level of effluent quality specified in section 133.102 of title 40, Code of Regulations (or a successor regulation).

(2) FECAL COLIFORM.—With respect to the samples from the discharge during any 30-day period—

(A) the geometric mean of the samples shall not exceed 20 fecal coliform per 100 milliliters; and

(B) not more than 10 percent of the samples shall exceed 40 fecal coliform per 100 milliliters.

(3) RESIDUAL CHLORINE.—Concentrations of total residual chlorine in samples shall not exceed 10 milligrams per liter.

(c) REVIEW AND REVISION OF EFFLUENT LIMITS.—The Commandant and the Administrator shall jointly—

(1) review the effluent limits required by subsection (a) at least once every 3 years; and

(2) revise the effluent limits as necessary to incorporate technology available at the time of the review in accordance with subsection (a)(2).

SEC. 6. INSPECTION AND SAMPLING.

(a) DEVELOPMENT AND IMPLEMENTATION OF INSPECTION PROGRAM.—

(1) IN GENERAL.—The Commandant, in consultation with the Administrator, shall promulgate regulations to implement an inspection, sampling, and testing program sufficient to verify that cruise vessels calling on ports of the United States are in compliance with—

(A) this Act (including regulations promulgated under this Act);

(B) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (including regulations promulgated under that Act);

(C) other applicable Federal laws and regulations; and

(D) all applicable requirements of international agreements.

(2) INSPECTIONS.—The program shall require that—

(A) regular announced and unannounced inspections be conducted of any relevant aspect of cruise vessel operations, equipment, or discharges, including sampling and testing of cruise vessel discharges; and

(B) each cruise vessel that calls on a port of the United States shall be subject to an unannounced inspection at least annually.

(b) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Commandant, in consultation with the Administrator, shall promulgate regulations that, at a minimum—

(1) require the owner, operator, or master, or other individual in charge, of a cruise vessel to maintain and produce a logbook detailing the times, types, volumes, and flow rates, origins, and locations of any discharges from the cruise vessel;

(2) provide for routine announced and unannounced inspections of—

(A) cruise vessel environmental compliance records and procedures; and

(B) the functionality and proper operation of installed equipment for abatement and control of any cruise vessel discharge (which equipment shall include equipment intended to treat sewage, graywater, or bilge water);

(3) require the sampling and testing of cruise vessel discharges that require the owner, operator, or master, or other individual in charge, of a cruise vessel—

(A) to conduct that sampling or testing; and

(B) to produce any records of the sampling or testing;

(4) require any owner, operator, or master, or other individual in charge, of a cruise vessel who has knowledge of a discharge from the cruise vessel in violation of this Act (in-

cluding regulations promulgated under this Act) to immediately report that discharge to the Commandant (who shall provide notification of the discharge to the Administrator); and

(5) require the owner, operator, or master, or other individual in charge, of a cruise vessel to provide to the Commandant and Administrator a blueprint of each cruise vessel that includes the location of every discharge pipe and valve.

(c) EVIDENCE OF COMPLIANCE.—

(1) VESSEL OF THE UNITED STATES.—

(A) IN GENERAL.—A cruise vessel registered in the United States to which this Act applies shall have a certificate of inspection issued by the Commandant.

(B) ISSUANCE OF CERTIFICATE.—The Commandant may issue a certificate described in subparagraph (A) only after the cruise vessel has been examined and found to be in compliance with this Act, including prohibitions on discharges and requirements for effluent limits, as determined by the Commandant.

(C) VALIDITY OF CERTIFICATE.—A certificate issued under this paragraph—

(i) shall be valid for a period of not more than 5 years, beginning on the date of issuance of the certificate;

(ii) may be renewed as specified by the Commandant; and

(iii) shall be suspended or revoked if the Commandant determines that the cruise vessel for which the certificate was issued is not in compliance with the conditions under which the certificate was issued.

(D) SPECIAL CERTIFICATES.—The Commandant may issue special certificates to certain vessels that exhibit compliance with this Act and other best practices, as determined by the Commandant.

(2) FOREIGN VESSEL.—

(A) IN GENERAL.—A cruise vessel registered in a country other than the United States to which this Act applies may operate in the waters of the United States, or visit a port or place under the jurisdiction of the United States, only if the cruise vessel has been issued a certificate of compliance by the Commandant.

(B) ISSUANCE OF CERTIFICATE.—The Commandant may issue a certificate described in subparagraph (A) to a cruise vessel only after the cruise vessel has been examined and found to be in compliance with this Act, including prohibitions on discharges and requirements for effluent limits, as determined by the Commandant.

(C) ACCEPTANCE OF FOREIGN DOCUMENTATION.—The Commandant may consider a certificate, endorsement, or document issued by the government of a foreign country under a treaty, convention, or other international agreement to which the United States is a party, in issuing a certificate of compliance under this paragraph. Such a certificate, endorsement, or document shall not serve as a proxy for certification of compliance with this Act.

(D) VALIDITY OF CERTIFICATE.—A certificate issued under this section—

(i) shall be valid for a period of not more than 24 months, beginning on the date of issuance of the certificate;

(ii) may be renewed as specified by the Commandant; and

(iii) shall be suspended or revoked if the Commandant determines that the cruise vessel for which the certificate was issued is not in compliance with the conditions under which the certificate was issued.

(d) CRUISE OBSERVER PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commandant shall establish, and for each of fiscal years 2006 through 2008, shall carry out, a program for the placement of 2 or more independent observers on cruise vessels for the

purpose of monitoring and inspecting cruise vessel operations, equipment, and discharges to ensure compliance with—

(A) this Act (including regulations promulgated under this Act); and

(B) all other relevant Federal laws and international agreements.

(2) RESPONSIBILITIES.—An observer described in paragraph (1) shall—

(A) observe and inspect—

(i) onboard environmental treatment systems;

(ii) use of shore-based treatment and storage facilities;

(iii) discharges and discharge practices; and

(iv) blueprints, logbooks, and other relevant information;

(B) have the authority to interview and otherwise query any crew member with knowledge of vessel operations;

(C) have access to all data and information made available to government officials under this section; and

(D) immediately report any known or suspected violation of this Act or any other applicable Federal law or international agreement to—

(i) the Coast Guard; and

(ii) the Environmental Protection Agency.

(3) REPORT.—Not later than January 31, 2008, the Commandant shall submit to Congress a report describing the results, and recommendations for continuance, of the program under this subsection.

(e) ONBOARD MONITORING SYSTEM PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator and the Commandant, shall establish, and for each of fiscal years 2006 through 2011, shall carry out, with industry partners as necessary, a pilot program to develop and promote commercialization of technologies to provide real-time data to Federal agencies regarding—

(A) graywater and sewage discharges from cruise vessels; and

(B) functioning of cruise vessel components relating to pollution control.

(2) TECHNOLOGY REQUIREMENTS.—Technologies developed under the program under this subsection—

(A) shall have the ability to record—

(i) the location and time of discharges from cruise vessels;

(ii) the source, content, and volume of those discharges; and

(iii) the state of components relating to pollution control at the time of the discharges, including whether the components are operating correctly; and

(B) shall be tested on not less than 10 percent of all cruise vessels operating in the territorial sea of the United States, including large and small vessels.

(3) PARTICIPATION OF INDUSTRY.—

(A) COMPETITIVE SELECTION PROCESS.—Industry partners willing to participate in the program may do so through a competitive selection process conducted by the Administrator of the National Oceanic and Atmospheric Administration.

(B) CONTRIBUTION.—A selected industry partner shall contribute not less than 20 percent of the cost of the project in which the industry partner participates.

(4) REPORT.—Not later than January 31, 2008, the Administrator of the National Oceanic and Atmospheric Administration shall submit to Congress a report describing the results, and recommendations for continuance, of the program under this subsection.

SEC. 7. EMPLOYEE PROTECTION.

(a) PROHIBITION OF DISCRIMINATION AGAINST PERSONS FILING, INSTITUTING, OR TESTIFYING

IN PROCEEDINGS UNDER THIS ACT.—No person shall terminate the employment of, or in any other way discriminate against (or cause the termination of employment of or discrimination against), any employee or any authorized representative of employees by reason of the fact that the employee or representative—

(1) has filed, instituted, or caused to be filed or instituted any proceeding under this Act; or

(2) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.

(b) APPLICATION FOR REVIEW; INVESTIGATION; HEARINGS; REVIEW.—

(1) IN GENERAL.—An employee or a representative of employees who believes that the termination of the employment of the employee has occurred, or that the employee has been discriminated against, as a result of the actions of any person in violation of subsection (a) may, not later than 30 days after the date on which the alleged violation occurred, apply to the Secretary of Labor for a review of the alleged termination of employment or discrimination.

(2) APPLICATION.—A copy of an application for review filed under paragraph (1) shall be sent to the respondent.

(3) INVESTIGATION.—

(A) IN GENERAL.—On receipt of an application for review under paragraph (1), the Secretary of Labor shall carry out an investigation of the complaint.

(B) REQUIREMENTS.—In carrying out this subsection, the Secretary of Labor shall—

(i) provide an opportunity for a public hearing at the request of any party to the review to enable the parties to present information relating to the alleged violation;

(ii) ensure that, at least 5 days before the date of the hearing, each party to the hearing is provided written notice of the time and place of the hearing; and

(iii) ensure that the hearing is on the record and subject to section 554 of title 5, United States Code.

(C) FINDINGS OF COMMANDANT.—On completion of an investigation under this paragraph, the Secretary of Labor shall—

(i) make findings of fact;

(ii) if the Secretary of Labor determines that a violation did occur, issue a decision, incorporating an order and the findings, requiring the person that committed the violation to take such action as is necessary to abate the violation, including the rehiring or reinstatement, with compensation, of an employee or representative of employees to the former position of the employee or representative; and

(iii) if the Secretary of Labor determines that there was no violation, issue an order denying the application.

(D) ORDER.—An order issued by the Secretary of Labor under subparagraph (C) shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

(c) COSTS AND EXPENSES.—In any case in which an order is issued under this section to abate a violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of the proceedings, shall be assessed against the person committing the violation.

(d) DELIBERATE VIOLATIONS BY EMPLOYEE ACTING WITHOUT DIRECTION FROM EMPLOYER OR AGENT.—This section shall not apply to any employee that, without direction from the employer of the employee (or agent of

the employer), deliberately violates any provision of this Act.

SEC. 8. JUDICIAL REVIEW.

(a) REVIEW OF ACTIONS BY ADMINISTRATOR OR COMMANDANT; SELECTION OF COURT; FEES.—

(1) REVIEW OF ACTIONS.—

(A) IN GENERAL.—Any interested person may petition for a review, in the United States circuit court for the circuit in which the person resides or transacts business directly affected by the action of which review is requested—

(i) of an action of the Commandant in promulgating any effluent limit under section 5; or

(ii) of an action of the Commandant in carrying out an inspection, sampling, or testing under section 6.

(B) DEADLINE FOR REVIEW.—A petition for review under subparagraph (A) shall be made—

(i) not later than 120 days after the date of promulgation of the limit or standard relating to the review sought; or

(ii) if the petition for review is based solely on grounds that arose after the date described in clause (i), as soon as practicable after that date.

(2) CIVIL AND CRIMINAL ENFORCEMENT PROCEEDINGS.—An action of the Commandant or Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(3) AWARD OF FEES.—In any judicial proceeding under this subsection, a court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party in any case in which the court determines such an award to be appropriate.

(b) ADDITIONAL EVIDENCE.—

(1) IN GENERAL.—In any judicial proceeding instituted under subsection (a) in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and demonstrates to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceeding before the Commandant or Administrator, the court may order the additional evidence (and evidence in rebuttal of the additional evidence) to be taken before the Commandant or Administrator, in such manner and on such terms and conditions as the court determines to be appropriate.

(2) MODIFICATION OF FINDINGS.—On admission of additional evidence under paragraph (1), the Commandant or Administrator—

(A) may modify findings of fact of the Commandant or Administrator, as the case may be, relating to a judicial proceeding, or make new findings of fact, by reason of the additional evidence so admitted; and

(B) shall file with the return of the additional evidence any modified or new findings, and any related recommendations, for the modification or setting aside of any original determinations of the Commandant or Administrator.

SEC. 9. ENFORCEMENT.

(a) IN GENERAL.—Any person that violates section 4 or any regulation promulgated under this Act may be assessed—

(1) a class I or class II penalty described in subsection (b); or

(2) a civil penalty in a civil action under subsection (c).

(b) AMOUNT OF ADMINISTRATIVE PENALTY.—

(1) CLASS I.—The amount of a class I civil penalty under subsection (a)(1) may not exceed—

(A) \$10,000 per violation; or

(B) \$25,000 in the aggregate, in the case of multiple violations.

(2) CLASS II.—The amount of a class II civil penalty under subsection (a)(1) may not exceed—

(A) \$10,000 per day for each day during which the violation continues; or

(B) \$125,000 in the aggregate, in the case of multiple violations.

(3) SEPARATE VIOLATIONS.—Each day on which a violation continues shall constitute a separate violation.

(4) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under subsection (a)(1), the Commandant or the court, as appropriate, shall consider—

(A) the seriousness of the violation;

(B) any economic benefit resulting from the violation;

(C) any history of violations;

(D) any good-faith efforts to comply with the applicable requirements;

(E) the economic impact of the penalty on the violator; and

(F) such other matters as justice may require.

(5) PROCEDURE FOR CLASS I PENALTY.—

(A) IN GENERAL.—Before assessing a civil penalty under this subsection, the Commandant shall provide to the person to be assessed the penalty—

(i) written notice of the proposal of the Commandant to assess the penalty; and

(ii) the opportunity to request, not later than 30 days after the date on which the notice is received by the person, a hearing on the proposed penalty.

(B) HEARING.—A hearing described in subparagraph (A)(ii)—

(i) shall not be subject to section 554 or 556 of title 5, United States Code; but

(ii) shall provide a reasonable opportunity to be heard and to present evidence.

(6) PROCEDURE FOR CLASS II PENALTY.—

(A) IN GENERAL.—Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and an opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code.

(B) RULES.—The Commandant may promulgate rules for discovery procedures for hearings under this subsection.

(7) RIGHTS OF INTERESTED PERSONS.—

(A) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this subsection, the Commandant shall provide public notice of and reasonable opportunity to comment on the proposed issuance of each order.

(B) PRESENTATION OF EVIDENCE.—

(i) IN GENERAL.—Any person that comments on a proposed assessment of a class II civil penalty under this subsection shall be given notice of—

(I) any hearing held under this subsection; and

(II) any order assessing the penalty.

(ii) HEARING.—In any hearing described in clause (i)(I), a person described in clause (i) shall have a reasonable opportunity to be heard and to present evidence.

(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—

(i) IN GENERAL.—If no hearing is held under subparagraph (B) before the date of issuance of an order assessing a class II civil penalty under this subsection, any person that commented on the proposed assessment may, not later than 30 days after the date of issuance of the order, petition the Commandant—

(I) to set aside the order; and

(II) to provide a hearing on the penalty.

(ii) NEW EVIDENCE.—If any evidence presented by a petitioner in support of the petition under clause (i) is material and was not considered in the issuance of the order, as determined by the Commandant, the Commandant shall immediately—

(I) set aside the order; and
(II) provide a hearing in accordance with subparagraph (B)(ii).

(iii) DENIAL OF HEARING.—If the Commandant denies a hearing under this subparagraph, the Commandant shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for the denial.

(8) FINALITY OF ORDER.—

(A) IN GENERAL.—An order assessing a class II civil penalty under this subsection shall become final on the date that is 30 days after the date of issuance of the order unless, before that date—

(i) a petition for judicial review is filed under paragraph (10); or

(ii) a hearing is requested under paragraph (7)(C).

(B) DENIAL OF HEARING.—If a hearing is requested under paragraph (7)(C) and subsequently denied, an order assessing a class II civil penalty under this subsection shall become final on the date that is 30 days after the date of the denial.

(9) EFFECT OF ACTION ON COMPLIANCE.—No action by the Commandant under this subsection shall affect the obligation of any person to comply with any provision of this Act.

(10) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any person against which a civil penalty is assessed under this subsection, or that commented on the proposed assessment of such a penalty in accordance with paragraph (7), may obtain review of the assessment in a court described in subparagraph (B) by—

(i) filing a notice of appeal with the court within the 30-day period beginning on the date on which the civil penalty order is issued; and

(ii) simultaneously sending a copy of the notice by certified mail to the Commandant and the Attorney General.

(B) COURTS OF JURISDICTION.—Review of an assessment under subparagraph (A) may be obtained by a person—

(i) in the case of assessment of a class I civil penalty, in—

(I) the United States District Court for the District of Columbia; or

(II) the United States district court for the district in which the violation occurred; or

(ii) in the case of assessment of a class II civil penalty, in—

(I) the United States Court of Appeals for the District of Columbia Circuit; or

(II) the United States circuit court for any other circuit in which the person resides or transacts business.

(C) COPY OF RECORD.—On receipt of notice under subparagraph (A)(ii), the Commandant, shall promptly file with the appropriate court a certified copy of the record on which the order assessing a civil penalty that is the subject of the review was issued.

(D) SUBSTANTIAL EVIDENCE.—A court with jurisdiction over a review under this paragraph—

(i) shall not set aside or remand an order described in subparagraph (C) unless—

(I) there is not substantial evidence in the record, taken as a whole, to support the finding of a violation; or

(II) the assessment by the Commandant of the civil penalty constitutes an abuse of discretion; and

(ii) shall not impose additional civil penalties for the same violation unless the assessment by the Commandant of the civil penalty constitutes an abuse of discretion.

(11) COLLECTION.—

(A) IN GENERAL.—If any person fails to pay an assessment of a civil penalty after the assessment has become final, or after a court in a proceeding under paragraph (10) has entered a final judgment in favor of the Commandant, the Commandant shall request the Attorney General to bring a civil action in an appropriate district court to recover—

(i) the amount assessed; and

(ii) interest that has accrued on the amount assessed, as calculated at currently prevailing rates beginning on the date of the final order or the date of the final judgment, as the case may be.

(B) NONREVIEWABILITY.—In an action to recover an assessed civil penalty under subparagraph (A), the validity, amount, and appropriateness of the civil penalty shall not be subject to judicial review.

(C) FAILURE TO PAY PENALTY.—Any person that fails to pay, on a timely basis, the amount of an assessment of a civil penalty under subparagraph (A) shall be required to pay, in addition to the amount of the civil penalty and accrued interest—

(i) attorney's fees and other costs for collection proceedings; and

(ii) for each quarter during which the failure to pay persists, a quarterly nonpayment penalty in an amount equal to 20 percent of the aggregate amount of the assessed civil penalties and nonpayment penalties of the person that are unpaid as of the beginning of the quarter.

(12) SUBPOENAS.—

(A) IN GENERAL.—The Commandant may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection.

(B) REFUSAL TO OBEY.—In case of contumacy or refusal to obey a subpoena issued under this paragraph and served on any person—

(i) the United States district court for any district in which the person is found, resides, or transacts business, on application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Commandant or to appear and produce documents before the Commandant; and

(ii) any failure to obey such an order of the court may be punished by the court as a contempt of the court.

(C) CIVIL ACTION.—The Commandant may commence, in the United States district court for the district in which the defendant is located, resides, or transacts business, a civil action to impose a civil penalty under this subsection in an amount not to exceed \$25,000 for each day of violation.

(d) CRIMINAL PENALTIES.—

(1) NEGLIGENT VIOLATIONS.—A person that negligently violates section 4 or any regulation promulgated under this Act commits a Class A misdemeanor.

(2) KNOWING VIOLATIONS.—Any person that knowingly violates section 4 or any regulation promulgated under this Act commits a Class D felony.

(3) FALSE STATEMENTS.—Any person that knowingly makes any false statement, representation, or certification in any record, report, or other document filed or required to be maintained under this Act or any regulation promulgated under this Act, or that falsifies, tampers with, or knowingly renders inaccurate any testing or monitoring device or method required to be maintained under this Act or any regulation promulgated under this Act, commits a Class D felony.

(e) REWARDS.—

(1) PAYMENTS TO INDIVIDUALS.—

(A) IN GENERAL.—The Commandant or the court, as the case may be, may order payment, from a civil penalty or criminal fine

collected under this section, of an amount not to exceed ½ of the civil penalty or fine, to any individual who furnishes information that leads to the payment of the civil penalty or criminal fine.

(B) MULTIPLE INDIVIDUALS.—If 2 or more individuals provide information described in subparagraph (A), the amount available for payment as a reward shall be divided equitably among the individuals.

(C) INELIGIBLE INDIVIDUALS.—No officer or employee of the United States, a State, or an Indian tribe who furnishes information or renders service in the performance of the official duties of the officer or employee shall be eligible for a reward payment under this subsection.

(2) PAYMENTS TO STATES OR INDIAN TRIBES.—The Commandant or the court, as the case may be, may order payment, from a civil penalty or criminal fine collected under this section, to a State or Indian tribe providing information or investigative assistance that leads to payment of the penalty or fine, of an amount that reflects the level of information or investigative assistance provided.

(3) PAYMENTS DIVIDED AMONG STATES, INDIAN TRIBES, AND INDIVIDUALS.—In a case in which a State or Indian tribe and an individual under paragraph (1) are eligible to receive a reward payment under this subsection, the Commandant or the court shall divide the amount available for the reward equitably among those recipients.

(f) LIABILITY IN REM.—A cruise vessel operated in violation of this Act or any regulation promulgated under this Act—

(1) shall be liable in rem for any civil penalty or criminal fine imposed under this section; and

(2) may be subject to a proceeding instituted in the United States district court for any district in which the cruise vessel may be found.

(g) COMPLIANCE ORDERS.—

(1) IN GENERAL.—If the Commandant determines that any person is in violation of section 4 or any regulation promulgated under this Act, the Commandant shall—

(A) issue an order requiring the person to comply with the section or requirement; or

(B) bring a civil action in accordance with subsection (b).

(2) COPIES OF ORDER, SERVICE.—

(A) CORPORATE ORDERS.—In any case in which an order under this subsection is issued to a corporation, a copy of the order shall be served on any appropriate corporate officer.

(B) METHOD OF SERVICE; SPECIFICATIONS.—An order issued under this subsection shall—

(i) be by personal service;

(ii) state with reasonable specificity the nature of the violation for which the order was issued; and

(iii) specify a deadline for compliance that is not later than—

(I) 30 days after the date of issuance of the order, in the case of a violation of an interim compliance schedule or operation and maintenance requirement; and

(II) such date as the Commandant, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, determines to be reasonable, in the case of a violation of a final deadline.

(h) CIVIL ACTIONS.—

(1) IN GENERAL.—The Commandant may commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which the Commandant is authorized to issue a compliance order under this subsection.

(2) COURT OF JURISDICTION.—

(A) IN GENERAL.—A civil action under this subsection may be brought in the United

States district court for the district in which the defendant is located, resides, or is doing business.

(B) JURISDICTION.—A court described in subparagraph (A) shall have jurisdiction to grant injunctive relief to address a violation, and require compliance, by the defendant.

SEC. 10. CITIZEN SUITS.

(a) AUTHORIZATION.—Except as provided in subsection (c), any citizen may commence a civil action on his or her own behalf—

(1) against any person (including the United States and any other governmental instrumentality or agency to the extent permitted by the eleventh amendment of the Constitution) that is alleged to be in violation of—

(A) the conditions imposed by section 4;

(B) an effluent limit or management standard under this Act; or

(C) an order issued by the Administrator or Commandant with respect to such a condition, effluent limit, or performance standard; or

(2) against the Administrator or Commandant, in a case in which there is alleged a failure by the Administrator or Commandant to perform any nondiscretionary act or duty under this Act.

(b) JURISDICTION.—The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties—

(1) to enforce a condition, effluent limit, performance standard, or order described in subsection (a)(1);

(2) to order the Administrator or Commandant to perform a nondiscretionary act or duty described in subsection (a)(2); and

(3) to apply any appropriate civil penalties under section 9(b).

(c) NOTICE.—No action may be commenced under this section—

(1) before the date that is 60 days after the date on which the plaintiff gives notice of the alleged violation—

(A) to the Administrator or Commandant; and

(B) to any alleged violator of the condition, limit, standard, or order; or

(2) if the Administrator or Commandant has commenced and is diligently prosecuting a civil or criminal action on the same matter in a court of the United States (but in any such action, a citizen may intervene as a matter of right).

(d) VENUE.—

(1) IN GENERAL.—Any civil action under this section shall be brought in—

(A) the United States District Court for the District of Columbia; or

(B) any other United States district court for any judicial district in which a cruise vessel or the owner or operator of a cruise vessel are located.

(2) INTERVENTION.—In a civil action under this section, the Administrator or the Commandant, if not a party, may intervene as a matter of right.

(3) PROCEDURES.—

(A) SERVICE.—In any case in which a civil action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on—

(i) the Attorney General;

(ii) the Administrator; and

(iii) the Commandant.

(B) CONSENT JUDGMENTS.—No consent judgment shall be entered in a civil action under this section to which the United States is not a party before the date that is 45 days after the date of receipt of a copy of the proposed consent judgment by—

(i) the Attorney General;

(ii) the Administrator; and

(iii) the Commandant.

(c) LITIGATION COSTS.—

(1) IN GENERAL.—A court of jurisdiction, in issuing any final order in any civil action brought in accordance with this section, may award costs of litigation (including reasonable attorney's and expert witness fees) to any prevailing or substantially prevailing party, in any case in which the court determines that such an award is appropriate.

(2) SECURITY.—In any civil action under this section, the court of jurisdiction may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) STATUTORY OR COMMON LAW RIGHTS NOT RESTRICTED.—Nothing in this section restricts the rights of any person (or class of persons) under any statute or common law to seek enforcement or other relief (including relief against the Administrator or Commandant).

(g) CIVIL ACTION BY STATE GOVERNORS.—A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitation under subsection (c), against the Administrator or Commandant in any case in which there is alleged a failure of the Administrator or Commandant to enforce an effluent limit or performance standard under this Act, the violation of which is causing—

(1) an adverse effect on the public health or welfare in the State; or

(2) a violation of any water quality requirement in the State.

SEC. 11. ALASKAN CRUISE VESSELS.

(a) DEFINITION OF ALASKAN CRUISE VESSEL.—In this section, the term "Alaskan cruise vessel" means a cruise vessel—

(1) that seasonally operates in water of or surrounding the State of Alaska;

(2) in which is installed, not later than the date of enactment of this Act (or, at the option of the Commandant, not later than September 30 of the fiscal year in which this Act is enacted), and certified by the State of Alaska for continuous discharge and operation in accordance with all applicable Federal and State law (including regulations), an advanced treatment system for the treatment and discharge of graywater and sewage; and

(3) that enters a port of the United States.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), an Alaskan cruise vessel shall not be subject to this Act (including regulations promulgated under this Act) until the date that is 15 years after the date of enactment of this Act.

(2) EXCEPTIONS.—An Alaskan cruise vessel—

(A) shall not be subject to the minimum effluent limits prescribed under section 5(b) until the date that is 3 years after the date of enactment of this Act;

(B) shall not be subject to effluent limits promulgated under section 5(a) or 5(c) until the date that is 6 years after the date of enactment of this Act; and

(C) shall be prohibited from discharging sewage, graywater, and bilge water in the territorial sea, in accordance with this Act, as of the date of enactment of this Act.

SEC. 12. BALLAST WATER.

It is the sense of Congress that action should be taken to enact legislation requiring strong, mandatory standards for ballast water to reduce the threat of aquatic invasive species.

SEC. 13. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commandant and the Administrator such sums as are necessary to carry out this Act for each of fiscal years 2006 through 2010.

(b) CRUISE VESSEL POLLUTION CONTROL FUND.—

(1) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account to be known as the "Cruise Vessel Pollution Control Fund" (referred to in this section as the "Fund").

(2) APPROPRIATION OF AMOUNTS.—There are appropriated to the Fund such amounts as are deposited in the Fund under subsection (c)(5).

(3) USE OF AMOUNTS IN FUND.—The Administrator and the Commandant may use amounts in the fund, without further appropriation, to carry out this Act.

(c) FEES ON CRUISE VESSELS.—

(1) IN GENERAL.—The Commandant shall establish and collect from each cruise vessel a reasonable and appropriate fee, in an amount not to exceed \$10 for each paying passenger on a cruise vessel voyage, for use in carrying out this Act.

(2) ADJUSTMENT OF FEE.—

(A) IN GENERAL.—The Commandant shall biennially adjust the amount of the fee established under paragraph (1) to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor during each 2-year period.

(B) ROUNDING.—The Commandant may round the adjustment in subparagraph (A) to the nearest $\frac{1}{10}$ of a dollar.

(3) FACTORS IN ESTABLISHING FEES.—

(A) IN GENERAL.—In establishing fees under paragraph (1), the Commandant may establish lower levels of fees and the maximum amount of fees for certain classes of cruise vessels based on—

(i) size;

(ii) economic share; and

(iii) such other factors as are determined to be appropriate by the Commandant and Administrator.

(B) FEE SCHEDULES.—Any fee schedule established under paragraph (1), including the level of fees and the maximum amount of fees, shall take into account—

(i) cruise vessel routes;

(ii) the frequency of stops at ports of call by cruise vessels; and

(iii) other relevant considerations.

(4) COLLECTION OF FEES.—A fee established under paragraph (1) shall be collected by the Commandant from the owner or operator of each cruise vessel to which this Act applies.

(5) DEPOSITS TO FUND.—Notwithstanding any other provision of law, all fees collected under this subsection, and all penalties and payments collected for violations of this Act, shall be deposited into the Fund.

SEC. 14. EFFECT ON OTHER LAW.

(a) UNITED STATES.—Nothing in this Act restricts, affects, or amends any other law or the authority of any department, instrumentality, or agency of the United States.

(b) STATES AND INTERSTATE AGENCIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act precludes or denies the right of any State (including a political subdivision of a State) or interstate agency to adopt or enforce—

(A) any standard or limit relating to the discharge of pollutants by cruise ships; or

(B) any requirement relating to the control or abatement of pollution.

(2) EXCEPTION.—If an effluent limit, performance standard, water quality standard, or any other prohibition or limitation is in effect under Federal law, a State (including a political subdivision of a State) or interstate agency described in paragraph (1) may not adopt or enforce any effluent limit, performance standard, water quality standard, or any other prohibition that—

(A) is less stringent than the effluent limit, performance standard, water quality standard, or other prohibition or limitation under this Act; or

(B) impairs or in any manner affects any right or jurisdiction of the State with respect to the waters of the State.

By Mr. HARKIN:

S. 794. A bill to amend title 23, United States Code, to improve the safety of nonmotorized transportation, including bicycle and pedestrian safety; to the Committee on Commerce, Science, and Transportation.

By Mr. HARKIN. Mr. President, I am pleased to introduce the "Safe and Complete Streets Act of 2005."

This legislation helps put this Nation on the path to a safer and, importantly, healthier America, by making some very modest adjustments in how State transportation departments and regional and local transportation agencies address the safety needs of pedestrians and bicyclists.

This proposal is being introduced today to ensure greater attention to the "SAFETEA" elements of the surface transportation renewal bill that will come before the Senate in the coming weeks. With some selected, but modest, adjustments to this surface transportation legislation, we can improve the safety of pedestrians and bicyclists. And with that improved safety, we make it easier for Americans to walk and use bicycles to meet their transportation needs, whether to work, for errands or for simple exercise and enjoyment.

Currently, safety concerns reduce the comfort of many people to move by foot and bicycle. Many roadways simply do not have sidewalks. And it is a particular problem for our growing elderly population. In many cases, the timing of lights makes it difficult for the elderly and those with a disability to simply get from one side of a busy intersection to another.

There is clearly a need for further progress in this area. Consider that nearly 52,000 pedestrians and more than 7,400 bicyclists were killed in the most recent 10-year period, ending 2003. And, we know that many of these deaths, and thousands of more injuries, are avoidable, if we commit ourselves to doing those things that make a difference.

This bill proposes three important changes to current law. First, it insists that Federal, State and local agencies receiving billions of dollars in federal transportation funds modernize their processes—how they plan, what they study and how they lead—so that the safety of pedestrians and bicyclists are more fully considered. Second, it ensures that investments we make today don't add to the problems we already have, which is the burden of retrofitting and reengineering existing transportation networks because we forgot about pedestrians and bicyclists. Finally, it commits additional resources to a national priority need—getting our children to schools safely on foot and bicycles through a stronger funding commitment to Safe Routes to School.

The Senate will soon take up a surface transportation renewal plan that

already includes key provisions to help us make further progress on the safety needs of nonmotorized travelers. The "Safe and Complete Streets Act of 2005" is specifically designed and developed to complement the efforts in the committee passed measure. Only in two areas, pertaining to the Safe Routes to School initiative and a small nonmotorized pilot program, does this legislation propose any additional funding commitments. All other aspects of the legislation before you today build upon existing commitments and existing features of current law.

Let me speak briefly to the issues of the Safe Routes to School program specifically. This legislation proposes to raise the Senate's commitment to increased safety for our school age kids by slightly more than \$100 million annually over the level in the surface transportation bill that the Senate will soon consider.

I am proposing this modest increase in spending because there is a critical need for us to accelerate what we are doing to protect our most exposed citizens, our school age children. This Nation has spent the last two generations getting kids into cars and buses, rather than on foot or bicycles.

Now, we are reaping the harvest. Billions more in added transportation costs for our schools districts to bus our kids to schools. Added congestion on our roadways as families transport their kids to school by private automobile, clogging traffic at the worst time possible, during the morning commute. In Marin County, CA, a pilot program has demonstrated substantial success in reducing congestion by shifting children to walking and riding their bikes to school.

In addition, we see rising obesity in our children and looming public health challenges over the next several generations, and even shortened life expectancy. We need to promote walking for both health and transportation purposes.

The "Safe and Complete Streets Act of 2005" will not only promote the safety of pedestrians and bicyclists, it also will provide benefits to society from smarter use of tax dollars, and by focusing on safety first. I urge my Senate colleagues to join with me in supporting this important legislation.

I am pleased to announce that it has the support of the following eleven national organizations: AARP, American Bikes, American Heart Association, American Public Health Association, American Society of Landscape Architects, American Planning Association, League of American Bicyclists, National Center for Bicycling & Walking, Paralyzed Veterans of America, Rail-to-Trails Conservancy and the Surface Transportation Policy Project.

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

S. 795. A bill to provide driver safety grants to States with graduated driver

licensing laws that meet certain minimum requirements; to the Committee on Environment and Public Works.

Mr. DODD. Mr. President, I rise with my colleague from Virginia, Senator WARNER, to introduce the Safe Teen and Novice Driver Uniform Protection (STAND UP) Act of 2005—an important piece of legislation that seeks to protect and ensure the lives of the 20 million teenage drivers in our country.

We all know that the teenage years represent an important formative stage in a person's life. They are a bridge between childhood and adulthood—the transitional and often challenging period during which a person will first gain an inner awareness of his or her identity. The teenage years encompass a time for discovery, a time for growth, and a time for gaining independence—all of which ultimately help boys and girls transition successfully into young men and women.

As we also know, the teenage years also encompass a time for risk-taking. A groundbreaking study to be published soon by the National Institutes of Health concludes that the frontal lobe region of the brain which inhibits risky behavior is not fully formed until the age of 25. In my view, this important report implies that we approach teenagers' behavior with a new sensitivity. It also implies that we have a societal obligation to steer teenagers towards positive risk-taking that fosters further growth and development and away from negative risk-taking that has an adverse effect on their well-being and the well-being of others.

Unfortunately, we see all too often this negative risk-taking in teenagers when they are behind the wheel of a motor vehicle. We see all too often how this risk-taking needlessly endangers the life of a teenage driver, his or her passengers, and other drivers on the road. And we see all too often the tragic results of this risk-taking when irresponsible and reckless behavior behind the wheel of a motor vehicle causes severe harm and death.

According to the National Transportation Safety Board, motor vehicle crashes are the leading cause of death for Americans between 15 and 20 years of age. In 2002, teenage drivers, who constituted only 6.4 percent of all drivers, were involved in 14.3 percent of all fatal motor vehicle crashes. In 2003, 5,691 teenage drivers were killed in motor vehicle crashes and 300,000 teenage drivers suffered injuries in motor vehicle crashes.

The National Highway Traffic Safety Administration reports that teenage drivers have a fatality rate that is four times higher than the average fatality rate for drivers between 25 and 70 years of age. Furthermore, teenage drivers who are 16 years of age have a motor vehicle crash rate that is almost ten times the crash rate for drivers between the ages of 30 and 60.

Finally, the Insurance Institute for Highway Safety concludes that the chance of a crash by a driver either 16

or 17 years of age is doubled if there are two peers in the motor vehicle and quadrupled with three or more peers in the vehicle.

Crashes involving teenage injuries or fatalities are often high-profile tragedies in the area where they occur. However, when taken together, these individual tragedies speak to a national problem clearly illustrated by the staggering statistics I just mentioned. It is a problem that adversely affects teenage drivers, their passengers, and literally everyone else who operates or rides in a motor vehicle. Clearly, more work must be done to design and implement innovative methods that educate our young drivers on the awesome responsibilities that are associated with operating a motor vehicle safely.

One such method involves implementing and enforcing a graduated driver's license system, or a GDL system. Under a typical GDL system, a teenage driver passes through several sequential learning stages before earning the full privileges associated with an unrestricted driver's license. Each learning stage is designed to teach a teenage driver fundamental lessons on driver operations, responsibilities, and safety. Each stage also imposes certain restrictions, such as curfews on nighttime driving and limitations on passengers, that further ensure the safety of the teenage driver, his or her passengers, and other motorists.

First implemented over ten years ago, three-stage GDL systems now exist in 38 States. Furthermore, every State in the country has adopted at least one driving restriction for new teenage drivers. Several studies have concluded that GDL systems and other license restriction measures have been linked to an overall reduction on the number of teenage driver crashes and fatalities. In 1997, in the first full year that its GDL system was in effect, Florida experienced a 9 percent reduction in fatal and injurious motor vehicle crashes among teenage drivers between 15 and 18 years of age. After GDL systems were implemented in Michigan and North Carolina in 1997, the number of motor vehicle crashes involving teenage drivers 16 years in age decreased in each State by 25 percent and 27 percent, respectively. And in California, the numbers of teenage passenger deaths and injuries in crashes involving teenage drivers 16 years in age decreased by 40 percent between 1998 and 2000, the first three years that California's GDL system was in effect. The number of "at-fault" crashes involving teenage drivers decreased by 24 percent during the same period.

These statistics are promising and clearly show that many States are taking an important first step towards addressing this enormous problem concerning teenage driver safety. However, there is currently no uniformity between States with regards to GDL system requirements and other novice driver license restrictions. Some States have very strong initiatives in

place that promote safe teenage driving while others have very weak initiatives in place. Given how many teenagers are killed or injured in motor vehicle crashes each year, and given how many other motorists and passengers are killed or injured in motor vehicle crashes involving teenage drivers each year, Senator Warner and I believe that the time has come for an initiative that sets a national minimum safety standard for teen driving laws while giving each State the flexibility to set additional standards that meet the more specific needs of its teenage driver population. The bill that Senator Warner and I are introducing today—the STANDUP Act—is such an initiative. There are four principal components of this legislation about which I would like to discuss.

First, The STANDUP Act mandates that all States implement a national minimum safety standard for teenage drivers that contains three core requirements recommended by the National Transportation Safety Board. These requirements include implementing a three-stage GDL system, implementing at least some prohibition on nighttime driving, and placing a restriction on the number of passengers without adult supervision.

Second, the STANDUP Act directs the Secretary of Transportation to issue voluntary guidelines beyond the three core requirements that encourage States to adopt additional standards that improve the safety of teenage driving. These additional standards may include requiring that the learner's permit and intermediate stages be six months each, requiring at least 30 hours of behind-the-wheel driving for a novice driver in the learner's permit stage in the company of a licensed driver who is over 21 years of age, requiring a novice driver in the learner's permit stage to be accompanied and supervised by a licensed driver 21 years of age or older at all times when the novice driver is operating a motor vehicle, and requiring that the granting of an unrestricted driver's license be delayed automatically to any novice driver in the learner's permit or intermediate stages who commits a motor vehicle offense, such as driving while intoxicated, misrepresenting his or her true age, reckless driving, speeding, or driving without a fastened seatbelt.

Third, the STANDUP Act provides incentive grants to States that come into compliance within three fiscal years. Calculated on a State's annual share of the Highway Trust Fund, these incentive grants could be used for activities such as training law enforcement and relevant State agency personnel in the GDL law or publishing relevant educational materials on the GDL law.

Finally, the STANDUP Act calls for sanctions to be imposed on States that do not come into compliance after three fiscal years. The bill withholds 1.5 percent of a State's Federal highway share after the first fiscal year of

non-compliance, three percent after the second fiscal year, and six percent after the third fiscal year. The bill does allow a State to reclaim any withheld funds if that State comes into compliance within two fiscal years after the first fiscal year of non-compliance.

There are those who will say that the STANDUP Act infringes on States' rights. I respectfully disagree. I believe that working to protect and ensure the lives and safety of the millions of teenage drivers, their passengers, and other motorists in this country is national in scope and a job that is rightly suited for Congress. I also believe that the number of motor vehicle deaths and injuries associated with teenage drivers each year compels us to address this important national issue today and not tomorrow.

The teenage driving provisions within the STANDUP Act are both well-known and popular with the American public. A Harris Poll conducted in 2001 found that 95 percent of Americans support a requirement of 30 to 50 hours of practice driving within an adult, 92 percent of Americans support a six-month learner's permit stage, 74 percent of Americans support limiting the number of teen passengers in a motor vehicle with a teen driver, and 74 percent of Americans also support supervised or restricted driving during high-risk periods such as nighttime. Clearly, these numbers show that teen driving safety is an issue that transcends party politics and is strongly embraced by a solid majority of Americans. Therefore, I ask my colleagues today to join Senator Warner and myself in protecting the lives of our teenagers and in supporting this important legislation.

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

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

S. 795

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 "Safe Teen and Novice Driver Uniform Protection Act of 2005" or the "STANDUP Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The National Transportation Safety Board has reported that—

(A) in 2002, teen drivers, which constituted only 6.4 percent of all drivers, were involved in 14.3 percent of all fatal motor vehicle crashes;

(B) motor vehicle crashes are the leading cause of death for Americans between 15 and 20 years of age;

(C) between 1994 and 2003, almost 64,000 Americans between 15 and 20 years of age died in motor vehicle crashes, an average of 122 per week; and

(D) in 2003—

(i) 3,657 American drivers between 15 and 20 years of age were killed in motor vehicle crashes;

(ii) 300,000 Americans between 15 and 20 years of age were injured in motor vehicle crashes; and

(iii) 7,884 American drivers between 15 and 20 years of age were involved in fatal crashes, resulting in 9,088 total fatalities, a 5 percent increase since 1993.

(2) Though only 20 percent of driving by young drivers occurs at night, over 50 percent of the motor vehicle crash fatalities involving young drivers occur at night.

(3) The National Highway Traffic Safety Administration has reported that—

(A) 6,300,000 motor vehicle crashes claimed the lives of nearly 43,000 Americans in 2003 and injured almost 3,000,000 more Americans;

(B) teen drivers between 16 and 20 years of age have a fatality rate that is 4 times the rate for drivers between 25 and 70 years of age; and

(C) drivers who are 16 years of age have a motor vehicle crash rate that is almost ten times the crash rate for drivers aged between 30 and 60 years of age.

(4) According to the Insurance Institute for Highway Safety, the chance of a crash by a 16- or 17-year-old driver is doubled if there are 2 peers in the vehicle and quadrupled with 3 or more peers in the vehicle.

(5) In 1997, the first full year of its graduated driver licensing system, Florida experienced a 9 percent reduction in fatal and injurious crashes among young drivers between the ages of 15 and 18, compared with 1995, according to the Insurance Institute for Highway Safety.

(6) The Journal of the American Medical Association reports that crashes involving 16-year-old drivers decreased between 1995 and 1999 by 25 percent in Michigan and 27 percent in North Carolina. Comprehensive graduated driver licensing systems were implemented in 1997 in these States.

(7) In California, according to the Automobile Club of Southern California, teenage passenger deaths and injuries resulting from crashes involving 16-year-old drivers declined by 40 percent from 1998 to 2000, the first 3 years of California's graduated driver licensing program. The number of at-fault collisions involving 16-year-old drivers decreased by 24 percent during the same period.

(8) The National Transportation Safety Board reports that 39 States and the District of Columbia have implemented 3-stage graduated driver licensing systems. Many States have not yet implemented these and other basic safety features of graduated driver licensing laws to protect the lives of teenage and novice drivers.

(9) A 2001 Harris Poll indicates that—

(A) 95 percent of Americans support a requirement of 30 to 50 hours of practice driving with an adult;

(B) 92 percent of Americans support a 6-month learner's permit period; and

(C) 74 percent of Americans support limiting the number of teen passengers in a car with a teen driver and supervised driving during high-risk driving periods, such as night.

SEC. 3. STATE GRADUATED DRIVER LICENSING LAWS.

(a) **MINIMUM REQUIREMENTS.**—A State is in compliance with this section if the State has a graduated driver licensing law that includes, for novice drivers under the age of 21—

(1) a 3-stage licensing process, including a learner's permit stage and an intermediate stage before granting an unrestricted driver's license;

(2) a prohibition on nighttime driving during the learner's permit and intermediate stages;

(3) a prohibition, during the learner's permit intermediate stages, from operating a motor vehicle with more than 1 non-familial passenger under the age of 21 if there is no licensed driver 21 years of age or older present in the motor vehicle; and

(4) any other requirement that the Secretary of Transportation (referred to in this Act as the "Secretary") may require, including—

(A) a learner's permit stage of at least 6 months;

(B) an intermediate stage of at least 6 months;

(C) for novice drivers in the learner's permit stage—

(i) a requirement of at least 30 hours of behind-the-wheel training with a licensed driver who is over 21 years of age; and

(ii) a requirement that any such driver be accompanied and supervised by a licensed driver 21 years of age or older at all times when such driver is operating a motor vehicle; and

(D) a requirement that the grant of full licensure be automatically delayed, in addition to any other penalties imposed by State law for any individual who, while holding a provisional license, convicted of an offense, such as driving while intoxicated, misrepresentation of their true age, reckless driving, unbelted driving, speeding, or other violations, as determined by the Secretary.

(b) **RULEMAKING.**—After public notice and comment rulemaking the Secretary shall issue regulations necessary to implement this section.

SEC. 4. INCENTIVE GRANTS.

(a) **IN GENERAL.**—For each of the first 3 fiscal years following the date of enactment of this Act, the Secretary shall award a grant to any State in compliance with section 3(a) on or before the first day of that fiscal year that submits an application under subsection (b).

(b) **APPLICATION.**—Any State desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including a certification by the governor of the State that the State is in compliance with section 3(a).

(c) **GRANTS.**—For each fiscal year described in subsection (a), amounts appropriated to carry out this section shall be apportioned to each State in compliance with section 3(a) in an amount determined by multiplying—

(1) the amount appropriated to carry out this section for such fiscal year; by

(2) the ratio that the amount of funds apportioned to each such State for such fiscal year under section 402 of title 23, United States Code, bears to the total amount of funds apportioned to all such States for such fiscal year under such section 402.

(d) **USE OF FUNDS.**—Amounts received under a grant under this section shall be used for—

(1) enforcement and providing training regarding the State graduated driver licensing law to law enforcement personnel and other relevant State agency personnel;

(2) publishing relevant educational materials that pertain directly or indirectly to the State graduated driver licensing law; and

(3) other administrative activities that the Secretary considers relevant to the State graduated driver licensing law.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$25,000,000 for each of the fiscal years 2005 through 2009.

SEC. 5. WITHHOLDING OF FUNDS FOR NON-COMPLIANCE.

(a) **IN GENERAL.**—

(1) **FISCAL YEAR 2010.**—The Secretary shall withhold 1.5 percent of the amount otherwise required to be apportioned to any State for fiscal year 2010 under each of the paragraphs (1), (3), and (4) of section 104(b) of title 23,

United States Code, if that State is not in compliance with section 3(a) of this Act on October 1, 2009.

(2) **FISCAL YEAR 2011.**—The Secretary shall withhold 3 percent of the amount otherwise required to be apportioned to any State for fiscal year 2011 under each of the paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if that State is not in compliance with section 3(a) of this Act on October 1, 2010.

(3) **FISCAL YEAR 2012 AND THEREAFTER.**—The Secretary shall withhold 6 percent of the amount otherwise required to be apportioned to any State for each fiscal year beginning with fiscal year 2012 under each of the paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if that State is not in compliance with section 3(a) of this Act on the first day of such fiscal year.

(b) **PERIOD OF AVAILABILITY OF WITHHELD FUNDS.**—

(1) **FUNDS WITHHELD ON OR BEFORE SEPTEMBER 30, 2011.**—Any amount withheld from any State under subsection (a) on or before September 30, 2011, shall remain available for distribution to the State under subsection (c) until the end of the third fiscal year following the fiscal year for which such amount is appropriated.

(2) **FUNDS WITHHELD AFTER SEPTEMBER 30, 2011.**—Any amount withheld under subsection (a)(2) from any State after September 30, 2011, may not be distributed to the State.

(c) **APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.**—

(1) **IN GENERAL.**—If, before the last day of the period for which funds withheld under subsection (a) are to remain available to a State under subsection (b), the State comes into compliance with section 3(a), the Secretary shall, on the first day on which the State comes into compliance, distribute to the State any amounts withheld under subsection (a) that remains available for apportionment to the State.

(2) **PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.**—Any amount distributed under paragraph (1) shall remain available for expenditure by the State until the end of the third fiscal year for which the funds are so apportioned. Any amount not expended by the State by the end of such period shall revert back to the Treasury of the United States.

(3) **EFFECT OF NON-COMPLIANCE.**—If a State is not in compliance with section 3(a) at the end of the period for which any amount withheld under subsection (a) remains available for distribution to the State under subsection (b), such amount shall revert back to the Treasury of the United States.

By Ms. MURKOWSKI:

S. 796. A bill to amend the National Aquaculture Act of 1980 to prohibit the issuance of permits for marine aquaculture facilities until requirements for such permits are enacted into law; to the Committee on Agriculture, Nutrition, and Forestry.

Ms. MURKOWSKI. Mr. President, I am today reintroducing a very important bill on a subject that was not resolved last year, and which continues to be an outstanding issue for those of us who are dependent on healthy and productive natural populations of ocean fish and shellfish.

Simply put, this bill prohibits further movement toward the development of aquaculture facilities in federal waters until Congress has had an opportunity to review all of the very

serious implications, and make decisions on how such development should proceed.

Some people are calling for a moratorium on offshore aquaculture. Frankly, Mr. President, we need more than a delay—we need a very comprehensive discussion of this issue and a serious debate on what the ground-rules should be.

For years, some members of the federal bureaucracy have advocated going forward with offshore aquaculture development without that debate. Doing so, would be an extraordinarily bad idea.

We are now being told that the Administration is in the final stages of preparing a draft bill to allow offshore aquaculture development to occur, and that it plans to send a draft to the Hill in the very near future. The problem is, that draft has been prepared in deep secrecy. We have only rumors about what may be in that draft bill. The administration has had meetings on the general topic of aquaculture, but has done little to nothing to work with those of us who represent constituents whose livelihoods might be imperiled and states with resources that might be endangered if the administration gets it wrong.

Scientists, the media and the public are awakening to the serious disadvantages of fish raised in fish farming operations compared to naturally healthy wild fish species such as Alaska salmon, halibut, sablefish, crab and many other species.

It has become common to see news reports that cite not only the general health advantages of eating fish at least once or twice a week, but the specific advantages of fish such as wild salmon, which contains essential Omega-3 fatty acids that may help reduce the risk of heart disease and possibly have similar beneficial effects on other diseases.

Educated and watchful consumers have also seen recent stories citing research that not only demonstrates that farmed salmon fed vegetable-based food does not have the same beneficial impact on cardio-vascular health, but also that the demand for other fish to grind up and use as feed in those fish farms may lead to the decimation of those stocks.

Those same alert consumers may also have seen stories indicating that fish farms may create serious pollution problems from the concentration of fish feces and uneaten food, that fish farms may harbor diseases that can be transmitted to previously healthy wild fish stocks, and that fish farming has had a devastating effect on communities that depend on traditional fisheries.

It is by no means certain that all those problems would be duplicated if we begin to develop fish farms that are farther offshore, but neither is there any evidence that they would not be. Yet despite the uncertainties, proponents have continued to push hard

for legislation that would encourage the development of huge new fish farms off our coasts.

Not only do the proponents want to encourage such development, but reports indicate they may also want to change the way decisions are made so that all the authority rests in the hands of just one federal agency. I believe that would be a serious mistake. There are simply too many factors that should be evaluated—from hydraulic engineering, to environmental impacts, to fish biology, to the management of disease, to the nutritional character of farmed fish, and so on—for any existing agency.

We cannot afford a rush to judgment on this issue—it is far too dangerous if we make a mistake. In my view, such a serious matter deserves the same level of scrutiny by Congress as the recommendations of the U.S. Commission on Ocean Policy for other sweeping changes in ocean governance.

The “Natural Stock Conservation Act” I am introducing today lays down a marker for where the debate on offshore aquaculture needs to go. It would prohibit the development of new offshore aquaculture operations until Congress has acted to ensure that every federal agency involved does the necessary analyses in areas such as disease control, engineering, pollution prevention, biological and genetic impacts, economic and social effects, and other critical issues, none of which are specifically required under existing law.

I strongly urge my colleagues to understand that this is not a parochial issue, but a very real threat to the literal viability of natural fish and shellfish stocks as well as the economic viability of many coastal communities.

I sincerely hope that this issue is taken up seriously in the context of reauthorizing the Magnuson-Stevens Act, which governs fishery management, and responding to the recommendations of the U.S. Oceans Commission and the Pew Oceans Commission.

We all want to make sure we enjoy abundant supplies of healthy foods in the future, but not if it means unnecessary and avoidable damage to wild species, to the environment generally, and to the economies of America’s coastal fishing communities.

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

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

S. 796

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 “Natural Stock Conservation Act of 2005”.

SEC. 2. PROHIBITION ON PERMITS FOR AQUACULTURE.

The National Aquaculture Act of 1980 (16 D.S.C. 2801 et seq.) is amended—

(1) by redesignating sections 10 and 11 as sections 11 and 12 respectively; and S.L.C.

(2) by inserting after section 9 the following new section:

PROHIBITION ON PERMITS FOR AQUACULTURE

“SEC. 10. (a) IN GENERAL.—The head of an agency with jurisdiction to regulate aquaculture may not issue a permit or license to permit an aquaculture facility located in the exclusive economic zone to operate until after the date on which a bill is enacted into law that—

“(1) sets out the type and specificity of the analyses that the head of an agency with jurisdiction to regulate aquaculture shall carry out prior to issuing any such permit or license, including analyses related to—

“(A) disease control;

“(B) structural engineering;

“(C) pollution;

“(D) biological and genetic impacts;

“(E) access and transportation;

“(F) food safety; and

“(G) social and economic impacts of such facility on other marine activities, including commercial and recreational fishing; and

“(2) requires that a decision to issue such a permit or license be—

“(A) made only after the head of the agency that issues such license or permit consults with the Governor of each State located within a 200-mile radius of the aquaculture facility; and

“(B) approved by the regional fishery management council that is granted authority under title III of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) over a fishery in the region where the aquaculture facility will be located.

“(b) DEFINITIONS.—In this section:

“(1) AGENCY WITH JURISDICTION TO REGULATE AQUACULTURE.—The term ‘agency with jurisdiction to regulate aquaculture’ means each agency and department of the United States, as follows:

“(A) The Department of Agriculture.

“(B) The Coast Guard.

“(C) The Department of Commerce.

“(D) The Environmental Protection Agency.

“(E) The Department of the Interior.

“(F) The U.S. Army Corps of Engineers.

“(2) EXCLUSIVE ECONOMIC ZONE.—The term ‘exclusive economic zone’ has the meaning given that term in section 3 of the of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

“(3) Regional fishery management council.—The term ‘regional fishery management council’ means a regional fishery management council established under section 302(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)).”.

By Ms. MURKOWSKI (for herself and Mr. STEVENS):

S. 797. A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to clarify the status of certain communities in the western Alaska community development quota program; to the Committee on Commerce, Science, and Transportation.

Ms. MURKOWSKI. Mr. President, I am today reintroducing legislation to clarify the status of villages participating in the federally established Community Development Quota (CDQ) program created to assist economically disadvantaged communities around the edge of the Bering Sea.

The CDQ program is one of the youngest but most successful of a variety of programs intended to improve economic opportunities in some of my State’s most challenged communities.

The CDQ Community Preservation Act is intended to maintain the participation of all currently eligible communities along the shore of the Bering Sea in Alaska's Community Development Quota program. It is necessary because inconsistencies in statutory and regulatory provisions may require a reassessment of eligibility and the exclusion of some communities from the program. This was not the intent of the original program, nor of any subsequent changes to it. In order to clarify that fact, a legislative remedy is needed.

Senator STEVENS joined me in introducing just such a remedy last year, but work on it was not completed and we were forced to settle for only temporary relief. It is time we dealt with this matter more appropriately.

Alaska has been generously blessed with natural resources, but due to its location and limited transportation infrastructure it continues to have pockets of severe poverty. Nowhere is this more evident than in the villages around the rim of the Bering Sea.

The Community Development Quota Program began in 1992, at the recommendation of the North Pacific Fishery Management Council, one of the regional councils formed under the Magnuson-Stevens Fishery Conservation and Management Act. Congress gave the program permanent status in the 1996 reauthorization of the Act. The program presently includes 65 communities within a 50 nautical-mile radius of the Bering Sea, which have formed six regional non-profit associations to participate in the program. The regional associations range in size from one to 20 communities. Under the program, a portion of the regulated annual harvests of pollock, halibut, sablefish, Atka mackerel, Pacific cod, and crab is assigned to each of the associations, which operate under combined Federal and State agency oversight. Almost all of an association's earnings must be invested in fishing-related projects in order to encourage a sustainable economic base for the region.

Typically, each association sells its share of the annual harvest quotas to established fishing companies in return for cash and agreements to provide job training and employment opportunities for residents of the region. The program has been remarkably successful.

Since 1992, approximately 9,000 jobs have been created for western Alaska residents with wages totaling more than \$60 million. The CDQ program has also contributed to fisheries infrastructure development in western Alaska, as well as providing vessel loan programs; education, training and other CDQ-related benefits.

The CDQ program has its roots in the amazing success story of how our offshore fishery resources were Americanized after the passage of the original Magnuson Act in 1976. At the time, vast foreign fishing fleets were almost the only ones operating in the U.S. 200-mile Exclusive Economic Zone. Amer-

ican fishermen simply did not have either the vessels or the expertise to participate.

The Magnuson-Stevens Act changed all that. It led to the adoption of what we called a "fish and chips" policy that provided for an exchange of fish allocations for technological and practical expertise. Within the next few years, harvesting fell almost exclusively to American vessels. Within a few years after that, processing also became Americanized. Today, there are no foreign fishing or processing vessels operating in the 200-mile zone off Alaska, and the industry is worth billions of dollars each year.

The CDQ program helps bring some of the benefits of that great industry to local residents in one of the most impoverished areas of the entire country. It is a vital element in the effort to create and maintain a lasting economic base for the region's many poor communities, and truly deserves the support of this body.

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

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

S. 797

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 "CDQ Community Preservation Act".

SEC. 2. WESTERN ALASKA COMMUNITY DEVELOPMENT QUOTA PROGRAM.

(a) **ELIGIBLE COMMUNITIES.**—Section 305(i)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(i)) is amended adding at the end the following:

"(E) A community shall be eligible to participate in the western Alaska community development quota program under subparagraph (A) if the community was—

"(i) listed in table 7 to part 679 of title 50, Code of Federal Regulations, as in effect on January 1, 2004; or

"(ii) approved by the National Marine Fisheries Service on April 19, 1999."

(b) **CONFORMING AMENDMENT.**—Such section is further amended, in paragraph (B), by striking "To" and inserting, "Except as provided in subparagraph (E), to".

By Mr. FEINGOLD (for himself, Mr. CORZINE, Mr. DAYTON, Mr. DURBIN, Mr. LAUTENBERG, Ms. MIKULSKI, and Mrs. MURRAY):

S. 798. A bill to amend the Family and Medical Leave Act of 1993 and title 5, United States Code, to provide entitlement to leave to eligible employees whose spouse, son, daughter, or parent is a member of the Armed Forces who is serving on active duty in support of a contingency operation or who is notified of an impending call or order to active duty in support of a contingency operation, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, today I introduce legislation on behalf of myself and Senators CORZINE, DAYTON,

DURBIN, LAUTENBERG, MIKULSKI, and MURRAY, that would bring a small measure of relief to the families of our brave military personnel who are being deployed for the ongoing fight against terrorism, the war in Iraq, and other missions in this country and around the world. It is legislation that the Senate adopted unanimously when I offered it as an amendment to the fiscal year 2004 Iraq supplemental spending bill and I think it would be very fitting for my colleagues to join me in supporting this measure again during this, the National Month of the Military Child.

The men and women of our Armed Forces undertake enormous sacrifices in their service to our country. They spend time away from home and from their families in different parts of the country and different parts of the world and are placed into harm's way in order to protect the American people and our way of life. We owe them a huge debt of gratitude for their dedicated service.

The ongoing deployments for the fight against terrorism and for the campaign in Iraq are turning upside down the lives of thousands of active duty, National Guard, and Reserve personnel and their families as they seek to do their duty to their country and honor their commitments to their families, and, in the case of the reserve components, to their employers as well. Today, there are more than 180,000 National Guard and Reserve personnel on active duty.

Some of my constituents are facing the latest in a series of activations and deployments for family members who serve our country in the military. Others are seeing their loved ones off on their first deployment. All of these families share in the worry and concern about what awaits their relatives and hope, as we do, for their swift and safe return.

Many of those deployed in Iraq have had their tours extended beyond the time they had expected to stay. This extension has played havoc with the lives of those deployed and their families. Worried mothers, fathers, spouses, and children expecting their loved ones home after more than a year of service have been forced to wait another three or four months before their loved ones' much-anticipated homecoming. The emotional toll is huge. So is the impact on a family's daily functioning as bills still need to be paid, children need to get to school events, and sick family members must still be cared for.

Our men and women in uniform face these challenges without complaint. But we should do more to help them and their families with the many things that preparing to be deployed requires.

During the first round of mobilizations for operations in Afghanistan and Iraq, military personnel and their families were given only a couple of days' notice that their units would be deployed. As a result, these dedicated

men and women had only a very limited amount of time to get their lives in order. For members of the National Guard and Reserve, this included informing their employers of the deployment. I want to commend the many employers around the country for their understanding and support when their employees were called to active duty.

In preparation for a deployment, military families often have to scramble to arrange for child care, to pay bills, to contact their landlords or mortgage companies, and to take care of other things that we deal with on a daily basis.

The legislation I introduce today would allow eligible employees whose spouses, parents, sons, or daughters are military personnel who are serving on or called to active duty in support of a contingency operation to use their Family and Medical Leave Act (FMLA) benefits for issues directly relating to or resulting from that deployment. These instances could include preparation for deployment or additional responsibilities that family members take on as a result of a loved one's deployment, such as child care.

But don't just take my word for it. Here is what the National Military Family Association has to say in a letter of support:

(The National Military Family Association) has heard from many families about the difficulty of balancing family obligations with job requirements when a close family member is deployed. Suddenly, they are single parents or, in the case of grandparents, assuming the new responsibility of caring for grandchildren. The days leading up to a deployment can be filled with pre-deployment briefings and putting legal affairs in order.

In that same letter, the National Military Family Association states that, "Military families, especially those of deployed service members, are called upon to make extraordinary sacrifices. (The Military Families Leave Act) offers families some breathing room as they adjust to this time of separation."

On July 21, 2004, then-Governor Joseph Kernan of Indiana testified before a joint hearing of the Senate Health, Labor, Education, and Pensions and Armed Services committees that Congress should revise FMLA to include activated National Guard families, as recommended by the National Governors' Association. The legislation I introduce today would give many military families some of the assistance Governor Kernan spoke of.

Let me make sure there is no confusion about what this legislation does and does not do. This legislation does not expand eligibility for FMLA to employees not already covered by FMLA. It does not expand FMLA eligibility to active duty military personnel. It simply allows those already covered by FMLA to use those benefits in one additional set of circumstances—to deal with issues directly related to or resulting from the deployment of a family member.

I was proud to cosponsor and vote for the legislation that created the land-

mark Family and Medical Leave Act (FMLA) during the early days of my service to the people of Wisconsin as a member of this body. This important legislation allows eligible workers to take up to 12 weeks of unpaid leave per year for the birth or adoption of child, the placement of a foster child, to care for a newborn or newly adopted child or newly placed foster child, or to care for their own serious health condition or that of a spouse, a parent, or a child. Some employers offer a portion of this time as paid leave in addition to other accrued leave, while others allow workers to use accrued vacation or sick leave for this purpose prior to going on unpaid leave.

Since its enactment in 1993, the FMLA has helped more than 35 million American workers to balance responsibilities to their families and their jobs. According to the Congressional Research Service, between 2.2 million and 6.1 million people took advantage of these benefits in 1999-2000.

Our military families sacrifice a great deal. Active duty families often move every couple of years due to transfers and new assignments. The twelve years since FMLA's enactment has also been a time where we as a country have relied more heavily on National Guard and Reserve personnel for more and more deployments of longer and longer duration. The growing burden on these service members' families must be addressed, and this legislation is one way to do so.

This legislation has the support of a number of organizations, including the Wisconsin National Guard, the Military Officers Association of America, the Enlisted Association of the National Guard of the United States, the Reserve Enlisted Association, the Reserve Officers Association, the National Military Family Association, the National Council on Family Relations, and the National Partnership for Women and Families. The Military Coalition, an umbrella organization of 31 prominent military organizations, specified this legislation as one of five meriting special consideration during the fiscal year 2004 Iraq supplemental debate.

We owe it to our military personnel and their families to do all we can to support them in this difficult time. I hope that this legislation will bring a small measure of relief to our military families and I urge my colleagues to support it.

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

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

S. 798

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 "Military Families Leave Act of 2005".

SEC. 2. LEAVE FOR MILITARY FAMILIES UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993.

(a) ENTITLEMENT TO LEAVE.—Section 102(a)(1) of the Family and Medical Leave Act of 1993 (29 U.S.C. 2612(a)(1)) is amended by adding at the end the following new subparagraph:

“(E) Because of any qualifying exigency (as the Secretary may by regulation determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.”.

(b) INTERMITTENT OR REDUCED LEAVE SCHEDULE.—Section 102(b)(1) of such Act (29 U.S.C. 2612(b)(1)) is amended by inserting after the second sentence the following new sentence: “Subject to subsection (e)(3) and section 103(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.”.

(c) SUBSTITUTION OF PAID LEAVE.—Section 102(d)(2)(A) of such Act (29 U.S.C. 2612(d)(2)(A)) is amended by striking “or (C)” and inserting “(C), or (E)”.

(d) NOTICE.—Section 102(e) of such Act (29 U.S.C. 2612(e)) is amended by adding at the end the following new paragraph:

“(3) NOTICE FOR LEAVE DUE TO ACTIVE DUTY OF FAMILY MEMBER.—In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable based on notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as is reasonable and practicable.”.

(e) CERTIFICATION.—Section 103 of such Act (29 U.S.C. 2613) is amended by adding at the end the following new subsection:

“(f) CERTIFICATION FOR LEAVE DUE TO ACTIVE DUTY OF FAMILY MEMBER.—An employer may require that a request for leave under section 102(a)(1)(E) be supported by a certification issued at such time and in such manner as the Secretary shall by regulation prescribe. If the Secretary issues a regulation requiring such certification, the employee shall provide, in a timely manner, a copy of such certification to the employer.”.

(f) DEFINITION.—Section 101 of such Act (29 U.S.C. 2611) is amended by adding at the end the following new paragraph:

“(14) CONTINGENCY OPERATION.—The term ‘contingency operation’ has the same meaning given such term in section 101(a)(13) of title 10, United States Code.”.

SEC. 3. LEAVE FOR MILITARY FAMILIES UNDER TITLE 5, UNITED STATES CODE.

(a) ENTITLEMENT TO LEAVE.—Section 6382(a)(1) of title 5, United States Code, is amended by adding at the end the following new subparagraph:

“(E) Because of any qualifying exigency (as defined under section 6387) arising out of the fact that the spouse, or a son, daughter, or parent, of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.”.

(b) INTERMITTENT OR REDUCED LEAVE SCHEDULE.—Section 6382(b)(1) of such title is amended by inserting after the second sentence the following new sentence: “Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.”.

(c) SUBSTITUTION OF PAID LEAVE.—Section 6382(d) of such title is amended by striking “or (D)” and inserting “(D), or (E)”.

(d) NOTICE.—Section 6382(e) of such title is amended by adding at the end the following new paragraph:

“(3) In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable based on notification of an impending

call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employing agency as is reasonable and practicable.”.

(e) CERTIFICATION.—Section 6383 of such title is amended by adding at the end the following new subsection:

“(f) An employing agency may require that a request for leave under section 6382(a)(1)(E) be supported by a certification issued at such time and in such manner as the employing agency may require.”.

(f) DEFINITION.—Section 6381 of such title is amended—

(1) in paragraph (5)(B), by striking “and” at the end;

(2) in paragraph (6)(B), by striking the period at the end and inserting “; and”; and

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

“(6) the term ‘contingency operation’ has the same meaning given such term in section 101(a)(13) of title 10.”.

By Mr. KENNEDY:

S. 799. A bill to amend the Public Health Service Act to provide for the coordination of Federal Government policies and activities to prevent obesity in childhood, to provide for State childhood obesity prevention and control, and to establish grant programs to prevent childhood obesity within homes, schools, and communities; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, America is facing a major public health problem because of the epidemic of obesity in the nation’s children. Nine million children today are obese. Over the past three decades, the rate of obesity has more than doubled in preschool children and adolescents, and tripled among all school-age children. The health risks are immense. If the current rates do not decrease, 30 percent of boys and 40 percent of girls born in 2000 will develop diabetes, which can lead to kidney failure, blindness, heart disease and stroke.

Obese children are 80 percent likely to become obese adults, with significantly greater risk for not only diabetes, but heart disease, arthritis and certain types of cancer. The economic impact of obesity-related health expenditures in 2004 reached \$129 billion, a clear sign of the lower quality of life likely to be faced by the growing number of the nation’s youth.

Childhood obesity is the obvious result of too much food and too little exercise. Children are especially susceptible because of the dramatic social changes that have been taking place for many years. Children are exposed to 40,000 food advertisements a year one food commercial every minute—urging them to eat candy, snacks, and fast food. Vending machines are now in 43 percent of elementary schools and 97 percent of high schools, offering young students easy access to soft drinks and snacks that can double their risk of obesity. Many schools have eliminated physical education classes, leaving children less active throughout the school day. More communities are built without sidewalks, safe parks, or bike trails. Parents, who worry about

the safety of their children in outside play, encourage them to sit and watch television. Fast food stores are nearby, grocery stores and farmers markets with fresh fruits and vegetables are not.

According to the Institute of Medicine, prevention of obesity in children and youth requires public health action at its broadest and most inclusive level, with coordination between federal and state governments, within schools and communities, and involving industry and media, so that children can make food and activity choices that lead to healthy weights.

The Prevention of Childhood Obesity Act makes the current epidemic a national public health priority. It appoints a federal commission on food policies to promote good nutrition. Guidelines for food and physical activity advertisements will be established by a summit conference of representatives from education, industry, and health care. Grants are provided to states to implement anti-obesity plans, including curricula and training for educators, for obesity prevention activities in preschool, school and after-school programs, and for sidewalks, bike trails, and parks where children can play and be both healthy and safe.

Prevention is the cornerstone of good health and long, productive lives for all Americans. Childhood obesity is preventable, but we have to work together to stop this worsening epidemic and protect our children’s future. Congress must do its part and I urge my colleagues to support this legislation.

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

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

S. 799

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 “Prevention of Childhood Obesity Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Childhood overweight and obesity is a major public health threat to the United States. The rates of obesity have doubled in preschool children and tripled in adolescents in the past 25 years. About 9,000,000 young people are considered overweight.

(2) Overweight and obesity is more prevalent in Mexican American and African American youth. Among Mexican Americans, 24 percent of children (6 to 11 years) and adolescents (12 to 19 years) are obese and another 40 percent of children and 44 percent of adolescents are overweight. Among African Americans, 20 percent of children and 24 percent of adolescents are obese and another 36 percent of children and 41 percent of adolescents are overweight.

(3) Childhood overweight and obesity is related to the development of a number of preventable chronic diseases in childhood and adulthood, such as type 2 diabetes and hypertension.

(4) Overweight adolescents have up to an 80 percent chance of becoming obese adults. In 2003, obesity-related health conditions in

adults resulted in approximately \$11,000,000,000 in medical expenditures.

(5) Childhood overweight and obesity is preventable but will require changes across the multiple environments to which our children are exposed. This includes homes, schools, communities, and society at large.

(6) Overweight and obesity in children are caused by unhealthy eating habits and insufficient physical activity.

(7) Only 2 percent of school children meet all of the recommendations of the Food Guide Pyramid. Sixty percent of young people eat too much fat and less than 20 percent eat the recommended 5 or more servings of fruits and vegetables each day.

(8) More than one third of young people do not meet recommended guidelines for physical activity. Daily participation in high school physical education classes dropped from 42 percent in 1991 to 28 percent in 2003.

(9) Children spend an average of 5½ hours per day using media, more time than they spend doing anything besides sleeping.

(10) Children are exposed to an average of 40,000 television advertisements each year for candy, high sugar cereals, and fast food. Fast food outlets alone spend \$3,000,000,000 in advertisements targeting children. Children are exposed to 1 food commercial every 5 minutes.

(11) A coordinated effort involving evidence-based approaches is needed to ensure children develop in a society in which healthy lifestyle choices are available and encouraged.

TITLE I—FEDERAL OBESITY PREVENTION
SEC. 101. FEDERAL LEADERSHIP COMMISSION TO PREVENT CHILDHOOD OBESITY.

Part Q of title III of the Public Health Service Act (42 U.S.C. 280h et seq.) is amended by inserting after section 399W, the following:

“SEC. 399W-1. FEDERAL LEADERSHIP COMMISSION TO PREVENT CHILDHOOD OBESITY.

“(a) IN GENERAL.—The Secretary shall ensure that the Federal Government coordinates efforts to develop, implement, and enforce policies that promote messages and activities designed to prevent obesity among children and youth.

“(b) ESTABLISHMENT OF LEADERSHIP COMMISSION.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish within the Centers for Disease Control and Prevention a Federal Leadership Commission to Prevent Childhood Obesity (referred to in this section as the ‘Commission’) to assess and make recommendations for Federal departmental policies, programs, and messages relating to the prevention of childhood obesity. The Director shall serve as the chairperson of the Commission.

“(c) MEMBERSHIP.—The Commission shall include representatives of offices and agencies within—

“(1) the Department of Health and Human Services;

“(2) the Department of Agriculture;

“(3) the Department of Commerce;

“(4) the Department of Education;

“(5) the Department of Housing and Urban Development;

“(6) the Department of the Interior;

“(7) the Department of Labor;

“(8) the Department of Transportation;

“(9) the Federal Trade Commission; and

“(10) other Federal entities as determined appropriate by the Secretary.

“(d) DUTIES.—The Commission shall—

“(1) serve as a centralized mechanism to coordinate activities related to obesity prevention across all Federal departments and agencies;

“(2) establish specific goals for obesity prevention, and determine accountability for

reaching these goals, within and across Federal departments and agencies;

“(3) review evaluation and economic data relating to the impact of Federal interventions on the prevention of childhood obesity;

“(4) provide a description of evidence-based best practices, model programs, effective guidelines, and other strategies for preventing childhood obesity;

“(5) make recommendations to improve Federal efforts relating to obesity prevention and to ensure Federal efforts are consistent with available standards and evidence; and

“(6) monitor Federal progress in meeting specific obesity prevention goals.

“(e) STUDY; SUMMIT; GUIDELINES.—

“(1) STUDY.—The Government Accountability Office shall—

“(A) conduct a study to assess the effect of Federal nutrition assistance programs and agricultural policies on the prevention of childhood obesity, and prepare a report on the results of such study that shall include a description and evaluation of the content and impact of Federal agriculture subsidy and commodity programs and policies as such relate to Federal nutrition programs;

“(B) make recommendations to guide or revise Federal policies for ensuring access to nutritional foods in Federal nutrition assistance programs; and

“(C) complete the activities provided for under this section not later than 18 months after the date of enactment of this section.

“(2) INSTITUTE OF MEDICINE STUDY.—

“(A) IN GENERAL.—Not later than 6 months after the date of enactment of this section, the Secretary shall request that the Institute of Medicine (or similar organization) conduct a study and make recommendations on guidelines for nutritional food and physical activity advertising and marketing to prevent childhood obesity. In conducting such study the Institute of Medicine shall—

“(i) evaluate children’s advertising and marketing guidelines and evidence-based literature relating to the impact of advertising on nutritional foods and physical activity in children and youth; and

“(ii) make recommendations on national guidelines for advertising and marketing practices relating to children and youth that—

“(I) reduce the exposure of children and youth to advertising and marketing of foods of poor or minimal nutritional value and practices that promote sedentary behavior; and

“(II) increase the number of media messages that promote physical activity and sound nutrition.

“(B) GUIDELINES.—Not later than 2 years after the date of enactment of this section, the Institute of Medicine shall submit to the Commission the final report concerning the results of the study, and making the recommendations, required under this paragraph.

“(3) NATIONAL SUMMIT.—

“(A) IN GENERAL.—Not later than 1 year after the date on which the report under paragraph (2)(B) is submitted, the Commission shall convene a National Summit to Implement Food and Physical Activity Advertising and Marketing Guidelines to Prevent Childhood Obesity (referred to in this section as the ‘Summit’).

“(B) COLLABORATIVE EFFORT.—The Summit shall be a collaborative effort and include representatives from—

“(i) education and child development groups;

“(ii) public health and behavioral science groups;

“(iii) child advocacy and health care provider groups; and

“(iv) advertising and marketing industry.

“(C) ACTIVITIES.—The participants in the Summit shall develop a 5-year plan for implementing the national guidelines recommended by the Institute of Medicine in the report submitted under paragraph (2)(B).

“(D) EVALUATION AND REPORTS.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Commission shall evaluate and submit a report to Congress on the efforts of the Federal Government to implement the recommendations made by the Institute of Medicine in the report under paragraph (2)(B) that shall include a detailed description of the plan of the Secretary to implement such recommendations.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2010.

“(g) DEFINITIONS.—For purposes of this section, the definitions contained in section 401 of the Prevention of Childhood Obesity Act shall apply.”

SEC. 102. FEDERAL TRADE COMMISSION AND MARKETING TO CHILDREN AND YOUTH.

(a) IN GENERAL.—Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a), the Federal Trade Commission is authorized to promulgate regulations and monitor compliance with the guidelines for advertising and marketing of nutritional foods and physical activity directed at children and youth, as recommended by the National Summit to Implement Food and Physical Activity Advertising and Marketing Guidelines to Prevent Childhood Obesity (as established under section 399W-1(e)(3) of the Public Health Service Act).

(b) FINES.—Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a), the Federal Trade Commission may assess fines on advertisers or network and media groups that fail to comply with the guidelines described in subsection (a).

TITLE II—STATE CHILDREN AND YOUTH OBESITY PREVENTION AND CONTROL

SEC. 201. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following:

“PART R—OBESITY PREVENTION AND CONTROL

“SEC. 399AA. STATE CHILDHOOD OBESITY PREVENTION AND CONTROL PROGRAMS.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award competitive grants to eligible entities to support activities that implement the children’s obesity prevention and control plans contained in the applications submitted under subsection (b)(2).

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be a State, territory, or an Indian tribe; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require, including a children’s obesity prevention and control plan that—

“(A) is developed with the advice of stakeholders from the public, private, and nonprofit sectors that have expertise relating to obesity prevention and control;

“(B) targets prevention and control of childhood obesity;

“(C) describes the obesity-related services and activities to be undertaken or supported by the applicant; and

“(D) describes plans or methods to evaluate the services and activities to be carried out under the grant.

“(c) USE OF FUNDS.—An eligible entity shall use amounts received under a grant under this section to conduct, in a manner consistent with the children’s obesity prevention and control plan under subsection (b)(2)—

“(1) an assessment of the prevalence and incidence of obesity in children;

“(2) an identification of evidence-based and cost-effective best practices for preventing childhood obesity;

“(3) innovative multi-level behavioral or environmental interventions to prevent childhood obesity;

“(4) demonstration projects for the prevention of obesity in children and youth through partnerships between private industry organizations, community-based organizations, academic institutions, schools, hospitals, health insurers, researchers, health professionals, or other health entities determined appropriate by the Secretary;

“(5) ongoing coordination of efforts between governmental and nonprofit entities pursuing obesity prevention and control efforts, including those entities involved in related areas that may inform or overlap with childhood obesity prevention and control efforts, such as activities to promote school nutrition and physical activity; and

“(6) evaluations of State and local policies and programs related to obesity prevention in children.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2010.

“SEC. 399AA-1. COMPREHENSIVE OBESITY PREVENTION ACTION GRANTS.

“(a) IN GENERAL.—The Secretary shall award grants on a competitive basis to eligible entities to enable such entities to implement activities related to obesity prevention and control.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be a public or private nonprofit entity; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require, including a description of how funds received under a grant awarded under this section will be used to—

“(A) supplement or fulfill unmet needs identified in the children’s obesity prevention and control plan of a State, Indian tribe, or territory (as prepared under this part); and

“(B) otherwise help achieve the goals of obesity prevention as established by the Secretary or the Commission.

“(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities submitting applications proposing to carry out programs for preventing obesity in children and youth from at-risk populations or reducing health disparities in underserved populations.

“(d) USE OF FUNDS.—An eligible entity shall use amounts received under a grant awarded under subsection (a) to implement and evaluate behavioral and environmental change programs for childhood obesity prevention.

“(e) EVALUATION.—An eligible entity that receives a grant under this section shall submit to the Secretary an evaluation of the operations and activities carried out under such grant that includes an analysis of the utilization and benefit of public health programs relevant to the activities described in subsection (d).

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

necessary for each of fiscal years 2006 through 2010.

“SEC. 399AA-2. DISCOVERY TO PRACTICE CENTERS OF EXCELLENCE WITHIN THE HEALTH PROMOTION AND DISEASE PREVENTION RESEARCH CENTERS OF THE CENTERS FOR DISEASE CONTROL AND PREVENTION.

“(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants to eligible entities for the establishment of Centers of Excellence for Discovery to Practice (referred to in this section as the ‘Centers’) implemented through the Health Promotion and Disease Prevention Research Centers of the Centers for Disease Control and Prevention. Such eligible entities shall use grant funds to disseminate childhood obesity prevention evidence-based practices to individuals, families, schools, organizations, and communities.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be a Health Promotion and Disease Prevention Research Center of the Centers for Disease Control and Prevention;

“(2) demonstrate a history of service to and collaboration with populations with a high incidence of childhood obesity; and

“(3) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require.

“(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to applications targeting childhood obesity prevention activities in underserved populations.

“(d) USE OF FUNDS.—An eligible entity shall use amounts received under a grant under this section to disseminate childhood obesity prevention evidence-based practices through activities that—

“(1) expand the availability of evidence-based nutrition and physical activity programs designed specifically for the prevention of childhood obesity; and

“(2) train lay and professional individuals on determinants of and methods for preventing childhood obesity.

“(e) EVALUATION.—An eligible entity that receives a grant under this section shall submit to the Secretary an evaluation of the operations and activities carried out under such a grant that includes an analysis of increased utilization and benefit of programs relevant to the activities described in subsection (d).

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$50,000,000 for each of fiscal years 2006 through 2010.

“SEC. 399AA-3. DEFINITIONS.

“For purposes of this part, the definitions contained in section 401 of the Prevention of Childhood Obesity Act shall apply.”

TITLE III—FEDERAL PROGRAMS TO PREVENT CHILDHOOD OBESITY

Subtitle A—Preventing Obesity at Home

SEC. 301. DEVELOPMENT OF OBESITY PREVENTION BEHAVIOR CHANGE CURRICULA FOR EARLY CHILDHOOD HOME VISITATION PROGRAMS.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.), as amended by section 201, is further amended by adding at the end the following:

“PART S—PREVENTING CHILDHOOD OBESITY

“SEC. 399BB. DEVELOPMENT OF OBESITY PREVENTION BEHAVIOR CHANGE CURRICULA FOR EARLY CHILDHOOD HOME VISITATION PROGRAMS.

“(a) IN GENERAL.—The Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention and the

Secretary of Education, shall award grants for the development of obesity prevention behavior change curricula to be incorporated into early childhood home visitation programs.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be an academic center collaborating with a public or private nonprofit organization that has the capability of testing behavior change curricula in service delivery settings and disseminating results to home visiting programs nationally, except that an organization testing the behavior change curricula developed under the grant shall implement a model of home visitation that—

“(A) focuses on parental education and care of children who are prenatal through 5 years of age;

“(B) promotes the overall health and well-being of young children; and

“(C) adheres to established quality standards; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require.

“(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities submitting applications that propose to develop and implement programs for preventing childhood obesity and reducing health disparities in underserved populations.

“(d) USE OF FUNDS.—An eligible entity shall use amounts received under a grant under this section to develop, implement, and evaluate the impact of behavior change curricula for early childhood home visitation programs that—

“(1) encourage breast-feeding of infants;

“(2) promote age-appropriate portion sizes for a variety of nutritious foods;

“(3) promote consumption of fruits and vegetables and low-energy dense foods; and

“(4) encourage education around parental modeling of physical activity and reduction in television viewing and other sedentary activities by toddlers and young children.

“(e) EVALUATION.—Not later than 3 years after the date on which a grant is awarded under this section, the grantee shall submit to the Secretary a report that describes the activities carried out with funds received under the grant and the effectiveness of such activities in preventing obesity by improving nutrition and increasing physical activity.

“(f) INCORPORATION INTO EVIDENCE-BASED PROGRAMS.—The Secretary, in consultation with the heads of other Federal departments and agencies, shall ensure that policies that prevent childhood obesity are incorporated into evidence-based early childhood home visitation programs in a manner that provides for measurable outcomes.

“(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$25,000,000 for each of fiscal years 2006 through 2010.”

Subtitle B—Preventing Childhood Obesity in Schools

SEC. 311. PREVENTING CHILDHOOD OBESITY IN SCHOOLS.

(a) IN GENERAL.—Part S of title III of the Public Health Service Act (as added by section 301) is amended by adding at the end the following:

“SEC. 399BB-1. PREVENTING CHILDHOOD OBESITY IN SCHOOLS.

“(a) IN GENERAL.—The Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention, the Secretary of Education, the Secretary of Agriculture, and the Secretary of the Interior shall establish and implement activities to prevent obesity by encouraging healthy nu-

trition choices and physical activity in schools.

“(b) SCHOOLS.—The Secretary, in consultation with the Secretary of Education, shall require that each local educational agency that receives Federal funds establish policies to ban vending machines that sell foods of poor or minimal nutritional value in schools.

“(c) SCHOOL DISTRICTS.—

“(1) IN GENERAL.—The Secretary shall award grants to local educational agencies to enable elementary and secondary schools to promote good nutrition and physical activity among children.

“(2) CAROL M. WHITE PHYSICAL EDUCATION PROGRAM.—The Secretary of Education, in collaboration with the Secretary, may give priority in awarding grants under the Carol M. White Physical Education Program under subpart 10 of part D of title V of the Elementary and Secondary Education Act of 1965 to local educational agencies and other eligible entities that have a plan to—

“(A) implement behavior change curricula that promotes the concepts of energy balance, good nutrition, and physical activity;

“(B) implement policies that encourage the appropriate portion sizes and limit access to soft drinks or other foods of poor or minimal nutritional value on school campuses, and at school events;

“(C) provide age-appropriate daily physical activity that helps students to adopt, maintain, and enjoy a physically active lifestyle;

“(D) maintain a minimum number of functioning water fountains (based on the number of individuals) in school buildings;

“(E) prohibit advertisements and marketing in schools and on school grounds for foods of poor or minimal nutritional value such as fast foods, soft drinks, and candy; and

“(F) develop and implement policies to conduct an annual assessment of each student's body mass index and provide such assessment to the student and the parents of that student with appropriate referral mechanisms to address concerns with respect to the results of such assessments.

“(3) GRANTS FOR ADDITIONAL ACTIVITIES.—The Director of the Centers for Disease Control and Prevention, in collaboration with the Secretary, the Secretary of Agriculture, and the Secretary of Education, shall award grants for the implementation and evaluation of activities that—

“(A) educate students about the health benefits of good nutrition and moderate or vigorous physical activity by integrating it into other subject areas and curriculum;

“(B) provide food options that are low in fat, calories, and added sugars such as fruit, vegetables, whole grains, and dairy products;

“(C) develop and implement guidelines for healthful snacks and foods for sale in vending machines, school stores, and other venues within the school's control;

“(D) restrict student access to vending machines, school stores, and other venues that contain foods of poor or minimal nutritional value;

“(E) encourage adherence to single-portion sizes, as defined by the Food and Drug Administration, in foods offered in the school environment;

“(F) provide daily physical education for students in prekindergarten through grade 12 through programs that are consistent with the Guidelines for Physical Activity as reported by Centers for Disease Control and Prevention and the American College of Sports Medicine and National Physical Education Standards;

“(G) encourage the use of school facilities for physical activity programs offered by the school or community-based organizations outside of school hours;

“(H) promote walking or bicycling to and from school using such programs as Walking School Bus and Bike Train;

“(I) train school personnel in a manner that provides such personnel with the knowledge and skills needed to effectively teach lifelong healthy eating and physical activity; and

“(J) evaluate the impact of school nutrition and physical education programs and facilities on body mass index and related fitness criteria at annual intervals to determine the extent to which national guidelines are met.

“(d) EVALUATION.—Not later than 3 years after the date on which a grant is awarded under this section, the grantee shall submit to the Director of the Centers for Disease Control and Prevention a report that describes the activities carried out with funds received under the grant and the effectiveness of such activities in improving nutrition and increasing physical activity.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$50,000,000 for each of fiscal years 2006 through 2010.”

(b) CAROL M. WHITE PHYSICAL EDUCATION PROGRAM.—Subpart 10 of part D of title V of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7261 et seq.) is amended by adding at the end the following:

“SEC. 5508. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this subpart, \$150,000,000 for each of fiscal years 2006 through 2010.”

Subtitle C—Preventing Childhood Obesity in Afterschool Programs

SEC. 321. CHILDHOOD OBESITY PREVENTION GRANTS TO AFTERSCHOOL PROGRAMS.

Part S of title III of the Public Health Service Act (as amended by section 311) is further amended by adding at the end the following:

“SEC. 399BB-2. CHILDHOOD OBESITY PREVENTION GRANTS TO AFTERSCHOOL PROGRAMS.

“(a) IN GENERAL.—The Secretary, in collaboration with the Director of the Centers for Disease Control and Prevention and the Secretary of Education, shall award grants for the development of obesity prevention behavior change curricula for afterschool programs for children.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be an academic center collaborating with a public or private nonprofit organization that has the capability of testing behavior change curricula in service delivery settings and disseminating results to afterschool programs on a nationwide basis, except that an organization testing the behavior change curricula developed under the grant shall implement a model of afterschool programming that shall—

“(A) focus on afterschool programs for children up to the age of 13 years;

“(B) promote the overall health and well-being of children and youth; and

“(C) adhere to established quality standards; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require.

“(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to eligible entities submitting applications proposing to develop, implement, and evaluate programs for preventing and controlling childhood obesity or reducing health disparities in underserved populations.

“(d) USE OF FUNDS.—An eligible entity shall use amounts received under a grant

under this section to develop, implement, and evaluate, and disseminate the results of such evaluations, the impact of curricula for afterschool programs that promote—

“(1) age-appropriate portion sizes;

“(2) consumption of fruits and vegetables and low-energy dense foods;

“(3) physical activity; and

“(4) reduction in television viewing and other passive activities.

“(e) EVALUATION.—Not later than 3 years after the date on which a grant is awarded under this section, the grantee shall submit to the Secretary a report that described the activities carried out with funds received under the grant and the effectiveness of such activities in preventing obesity, improving nutrition, and increasing physical activity.

“(f) INCORPORATION OF POLICIES INTO FEDERAL PROGRAMS.—The Secretary, in consultation with the heads of other Federal departments and agencies, shall ensure that policies that prevent childhood obesity are incorporated into evidence-based afterschool programs in a manner that provides for measurable outcomes.

“(g) DEFINITION.—In this section, the term ‘afterschool programs’ means programs providing structured activities for children during out-of-school time, including before school, after school, and during the summer months.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$25,000,000 for each of fiscal years 2006 through 2010.”

Subtitle D—Training Early Childhood and Afterschool Professionals to Prevent Childhood Obesity

SEC. 331. TRAINING EARLY CHILDHOOD AND AFTERSCHOOL PROFESSIONALS TO PREVENT CHILDHOOD OBESITY.

Part S of title III of the Public Health Service Act (as amended by section 321) is further amended by adding at the end the following:

“SEC. 399BB-3. TRAINING EARLY CHILDHOOD AND AFTERSCHOOL PROFESSIONALS TO PREVENT CHILDHOOD OBESITY.

“(a) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall award grants to support the training of early childhood professionals (such as parent educators and child care providers) about obesity prevention, with emphasis on nationally accepted standards.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be a public or private nonprofit organization that conducts or supports early childhood and afterschool programs, home visitation, or other initiatives that—

“(A) focus on parental education and care of children;

“(B) promote the overall health and well-being of children; and

“(C) adhere to established quality standards; and

“(D) have the capability to provide or distribute training on a nationwide basis; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require.

“(c) EVALUATION.—Not later than 3 years after the date on which a grant is awarded under this section, the grantee shall submit to the Administrator of the Health Resources and Services Administration a report that describes the activities carried out with funds received under the grant and the effectiveness of such activities in improving the practice of child care and afterschool professionals with respect to the prevention of obesity.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$10,000,000 for each of fiscal years 2006 through 2010.”

Subtitle E—Preventing Childhood Obesity in Communities

SEC. 341. PREVENTING CHILDHOOD OBESITY IN COMMUNITIES.

Part S of title III of the Public Health Service Act (as amended by section 331) is further amended by adding at the end the following:

“SEC. 399BB-4. PREVENTING CHILDHOOD OBESITY IN COMMUNITIES.

“(a) IN GENERAL.—The Director of the Centers for Disease Control and Prevention, in collaboration with the Secretary, the Secretary of Transportation, and Secretary of the Interior, shall award grants and implement activities to encourage healthy nutrition and physical activity by children in communities.

“(b) ELIGIBILITY.—To be eligible to receive a grant under this section, an entity shall—

“(1) be a public or private nonprofit organization or community-based organizations that conduct initiatives that—

“(A) focus on parental education and care of children;

“(B) promote the overall health and well-being of children; and

“(C) adhere to established quality standards; and

“(D) have the capability to provide training on a nationwide basis; and

“(2) submit to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require.

“(c) COMMUNITIES.—

“(1) IN GENERAL.—The Director of the Centers for Disease Control and Prevention, in collaboration with the Secretary, the Secretary of Transportation, and Secretary of the Interior, shall award grants to eligible entities to develop broad partnerships between private and public and nonprofit entities to promote healthy nutrition and physical activity for children by assessing, modifying, and improving community planning and design.

“(2) ACTIVITIES.—Amounts awarded under a grant under paragraph (1) shall be used for the implementation and evaluation of activities—

“(A) to create neighborhoods that encourage healthy nutrition and physical activity;

“(B) to promote safe walking and biking routes to schools;

“(C) to design pedestrian zones and construct safe walkways, cycling paths, and playgrounds;

“(D) to implement campaigns, in communities at risk for sedentary activity, designed to increase levels of physical activity, which should be evidence-based, and may incorporate informational, behavioral, and social, or environmental and policy change interventions;

“(E) to implement campaigns, in communities at risk for poor nutrition, that are designed to promote intake of foods by children consistent with established dietary guidelines through the use of different types of media including television, radio, newspapers, movie theaters, billboards, and mailings; and

“(F) to implement campaigns, in communities at risk for poor nutrition, that promote water as the main daily drink of choice for children through the use of different types of media including television, radio, newspapers, movie theaters, billboards, and mailings.

“(d) EVALUATION.—Not later than 3 years after the date on which a grant is awarded under this section, the grantee shall submit

to the Director of the Centers for Disease Control and Prevention a report that describes the activities carried out with funds received under the grant and the effectiveness of such activities in increasing physical activity and improving dietary intake.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$50,000,000 for each of fiscal years 2006 through 2010.”

SEC. 342. GRANTS AND CONTRACTS FOR A NATIONAL CAMPAIGN TO CHANGE CHILDREN'S HEALTH BEHAVIORS.

Section 399Y of the Public Health Service Act (42 U.S.C. 280h-2) is amended by striking subsection (b) and inserting the following:

“(b) GRANTS.—

“(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall award grants or contracts to eligible entities to design and implement culturally and linguistically appropriate and competent campaigns to change children's health behaviors.

“(2) ELIGIBLE ENTITY.—In this subsection, the term ‘eligible entity’ means a marketing, public relations, advertising, or other appropriate entity.

“(3) CONTENT.—An eligible entity that receives a grant under this subsection shall use funds received through such grant or contract to utilize marketing and communication strategies to—

“(A) communicate messages to help young people develop habits that will foster good health over a lifetime;

“(B) provide young people with motivation to engage in sports and other physical activities;

“(C) influence youth to develop good health habits such as regular physical activity and good nutrition;

“(D) educate parents of young people on the importance of physical activity and improving nutrition, how to maintain healthy behaviors for the entire family, and how to encourage children to develop good nutrition and physical activity habits; and

“(E) discourage stigmatization and discrimination based on body size or shape.

“(4) REPORT.—The Secretary shall evaluate the effectiveness of the campaign described in paragraph (1) in changing children's behaviors and report such results to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$125,000,000 for fiscal year 2006, and such sums as may be necessary for each of fiscal years 2007 through 2011.”

SEC. 343. PREVENTION OF CHILDHOOD OBESITY RESEARCH THROUGH THE NATIONAL INSTITUTES OF HEALTH.

(a) IN GENERAL.—The Director of the National Institutes of Health, in accordance with the National Institutes of Health's Strategic Plan for Obesity Research, shall expand and intensify research that addresses the prevention of childhood obesity.

(b) PLAN.—The Director of the National Institutes of Health shall—

(1) conduct or support research programs and research training concerning the prevention of obesity in children; and

(2) develop and periodically review, and revise as appropriate, the Strategic Plan for Obesity Research.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011. Amounts appropriated under this section shall be in addition to other amounts available for carrying out activities of the type described in this section.

SEC. 344. RESEARCH ON THE RELATIONSHIP BETWEEN THE PHYSICAL ACTIVITY OF CHILDREN AND THE BUILT ENVIRONMENT.

Part S of title III of the Public Health Service Act (as amended by section 341) is further amended by adding at the end the following:

“SEC. 399BB-5. RESEARCH ON THE RELATIONSHIP BETWEEN THE PHYSICAL ACTIVITY OF CHILDREN AND THE BUILT ENVIRONMENT.

“(a) IN GENERAL.—The Secretary shall support research efforts to promote physical activity in children through enhancement of the built environment.

“(b) ELIGIBILITY.—In this section, the term ‘eligible institution’ means a public or private nonprofit institution that submits to the Secretary an application at such time, in such manner, and containing such agreements, assurances, and information as the Secretary may require.

“(c) GRANT PROGRAMS.—

“(1) RESEARCH.—The Secretary, in collaboration with the Transportation Research Board of the National Research Council, shall award grants to eligible institutions to expand, intensify, and coordinate research that will—

“(A) investigate and define causal links between the built environment and levels of physical activity in children;

“(B) include focus on a variety of geographic scales, with particular focus given to smaller geographic units of analysis such as neighborhoods and areas around elementary schools and secondary schools;

“(C) identify or develop effective intervention strategies to promote physical activity among children with focus on behavioral interventions and enhancements of the built environment that promote increased use by children; and

“(D) assure the generalizability of intervention strategies to high-risk populations and high-risk communities, including low-income urban and rural communities.

“(2) INTERVENTION PILOT PROGRAMS.—The Secretary, in collaboration with the Transportation Research Board of the National Research Council and with appropriate Federal agencies, shall award grants to pilot test the intervention strategies identified or developed through research activities described in paragraph (1) relating to increasing use of the built environment by children.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2006 through 2010.

“SEC. 399BB-6. DEFINITIONS.

“For purposes of this part, the definitions contained in section 401 of the Prevention of Childhood Obesity Act shall apply.”

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. DEFINITIONS.

In this Act:

(1) CHILDHOOD.—The term “childhood” means children and youth from birth to 18 years of age.

(2) CHILDREN.—The term “children” means children and youth from birth through 18 years of age.

(3) FOOD OF POOR OR MINIMAL NUTRITIONAL VALUE.—The term “food of poor or minimal nutritional value” has the meaning given the term “food of minimal nutritional value” for purposes of the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) and part 210 of title 7, Code of Federal Regulations.

(4) OBESITY AND OVERWEIGHT.—The terms “obesity” and “overweight” have the meanings given such terms by the Centers for Disease Control and Prevention.

(5) OBESITY CONTROL.—The term “obesity control” means programs or activities for the prevention of excessive weight gain.

(6) OBESITY PREVENTION.—The term “obesity prevention” means prevention of obesity or overweight.

By Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. AKAKA, Ms. LANDRIEU, and Mr. DURBIN):

S. 800. A bill to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. Collins. Mr. President, today I am introducing legislation that includes the District of Columbia Budget Autonomy Act of 2005 and the District of Columbia Independence of the Chief Financial Officer Act of 2005. Last Congress, I introduced this legislation, which passed the Senate unanimously. This legislation would provide the District of Columbia with more autonomy over its local budget and make permanent the authority of the D.C. Chief Financial Officer.

Providing the District of Columbia with more autonomy over its local budget will help the Mayor and the Council of the District of Columbia better manage and run the city. Currently, the District of Columbia must submit its budget through the normal Federal appropriations process. Unfortunately, this process is often riddled with delays. For example, the average delay for enactment of an appropriations bill for the District of Columbia has been 3 months. The result of this delay is clear. For a local community these delays affect programs, planning and management initiatives important to the everyday lives of the residents of the city.

The ability of D.C., like any other city in the Nation, to operate efficiently and address the needs of its citizens is of utmost importance. Unlike other budgets that are approved by Congress, the local D.C. budget has a direct effect on local services and programs and affects the quality of life for the residents of D.C. Congress has recognized the practical issues associated with running a city. As a result, in the 1970s, Congress passed the D.C. Home Rule Act which established the current form of local government. Congress also empowered D.C. to enact local laws that affect the everyday lives of District residents. And, now, I believe it is time for Congress to do the same with regard to the local budget.

The District of Columbia Budget Autonomy Act of 2005 would address these problems by authorizing the local government to pass its own budget each year. This bill would only affect that portion of the D.C. budget that includes the use of local funds, not Federal funds. In addition, the bill still provides for congressional oversight. Prior to a local budget becoming effective, Congress will have a 30-day period

in which to review the local budget. In addition, the local authority to pass a budget would be suspended during any periods of poor financial condition that would trigger a control year.

Having the locally elected officials of those providing the funds that are the subject of the budget process decide on how those funds should be spent is a matter of simple fairness. There are also the practical difficulties that the current system causes when the local budget is not approved until well into the fiscal year. By enacting this bill, Congress would be appropriately carrying out its constitutional duties with respect to the District by improving the city's ability to better plan, manage and run its local programs and services. This is what the taxpayers of the District of Columbia have elected their local officials to do.

The legislation also includes the District of Columbia Independence of the Chief Financial Officer Act of 2005 which would make permanent the authority of the District of Columbia Chief Financial Officer. The current Chief Financial Officer for the District of Columbia is operating under authority it derived from the D.C. Control Board, which is currently dormant due to the city's improved financial situation. That authority was set to sunset when the D.C. Control Board was phased out; however, the CFO's authority continues to be extended through the appropriations process, until such time as permanent legislation is enacted.

Ensuring continued financial accountability of the D.C. government is crucial for the fiscal stability of the city. The CFO has played a significant role in maintaining this stability. While providing the District with more autonomy over its budgets, it is also important that the CFO's authority is made permanent and that its role is clear.

I urge my colleagues to support this important piece of legislation.

By Mr. NELSON of Florida:

S. 801. A bill to designate the United States courthouse located at 300 North Hogan Street, Jacksonville, Florida, as the "John Milton Bryan Simpson United States Courthouse"; to the Committee on Environment and Public Works.

Mr. NELSON. Mr. President, today I rise to introduce a bill designating a Jacksonville courthouse as the John Milton Bryan Simpson United States Courthouse.

John Milton Bryan Simpson was born in Kissimmee, FL, in 1903. He was nominated to the Southern District Court of Florida by President Truman in 1950 and to the Federal court of appeals by President Johnson in 1966.

Designating this courthouse after the late Judge Simpson is a fitting tribute to a man whose judicial decisions were instrumental in desegregating public facilities in Jacksonville, Orlando, and Daytona Beach.

It is important that we remember not only his name but also his legacy

of courage during that period of our history.

I hope that other members of the Senate will join me in honoring Judge Simpson, a man who was not only a hero to the state of Florida, but a national hero.

By Mr. DOMENICI (for himself, Mr. BAUCUS, Mr. BURNS, Mr. JOHNSON, Mr. ROBERTS, Mr. BINGAMAN, Mr. ALLARD, Mr. WYDEN, Mr. SMITH, Mr. HAGEL, and Mr. BROWNBACK):

S. 802. A bill to establish a National Drought Council within the Department of Agriculture, to improve national drought preparedness, mitigation, and response efforts, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DOMENICI. Mr. President, I rise today to introduce The National Drought Preparedness Act of 2005. First off, I would like to thank Senator BAUCUS. As the lead cosponsor, his strong leadership and hard work on this bill has been a tremendous help.

Drought is a unique emergency situation; it creeps in unlike other abrupt weather disasters. Without a national drought policy we constantly live not knowing what the next year will bring. Unfortunately, when we find ourselves facing a drought, towns often scramble to drill new water wells, fires often sweep across bone dry forests and farmers and ranchers are forced to watch their way of life blow away with the dust.

We must be vigilant and prepare ourselves for quick action when the next drought cycle begins. Better planning on our part could limit some of the damage felt by drought. I submit that this bill is the exact tool needed for facilitating better planning.

This Act establishes a National Drought Council within the Department of Agriculture to improve national drought preparedness, mitigation and response efforts. The National Drought Council will formulate strategies to alleviate the effects of drought by fostering a greater understanding of what triggers wide-spread drought conditions. By educating the public in water conservation and proper land stewardship, we can ensure a better preparedness when future drought plagues our country.

The impacts of drought are also very costly. According to NOAA, there have been 12 different drought events since 1980 that resulted in damages and costs exceeding \$1 billion each. In 2000, severe drought in the South-Central and Southeastern states caused losses to agriculture and related industries of over \$4 billion. Western wildfires that year totaled over \$2 billion in damages. The Eastern drought in 1999 led to \$1 billion in losses. These are just a few of the statistics.

While drought affects the economic and environmental well being of the entire nation, the United States has lacked a cohesive strategy for dealing with serious drought emergencies. As

many of you know, the impact of drought emerges gradually rather than suddenly as is the case with other natural disasters.

I am pleased to be following through on what I started in 1997. The bill that we are introducing today is the next step in implementing a national, cohesive drought policy. The bill recognizes that drought is a recurring phenomenon that causes serious economic and environmental loss and that a national drought policy is needed to ensure an integrated, coordinated strategy.

The National Drought Preparedness Act of 2005 does the following: It creates national policy for drought. This will hopefully move the country away from the costly, ad hoc, response-oriented approach to drought, and move us toward a pro-active, preparedness approach. The new national policy would provide the tools and focus, similar to the Stafford Act, for Federal, State, tribal and local governments to address the diverse impacts and costs caused by drought.

The Bill would improve delivery of federal drought programs. This would ensure improved program delivery, integration and leadership. To achieve this intended purpose, the bill establishes the National Drought Council, designating USDA as the lead federal agency. The Council and USDA would provide the coordinating and integrating function for federal drought programs, much like FEMA provides that function for other natural disasters under the Stafford Act.

The Act will provide new tools for drought preparedness planning. Building on existing policy and planning processes, the bill would assist states, local governments, tribes, and other entities in the development and implementation of drought preparedness plans. The bill does not mandate state and local planning, but is intended to facilitate plan development and implementation through establishment of the Drought Assistance Fund.

The bill would improve forecasting & monitoring by facilitating the development of the National Drought Monitoring Network in order to improve the characterization of current drought conditions and the forecasting of future droughts. Ultimately, this would provide a better basis to "trigger" federal drought assistance.

Finally, the bill would authorize the USDA to provide reimbursement to states for reasonable staging and prepositioning costs when there is a threat of a wildfire.

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. 802

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 “National Drought Preparedness Act of 2005”.

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

- Sec. 1. Short title; table of contents
- Sec. 2. Findings
- Sec. 3. Definitions
- Sec. 4. Effect of Act

TITLE I—DROUGHT PREPAREDNESS**SUBTITLE A—NATIONAL DROUGHT COUNCIL**

- Sec. 101. Membership and voting
- Sec. 102. Duties of the Council
- Sec. 103. Powers of the Council
- Sec. 104. Council personnel matters
- Sec. 105. Authorization of appropriations
- Sec. 106. Termination of Council

SUBTITLE B—NATIONAL OFFICE OF DROUGHT PREPAREDNESS

- Sec. 111. Establishment
- Sec. 112. Director of the Office
- Sec. 113. Office staff

SUBTITLE C—DROUGHT PREPAREDNESS PLANS

- Sec. 121. Drought Assistance Fund
- Sec. 122. Drought preparedness plans
- Sec. 123. Federal plans
- Sec. 124. State and tribal plans
- Sec. 125. Regional and local plans
- Sec. 126. Plan elements

TITLE II—WILDFIRE SUPPRESSION

- Sec. 201. Grants for prepositioning wildfire suppression resources

SEC. 2. FINDINGS.

Congress finds that—

- (1) drought is a natural disaster;
- (2) regional drought disasters in the United States cause serious economic and environmental losses, yet there is no national policy to ensure an integrated and coordinated Federal strategy to prepare for, mitigate, or respond to such losses;
- (3) drought has an adverse effect on resource-dependent businesses and industries (including the recreation and tourism industries);
- (4) State, tribal, and local governments have to increase coordinated efforts with each Federal agency involved in drought monitoring, planning, mitigation, and response;
- (5) effective drought monitoring—
 - (A) is a critical component of drought preparedness and mitigation; and
 - (B) requires a comprehensive, integrated national program that is capable of providing reliable, accessible, and timely information to persons involved in drought planning, mitigation, and response activities;
- (6) the National Drought Policy Commission was established in 1998 to provide advice and recommendations on the creation of an integrated, coordinated Federal policy designed to prepare for and respond to serious drought emergencies;
- (7) according to the report issued by the National Drought Policy Commission in May 2000, the guiding principles of national drought policy should be—
 - (A) to favor preparedness over insurance, insurance over relief, and incentives over regulation;
 - (B) to establish research priorities based on the potential of the research to reduce drought impacts;
 - (C) to coordinate the delivery of Federal services through collaboration with State and local governments and other non-Federal entities; and
 - (D) to improve collaboration among scientists and managers; and
 - (8) the National Drought Council, in coordination with Federal agencies and State, tribal, and local governments, should provide the necessary direction, coordination, guid-

ance, and assistance in developing a comprehensive drought preparedness system.

SEC. 3. DEFINITIONS.

In this Act:

- (1) **COUNCIL.**—The term “Council” means the National Drought Council established by section 101(a).
- (2) **CRITICAL SERVICE PROVIDER.**—The term “critical service provider” means an entity that provides power, water (including water provided by an irrigation organization or facility), sewer services, or wastewater treatment.
- (3) **DIRECTOR.**—The term “Director” means the Director of the Office appointed under section 112(a).
- (4) **DROUGHT.**—The term “drought” means a natural disaster that is caused by a deficiency in precipitation—
 - (A) that may lead to a deficiency in surface and subsurface water supplies (including rivers, streams, wetlands, ground water, soil moisture, reservoir supplies, lake levels, and snow pack); and
 - (B) that causes or may cause—
 - (i) substantial economic or social impacts; or
 - (ii) physical damage or injury to individuals, property, or the environment.
- (5) **FUND.**—The term “Fund” means the Drought Assistance Fund established by section 121(a).
- (6) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
- (7) **INTERSTATE WATERSHED.**—The term “interstate watershed” means a watershed that crosses a State or tribal boundary.
- (8) **MITIGATION.**—The term “mitigation” means a short- or long-term action, program, or policy that is implemented in advance of or during a drought to minimize any risks and impacts of drought.
- (9) **NATIONAL INTEGRATED DROUGHT INFORMATION SYSTEM.**—The term “National Integrated Drought Information System” means a comprehensive system that collects and integrates information on the key indicators of drought, including stream flow, ground water levels, reservoir levels, soil moisture, snow pack, and climate (including precipitation and temperature), in order to make usable, reliable, and timely assessments of drought, including the severity of drought and drought forecasts.
- (10) **NEIGHBORING COUNTRY.**—The term “neighboring country” means Canada and Mexico.
- (11) **OFFICE.**—The term “Office” means the National Office of Drought Preparedness established under section 111.
- (12) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.
- (13) **STATE.**—The term “State” means—
 - (A) each of the several States of the United States;
 - (B) the District of Columbia;
 - (C) the Commonwealth of Puerto Rico;
 - (D) Guam;
 - (E) American Samoa;
 - (F) the Commonwealth of the Northern Mariana Islands;
 - (G) the Federated States of Micronesia;
 - (H) the Republic of the Marshall Islands;
 - (I) the Republic of Palau; and
 - (J) the United States Virgin Islands.
- (14) **TRIGGER.**—The term “trigger” means the thresholds or criteria that must be satisfied before mitigation or emergency assistance may be provided to an area—
 - (A) in which drought is emerging; or
 - (B) that is experiencing a drought.
- (15) **UNDER SECRETARY.**—The term “Under Secretary” means the Under Secretary of Agriculture for Natural Resources and Environment.

(16) **UNITED STATES.**—The term “United States”, when used in a geographical sense, means all of the States.

(17) **WATERSHED.**—

- (A) **IN GENERAL.**—The term “watershed” means—
- (i) a region or area with common hydrology;
 - (ii) an area drained by a waterway that drains into a lake or reservoir;
 - (iii) the total area above a designated point on a stream that contributes water to the flow at the designated point; or
 - (iv) the topographic dividing line from which surface streams flow in 2 different directions.

(B) **EXCLUSION.**—The term “watershed” does not include a region or area described in subparagraph (A) that is larger than a river basin.

(18) **WATERSHED GROUP.**—The term “watershed group” means a group of individuals that—

- (A) represents the broad scope of relevant interests in a watershed; and
- (B) works in a collaborative manner to jointly plan the management of the natural resources in the watershed; and
- (C) is formally recognized by each of the States in which the watershed lies.

SEC. 4. EFFECT OF ACT.

This Act does not affect—

- (1) the authority of a State to allocate quantities of water under the jurisdiction of the State; or
- (2) any State water rights established as of the date of enactment of this Act.

TITLE I—DROUGHT PREPAREDNESS**Subtitle A—National Drought Council****SEC. 101. MEMBERSHIP AND VOTING.**

- (a) **IN GENERAL.**—There is established in the Office of the Secretary a council to be known as the “National Drought Council”.
- (b) **MEMBERSHIP.**—
- (1) **COMPOSITION.**—The Council shall be composed of—
 - (A) the Secretary;
 - (B) the Secretary of Commerce;
 - (C) the Secretary of the Army;
 - (D) the Secretary of the Interior;
 - (E) the Director of the Federal Emergency Management Agency;
 - (F) the Administrator of the Environmental Protection Agency;
 - (G) 4 members appointed by the Secretary, in coordination with the National Governors Association—
 - (i) who shall each be a Governor of a State; and
 - (ii) who shall collectively represent the geographic diversity of the United States;
 - (H) 1 member appointed by the Secretary, in coordination with the National Association of Counties;
 - (I) 1 member appointed by the Secretary, in coordination with the United States Conference of Mayors;
 - (J) 1 member appointed by the Secretary of the Interior, in coordination with Indian tribes, to represent the interests of tribal governments; and
 - (K) 1 member appointed by the Secretary, in coordination with the National Association of Conservation Districts, to represent local soil and water conservation districts.
 - (2) **DATE OF APPOINTMENT.**—The appointment of each member of the Council shall be made not later than 120 days after the date of enactment of this Act.
 - (c) **TERM; VACANCIES.**—
 - (1) **TERM.**—
 - (A) **IN GENERAL.**—Except as provided in subparagraph (B), a member of the Council shall serve for the life of the Council.
 - (B) **EXCEPTION.**—A member of the Council appointed under subparagraphs (G) through

(K) of subsection (b)(1) shall be appointed for a term of 2 years.

(2) VACANCIES.—

(A) IN GENERAL.—A vacancy on the Council—

(i) shall not affect the powers of the Council; and

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

(B) DURATION OF APPOINTMENT.—A member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term.

(d) MEETINGS.—

(1) IN GENERAL.—The Council shall meet at the call of the co-chairs.

(2) FREQUENCY.—The Council shall meet at least semiannually.

(e) QUORUM.—A majority of the members of the Council, including a designee of a member, shall constitute a quorum, but a lesser number may hold hearings or conduct other business.

(f) CO-CHAIRS.—

(1) IN GENERAL.—There shall be a Federal co-chair and non-Federal co-chair of the Council.

(2) APPOINTMENT.—

(A) FEDERAL CO-CHAIR.—The Secretary shall be Federal co-chair.

(B) NON-FEDERAL CO-CHAIR.—Every 2 years, the Council members appointed under subparagraphs (G) through (K) of subsection (b)(1) shall select a non-Federal co-chair from among the members appointed under those subparagraphs.

(g) DIRECTOR.—

(1) IN GENERAL.—The Director shall serve as Director of the Council.

(2) DUTIES.—The Director shall serve the interests of all members of the Council.

SEC. 102. DUTIES OF THE COUNCIL.

(a) IN GENERAL.—The Council shall—

(1) not later than 1 year after the date of the first meeting of the Council, develop a comprehensive National Drought Policy Action Plan that—

(A)(i) delineates and integrates responsibilities for activities relating to drought (including drought preparedness, mitigation, research, risk management, training, and emergency relief) among Federal agencies; and

(ii) ensures that those activities are coordinated with the activities of the States, local governments, Indian tribes, and neighboring countries;

(B) is consistent with—

(i) this Act and other applicable Federal laws; and

(ii) the laws and policies of the States for water management;

(C) is integrated with drought management programs of the States, Indian tribes, local governments, watershed groups, and private entities; and

(D) avoids duplicating Federal, State, tribal, local, watershed, and private drought preparedness and monitoring programs in existence on the date of enactment of this Act;

(2) evaluate Federal drought-related programs in existence on the date of enactment of this Act and make recommendations to Congress and the President on means of eliminating—

(A) discrepancies between the goals of the programs and actual service delivery;

(B) duplication among programs; and

(C) any other circumstances that interfere with the effective operation of the programs;

(3) make recommendations to the President, Congress, and appropriate Federal Agencies on—

(A) the establishment of common inter-agency triggers for authorizing Federal drought mitigation programs; and

(B) improving the consistency and fairness of assistance among Federal drought relief programs;

(4) in conjunction with the Secretary of Commerce, coordinate and prioritize specific activities to establish and improve the National Integrated Drought Information System by—

(A) taking into consideration the limited resources for—

(i) drought monitoring, prediction, and research activities; and

(ii) water supply forecasting; and

(B) providing for the development of an effective drought early warning system that—

(i) communicates drought conditions and impacts to—

(I) decisionmakers at the Federal, regional, State, tribal, and local levels of government;

(II) the private sector; and

(III) the public; and

(ii) includes near-real-time data, information, and products developed at the Federal, regional, State, tribal, and local levels of government that reflect regional and State differences in drought conditions;

(5) in conjunction with the Secretary of the Army and the Secretary of the Interior—

(A) encourage and facilitate the development of drought preparedness plans under subtitle C, including establishing the guidelines under sections 121(c) and 122(a); and

(B) based on a review of drought preparedness plans, develop and make available to the public drought planning models to reduce water resource conflicts relating to water conservation and droughts;

(6) develop and coordinate public awareness activities to provide the public with access to understandable, and informative materials on drought, including—

(A) explanations of the causes of drought, the impacts of drought, and the damages from drought;

(B) descriptions of the value and benefits of land stewardship to reduce the impacts of drought and to protect the environment;

(C) clear instructions for appropriate responses to drought, including water conservation, water reuse, and detection and elimination of water leaks;

(D) information on State and local laws applicable to drought; and

(E) information on the assistance available to resource-dependent businesses and industries during a drought; and

(7) establish operating procedures for the Council.

(b) CONSULTATION.—In carrying out this section, the Council shall consult with groups affected by drought emergencies, including groups that represent—

(1) agricultural production, wildlife, and fishery interests;

(2) forestry and fire management interests;

(3) the credit community;

(4) rural and urban water associations;

(5) environmental interests;

(6) engineering and construction interests;

(7) the portion of the science community that is concerned with drought and climatology;

(8) resource-dependent businesses and other private entities (including the recreation and tourism industries); and

(9) watershed groups.

(c) AGENCY ROLES AND RESPONSIBILITIES.—

(1) DESIGNATION OF LEAD AGENCIES.—

(A) DEPARTMENT OF COMMERCE.—The Department of Commerce shall be the lead agency for purposes of implementing subsection (a)(4).

(B) DEPARTMENTS OF THE ARMY AND THE INTERIOR.—The Department of the Army and the Department of the Interior shall jointly be the lead agency for purposes of implementing—

(i) paragraphs (5) and (6) of section subsection (a); and

(ii) section 122.

(C) DEPARTMENT OF AGRICULTURE.—The Department of Agriculture, in cooperation with the lead agencies designated under subparagraphs (A) and (B), shall be the lead agency for purposes of implementing section 121.

(2) COOPERATION FROM OTHER FEDERAL AGENCIES.—The head of each Federal agency shall cooperate as appropriate with the lead agencies in carrying out any duties under this Act.

(d) REPORTS TO CONGRESS.—

(1) ANNUAL REPORT.—

(A) IN GENERAL.—Not later than 1 year after the date of the first meeting of the Council, and annually thereafter, the Council shall submit to Congress a report on the activities carried out under this title.

(B) INCLUSIONS.—

(i) IN GENERAL.—The annual report shall include a summary of drought preparedness plans completed under sections 123 through 125.

(ii) INITIAL REPORT.—The initial report submitted under subparagraph (A) shall include any recommendations of the Council under paragraph (2) or (3) of subsection (a).

(2) FINAL REPORT.—Not later than 7 years after the date of enactment of this Act, the Council shall submit to Congress a report that recommends—

(A) amendments to this Act; and

(B) whether the Council should continue.

SEC. 103. POWERS OF THE COUNCIL.

(a) HEARINGS.—The Council may hold hearings, meet and act at any time and place, take any testimony and receive any evidence that the Council considers advisable to carry out this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Council may obtain directly from any Federal agency any information that the Council considers necessary to carry out this title.

(2) PROVISION OF INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), on request of the Secretary or the non-Federal co-chair, the head of a Federal agency may provide information to the Council.

(B) LIMITATION.—The head of a Federal agency shall not provide any information to the Council that the Federal agency head determines the disclosure of which may cause harm to national security interests.

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

(d) GIFTS.—The Council may accept, use, and dispose of gifts or donations of services or property.

(e) FEDERAL FACILITIES.—If the Council proposes the use of a Federal facility for the purposes of carrying out this title, the Council shall solicit and consider the input of the Federal agency with jurisdiction over the facility.

SEC. 104. COUNCIL PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) NON-FEDERAL EMPLOYEES.—A member of the Council who is not an officer or employee of the Federal Government shall serve without compensation.

(2) FEDERAL EMPLOYEES.—A member of the Council who is an officer or employee of the United States shall serve without compensation in addition to the compensation received for services of the member as an officer or employee of the Federal Government.

(b) TRAVEL EXPENSES.—A member of the Council shall be allowed travel expenses at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5,

United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Council.

SEC. 105. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title \$2,000,000 for each of the 7 fiscal years after the date of enactment of this Act.

SEC. 106. TERMINATION OF COUNCIL.

The Council shall terminate 8 years after the date of enactment of this Act.

Subtitle B—National Office of Drought Preparedness

SEC. 111. ESTABLISHMENT.

The Secretary shall establish an office to be known as the "National Office of Drought Preparedness", which shall be under the jurisdiction of the Under Secretary, to provide assistance to the Council in carrying out this title.

SEC. 112. DIRECTOR OF THE OFFICE.

(a) APPOINTMENT.—

(1) IN GENERAL.—The Under Secretary shall appoint a Director of the Office under sections 3371 through 3375 of title 5, United States Code.

(2) QUALIFICATIONS.—The Director shall be a person who has experience in—

(A) public administration; and

(B) drought mitigation or drought management.

(b) POWERS.—The Director may hire such other additional personnel or contract for services with other entities as necessary to carry out the duties of the Office.

SEC. 113. OFFICE STAFF.

(a) IN GENERAL.—The Office shall have at least 5 full-time staff, including the detailees detailed under subsection (b)(1).

(b) DETAILEES.—

(1) REQUIRED DETAILEES.—There shall be detailed to the Office, on a nonreimbursable basis—

(A) by the Director of the Federal Emergency Management Agency, 1 employee of the Federal Emergency Management Agency with expertise in emergency planning;

(B) by the Secretary of Commerce, 1 employee of the Department of Commerce with experience in drought monitoring;

(C) by the Secretary of the Interior, 1 employee of the Bureau of Reclamation with experience in water planning; and

(D) by the Secretary of the Army, 1 employee of the Army Corps of Engineers with experience in water planning.

(2) ADDITIONAL DETAILEES.—

(A) IN GENERAL.—In addition to any employees detailed under paragraph (1), any other employees of the Federal Government may be detailed to the Office.

(B) REIMBURSEMENT.—An employee detailed under subparagraph (A) shall be detailed without reimbursement, unless the Secretary, on the recommendation of the Director, determines that reimbursement is appropriate.

(3) CIVIL SERVICE STATUS.—The detail of an employee under paragraph (1) or (2) shall be without interruption or loss of civil service status or privilege.

Subtitle C—Drought Preparedness Plans

SEC. 121. DROUGHT ASSISTANCE FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "Drought Assistance Fund".

(b) PURPOSE.—The Fund shall be used to pay the costs of—

(1) providing technical and financial assistance (including grants and cooperative assistance) to States, Indian tribes, local governments, watershed groups, and critical service providers for the development and

implementation of drought preparedness plans under sections 123 through 125;

(2) providing to States, Indian tribes, local governments, watershed groups, and critical service providers the Federal share, as determined by the Secretary, in consultation with the other members of the Council, of the cost of mitigating the overall risk and impacts of droughts;

(3) assisting States, Indian tribes, local governments, watershed groups, and critical service providers in the development of mitigation measures to address environmental, economic, and human health and safety issues relating to drought;

(4) expanding the technology transfer of drought and water conservation strategies and innovative water supply techniques;

(5) developing post-drought evaluations and recommendations; and

(6) supplementing, if necessary, the costs of implementing actions under section 102(a)(4).

(c) GUIDELINES.—

(1) IN GENERAL.—The Secretary, in consultation with the non-Federal co-chair and with the concurrence of the Council, shall promulgate guidelines to implement this section.

(2) GENERAL REQUIREMENTS.—The guidelines shall—

(A) ensure the distribution of amounts from the Fund within a reasonable period of time;

(B) take into consideration regional differences;

(C) take into consideration all impacts of drought in a balanced manner;

(D) prohibit the use of amounts from the Fund for Federal salaries that are not directly related to the provision of drought assistance;

(E) require that amounts from the Fund provided to States, local governments, watershed groups, and critical service providers under subsection (b)(1) be coordinated with and managed by the State in which the local governments, watershed groups, or critical service providers are located, consistent with the drought preparedness priorities and relevant water management plans in the State;

(F) require that amounts from the Fund provided to Indian tribes under subsection (b)(1) be used to implement plans that are, to the maximum extent practicable—

(i) coordinated with any State in which land of the Indian tribe is located; and

(ii) consistent with existing drought preparedness and water management plans of the State; and

(G) require that a State, Indian tribe, local government, watershed group, or critical service provider that receives Federal funds under paragraph (2) or (3) of subsection (b) pay, using amounts made available through non-Federal grants, cash donations made by non-Federal persons or entities, or any other non-Federal funds, not less than 25 percent of the total cost of carrying out a project for which Federal funds are provided under this Act.

(3) SPECIAL REQUIREMENTS APPLICABLE TO INTERSTATE WATERSHEDS.—

(A) DEVELOPMENT OF DROUGHT PREPAREDNESS PLANS.—The guidelines promulgated under paragraph (1) shall require that, to receive financial assistance under subsection (b)(1) for the development of drought preparedness plans for interstate watersheds, the States or Indian tribes in which the interstate watershed is located shall—

(i) cooperate in the development of the plan; and

(ii) in developing the plan—

(I) ensure that the plan is consistent with any applicable State and tribal water laws, policies, and agreements;

(II) ensure that the plan is consistent and coordinated with any interstate stream compacts;

(III) include the participation of any appropriate watershed groups; and

(IV) recognize that while implementation of the plan will involve further coordination among the appropriate States and Indian tribes, each State and Indian tribe has sole jurisdiction over implementation of the portion of the watershed within the State or tribal boundaries.

(B) IMPLEMENTATION OF DROUGHT PREPAREDNESS PLANS.—The guidelines promulgated under paragraph (1) shall require that, to receive financial assistance under subsection (b)(1) for the implementation of drought preparedness plans for interstate watersheds, the States or Indian tribes in which the interstate watershed is located shall, to the maximum extent practicable—

(i) cooperate in implementing the plan;

(ii) in implementing the plan—

(I) provide that the distribution of funds to all States and Indian tribes in which the watershed is located is not required; and

(II) consider the level of impact within the watershed on the affected States or Indian tribes; and

(iii) ensure that implementation of the plan does not interfere with State water rights in existence on the date of enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as are necessary to carry out subsection (b).

SEC. 122. DROUGHT PREPAREDNESS PLANS.

(a) IN GENERAL.—The Secretary of the Interior and the Secretary of the Army shall, with the concurrence of the Council, jointly promulgate guidelines for administering a national program to provide technical and financial assistance to States, Indian tribes, local governments, watershed groups, and critical service providers for the development, maintenance, and implementation of drought preparedness plans.

(b) REQUIREMENTS.—To build on the experience and avoid duplication of efforts of Federal, State, local, tribal, and regional drought plans in existence on the date of enactment of this Act, the guidelines may recognize and incorporate those plans.

SEC. 123. FEDERAL PLANS.

(a) IN GENERAL.—The Secretary, the Secretary of the Interior, the Secretary of the Army, and other appropriate Federal agency heads shall develop and implement Federal drought preparedness plans for agencies under the jurisdiction of the appropriate Federal agency head.

(b) REQUIREMENTS.—The Federal plans—

(1) shall be integrated with each other;

(2) may be included as components of other Federal planning requirements;

(3) shall be integrated with drought preparedness plans of State, tribal, and local governments that are affected by Federal projects and programs; and

(4) shall be completed not later than 2 years after the date of enactment of this Act.

SEC. 124. STATE AND TRIBAL PLANS.

States and Indian tribes may develop and implement State and tribal drought preparedness plans that—

(1) address monitoring of resource conditions that are related to drought;

(2) identify areas that are at a high risk for drought;

(3) describes mitigation strategies to address and reduce the vulnerability of an area to drought; and

(4) are integrated with State, tribal, and local water plans in existence on the date of enactment of this Act.

SEC. 125. REGIONAL AND LOCAL PLANS.

Local governments, watershed groups, and regional water providers may develop and implement drought preparedness plans that—

- (1) address monitoring of resource conditions that are related to drought;
- (2) identify areas that are at a high risk for drought;
- (3) describe mitigation strategies to address and reduce the vulnerability of an area to drought; and
- (4) are integrated with corresponding State plans.

SEC. 126. PLAN ELEMENTS.

The drought preparedness plans developed under sections 123 through 125—

- (1) shall be consistent with Federal and State laws, contracts, and policies;
- (2) shall allow each State to continue to manage water and wildlife in the State;
- (3) shall address the health, safety, and economic interests of those persons directly affected by drought;
- (4) shall address the economic impact on resource-dependent businesses and industries, including regional tourism;
- (5) may include—

(A) provisions for water management strategies to be used during various drought or water shortage thresholds, consistent with State water law;

(B) provisions to address key issues relating to drought (including public health, safety, economic factors, and environmental issues such as water quality, water quantity, protection of threatened and endangered species, and fire management);

(C) provisions that allow for public participation in the development, adoption, and implementation of drought plans;

(D) provisions for periodic drought exercises, revisions, and updates;

(E) a hydrologic characterization study to determine how water is being used during times of normal water supply availability to anticipate the types of drought mitigation actions that would most effectively improve water management during a drought;

(F) drought triggers;

(G) specific implementation actions for droughts;

(H) a water shortage allocation plan, consistent with State water law; and

(I) comprehensive insurance and financial strategies to manage the risks and financial impacts of droughts; and

(6) shall take into consideration—

(A) the financial impact of the plan on the ability of the utilities to ensure rate stability and revenue stream; and

(B) economic impacts from water shortages.

TITLE II—WILDFIRE SUPPRESSION

SEC. 201. GRANTS FOR PREPOSITIONING WILDFIRE SUPPRESSION RESOURCES.

Title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.) is amended by adding at the end the following:

“SEC. 205. GRANTS FOR PREPOSITIONING WILDFIRE SUPPRESSION RESOURCES.

“(a) FINDINGS AND PURPOSE.—

“(1) FINDINGS.—Congress finds that—

“(A) droughts increase the risk of catastrophic wildfires that—

“(i) drastically alter and otherwise adversely affect the landscape for communities and the environment;

“(ii) because of the potential of such wildfires to overwhelm State wildfire suppression resources, require a coordinated response among States, Federal agencies, and neighboring countries; and

“(iii) result in billions of dollars in losses each year;

“(B) the Federal Government must, to the maximum extent practicable, prevent and

suppress such catastrophic wildfires to protect human life and property;

“(C) not taking into account State, local, and private wildfire suppression costs, during the period of 2000 through 2004, the Federal Government expended more than \$5,800,000,000 for wildfire suppression costs, at an average annual cost of almost \$1,200,000,000;

“(D) since 1980, 2.8 percent of Federal wildfires have been responsible for an average annual cost to the Forest Service of more than \$350,000,000;

“(E) the Forest Service estimates that annual national mobilization costs are between \$40,000,000 and \$50,000,000;

“(F) saving 10 percent of annual national mobilization costs through more effective use of local resources would reduce costs by \$4,000,000 to \$5,000,000 each year;

“(G) it is more cost-effective to prevent wildfires by prepositioning wildfire fighting resources to catch flare-ups than to commit millions of dollars to respond to large uncontrollable fires; and

“(H) it is in the best interest of the United States to invest in catastrophic wildfire prevention and mitigation by easing the financial burden of prepositioning wildfire suppression resources.

“(2) PURPOSE.—The purpose of this section is to encourage the mitigation and prevention of wildfires by providing financial assistance to States for prepositioning of wildfire suppression resources.

“(b) AUTHORIZATION.—Subject to the availability of funds, the Director of the Federal Emergency Management Agency (referred to in this section as the ‘Director’) shall reimburse a State for the cost of prepositioning wildfire suppression resources on potential multiple and large fire complexes when the Director determines, in accordance with the national and regional severity indices contained in the Forest Service handbook entitled ‘Interagency Standards for Fire and Fire Aviation Operations’, that a wildfire event poses a threat to life and property in the area.

“(c) ELIGIBILITY.—Wildfire suppression resources of the Federal Government, neighboring countries, and any State other than the State requesting assistance are eligible for reimbursement under this section.

“(d) REIMBURSEMENT.—

“(1) IN GENERAL.—The Director may reimburse a State for the costs of prepositioning of wildfire suppression resources of the entities specified in subsection (c), including mobilization to, and demobilization from, the staging or prepositioning area.

“(2) REQUIREMENTS.—For a State to receive reimbursement under paragraph (1)—

“(A) any resource provided by an entity specified in subsection (c) shall have been specifically requested by the State seeking reimbursement; and

“(B) staging or prepositioning costs—

“(i) shall be expended during the approved prepositioning period; and

“(ii) shall be reasonable.

“(3) LIMITATION.—The amount of all reimbursements made under this subsection during any year shall not exceed \$50,000,000.”

Mr. JOHNSON. Mr. President, I rise today in support of bipartisan National Drought Preparedness Act of 2005. For the last 5 years a devastating drought has forced many families across South Dakota and the United States to make difficult life-changing decisions about their future in agriculture. Many of our Nation’s hard-working producers have had to abandon their farms, and the family farm life has been threatened for too many people.

I was hopeful that the drought measures I have helped pass in the last 5 years would assist producers in weathering the current drought. With my support, the Senate, and ultimately Congress, agreed to legislation providing either or agriculture disaster assistance packages for 2001–2002 and 2003–2004. While this assistance is greatly appreciated by those suffering from this natural disaster, I am concerned for our future prospects for drought aid. Given the President’s reluctance to fund crucial USDA farm bill programs in his proposed fiscal year 2006 budget, his insistence on cannibalizing \$3 billion from the Conservation Security Program, CSP to fund the 2003–2004 package, which should in fact be recognized as an uncapped entitlement provision, and a historically high budgetary deficit, I am concerned at our prospects of securing substantive monies for future disasters. I will continue to work with my Senate colleagues to ensure adequate dollars for South Dakota, but we must examine more comprehensive measures for addressing drought.

That National Drought Preparedness Act will help us better prepare for future droughts and reduce the need for large ad hoc disaster programs that may cannibalize funds from other agricultural programs. I am fully prepared to support special disaster assistance when it is necessary, but with this act made law, producers, tribes, States, and Federal agencies will be much better prepared for future droughts.

This act will do several things that will significantly increase our ability to deal with drought conditions. The bill establishes, in the office of the Secretary of Agriculture, a National Drought Council to oversee the development of a national drought policy action plan. This plan will be the blueprint for dealing with and preparing for drought. The Federal government has plans for dealing with floods and hurricanes, and we need the same kind of plan for the slow, dry disaster that is drought. This bill recognizes drought as the natural disaster it is.

The act also creates the National Office of Drought Preparedness. This would be the permanent body that assists the National Drought Council in the formulation and carrying out of the national drought policy action plan.

A drought assistance fund will be established by this act, to assist State and local governments in their development and implementation of drought preparedness plans. The act will also provide assistance for the rapid response to wildfires, which is critical to mitigating the effects of a prolonged drought in forested areas, like we have in western South Dakota.

Lastly, the act provides for the development of a national drought forecasting and monitoring network, that will help forecast the onset of droughts better and improve reporting on current droughts.

I am encouraged by what the National Drought Preparedness Act of 2005 has to offer to the farmers and ranchers of our great country. We must treat drought like all other disasters are treated, and take an aggressive stance toward minimizing its effect on communities across America. That is why I am pleased to be an original co-sponsor of this important bipartisan piece of legislation.

By Mr. COLEMAN (for himself and Mrs. CLINTON):

S. 803. A bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage; to the Committee on Health, Education, Labor, and Pensions.

Mr. COLEMAN. Mr. President, I am pleased to introduce the Help Expand Access to Recovery and Treatment (HEART) Act of 2005 with my friend and colleague, Senator CLINTON of New York.

By passing this life-saving legislation, Congress would provide equitable access to substance abuse treatment services for 23 million adults and children who need treatment for the disease of alcoholism and other drug dependencies.

HEART would put the decision of whether or not consumers are granted substance abuse treatment services in the hands of doctors and trained addiction professionals, and patients. At least 75 percent of individuals who suffer from alcoholism have access to private health insurance. However, fewer than 70 percent of employer-provided health plans cover alcoholism and drug treatment at the same level as other medical conditions.

Our bill eliminates this inequitable coverage of medical conditions so those who need treatment receive it.

I look forward to working with my colleagues to pass this legislation that is not just important to our nation's economy and the health of our workforce but to the quality of life for millions of Americans and their families.

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. 803

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 "Help Expand Access to Recovery and Treatment Act of 2005" or the "HEART Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Substance abuse, if left untreated, is a medical emergency and a private and public health crisis.

(2) Nothing in this Act should be construed as prohibiting application of the concept of

parity to substance abuse treatment provided by faith-based treatment providers.

SEC. 3. PARITY IN SUBSTANCE ABUSE TREATMENT BENEFITS.

(a) GROUP HEALTH PLANS.—

(1) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

(A) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–4 et seq.) is amended by adding at the end the following new section:

"SEC. 2707. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

"(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

"(b) CONSTRUCTION.—Nothing in this section shall be construed—

"(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

"(2) to prevent a group health plan or a health insurance issuer offering group health insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

"(c) EXEMPTIONS.—

"(1) SMALL EMPLOYER EXEMPTION.—

"(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

"(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term 'small employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

"(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

"(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

"(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

"(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

"(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

"(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary

2 or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

"(e) DEFINITIONS.—For purposes of this section:

"(1) TREATMENT LIMITATION.—The term 'treatment limitation' means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

"(2) FINANCIAL REQUIREMENT.—The term 'financial requirement' means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

"(3) MEDICAL OR SURGICAL BENEFITS.—The term 'medical or surgical benefits' means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

"(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term 'substance abuse treatment benefits' means benefits with respect to substance abuse treatment services.

"(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term 'substance abuse treatment services' means any of the following items and services provided for the treatment of substance abuse:

"(A) Inpatient treatment, including detoxification.

"(B) Nonhospital residential treatment.

"(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

"(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

"(6) SUBSTANCE ABUSE.—The term 'substance abuse' includes chemical dependency.

"(f) NOTICE.—A group health plan under this part shall comply with the notice requirement under section 714(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan."

(B) CONFORMING AMENDMENT.—Section 2723(c) of such Act (42 U.S.C. 300gg–23(c)) is amended by striking "section 2704" and inserting "sections 2704 and 2707".

(2) ERISA AMENDMENTS.—

(A) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

"SEC. 714. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

"(a) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and substance abuse treatment benefits, the plan or coverage shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

"(b) CONSTRUCTION.—Nothing in this section shall be construed—

"(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any substance abuse treatment benefits; or

"(2) to prevent a group health plan or a health insurance issuer offering group health

insurance coverage from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

“(C) EXEMPTIONS.—

“(1) SMALL EMPLOYER EXEMPTION.—

“(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

“(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term ‘small employer’ means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

“(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

“(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

“(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

“(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan (or health insurance coverage offered in connection with a group health plan) if the application of this section to such plan (or to such coverage) results in an increase in the cost under the plan (or for such coverage) of at least 1 percent.

“(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary 2 or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

“(e) DEFINITIONS.—For purposes of this section:

“(1) TREATMENT LIMITATION.—The term ‘treatment limitation’ means, with respect to benefits under a group health plan or health insurance coverage, any day or visit limits imposed on coverage of benefits under the plan or coverage during a period of time.

“(2) FINANCIAL REQUIREMENT.—The term ‘financial requirement’ means, with respect to benefits under a group health plan or health insurance coverage, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan or coverage.

“(3) MEDICAL OR SURGICAL BENEFITS.—The term ‘medical or surgical benefits’ means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include substance abuse treatment benefits.

“(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term ‘substance abuse treatment benefits’ means benefits with respect to substance abuse treatment services.

“(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term ‘substance abuse treatment services’ means any of the following items

and services provided for the treatment of substance abuse:

“(A) Inpatient treatment, including detoxification.

“(B) Nonhospital residential treatment.

“(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

“(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

“(6) SUBSTANCE ABUSE.—The term ‘substance abuse’ includes chemical dependency.

“(f) NOTICE UNDER GROUP HEALTH PLAN.—The imposition of the requirements of this section shall be treated as a material modification in the terms of the plan described in section 102(a), for purposes of assuring notice of such requirements under the plan; except that the summary description required to be provided under section 104(b)(1) with respect to such modification shall be provided by not later than 60 days after the first day of the first plan year in which such requirements apply.”.

(B) CONFORMING AMENDMENTS.—

(i) Section 731(c) of such Act (29 U.S.C. 1191(c)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(ii) Section 732(a) of such Act (29 U.S.C. 1191a(a)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(iii) The table of contents in section 1 of such Act is amended by inserting after the item relating to section 713 the following new item:

“714. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits”.

(3) INTERNAL REVENUE CODE AMENDMENTS.—

(A) IN GENERAL.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 (relating to other requirements) is amended by adding at the end the following new section:

“SEC. 9813. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE TREATMENT BENEFITS.

“(a) IN GENERAL.—In the case of a group health plan that provides both medical and surgical benefits and substance abuse treatment benefits, the plan shall not impose treatment limitations or financial requirements on the substance abuse treatment benefits unless similar limitations or requirements are imposed for medical and surgical benefits.

“(b) CONSTRUCTION.—Nothing in this section shall be construed—

“(1) as requiring a group health plan to provide any substance abuse treatment benefits; or

“(2) to prevent a group health plan from negotiating the level and type of reimbursement with a provider for care provided in accordance with this section.

“(c) EXEMPTIONS.—

“(1) SMALL EMPLOYER EXEMPTION.—

“(A) IN GENERAL.—This section shall not apply to any group health plan for any plan year of a small employer.

“(B) SMALL EMPLOYER.—For purposes of subparagraph (A), the term ‘small employer’ means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

“(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this paragraph—

“(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 shall apply for purposes of treating persons as a single employer.

“(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

“(iii) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

“(2) INCREASED COST EXEMPTION.—This section shall not apply with respect to a group health plan if the application of this section to such plan results in an increase in the cost under the plan of at least 1 percent.

“(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary 2 or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

“(e) DEFINITIONS.—For purposes of this section:

“(1) TREATMENT LIMITATION.—The term ‘treatment limitation’ means, with respect to benefits under a group health plan, any day or visit limits imposed on coverage of benefits under the plan during a period of time.

“(2) FINANCIAL REQUIREMENT.—The term ‘financial requirement’ means, with respect to benefits under a group health plan, any deductible, coinsurance, or cost-sharing or an annual or lifetime dollar limit imposed with respect to the benefits under the plan.

“(3) MEDICAL OR SURGICAL BENEFITS.—The term ‘medical or surgical benefits’ means benefits with respect to medical or surgical services, as defined under the terms of the plan, but does not include substance abuse treatment benefits.

“(4) SUBSTANCE ABUSE TREATMENT BENEFITS.—The term ‘substance abuse treatment benefits’ means benefits with respect to substance abuse treatment services.

“(5) SUBSTANCE ABUSE TREATMENT SERVICES.—The term ‘substance abuse treatment services’ means any of the following items and services provided for the treatment of substance abuse:

“(A) Inpatient treatment, including detoxification.

“(B) Nonhospital residential treatment.

“(C) Outpatient treatment, including screening and assessment, medication management, individual, group, and family counseling, and relapse prevention.

“(D) Prevention services, including health education and individual and group counseling to encourage the reduction of risk factors for substance abuse.

“(6) SUBSTANCE ABUSE.—The term ‘substance abuse’ includes chemical dependency.”.

(B) CONFORMING AMENDMENTS.—

(i) Section 4980D(d)(1) of such Code is amended by striking “section 9811” and inserting “sections 9811 and 9813”.

(ii) The table of sections of subchapter B of chapter 100 of such Code is amended by adding at the end the following new item:

“9813. Parity in the application of treatment limitations and financial requirements to substance abuse treatment benefits”.

(b) INDIVIDUAL HEALTH INSURANCE.—

(1) AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.—Part B of title XXVII of the

Public Health Service Act (42 U.S.C. 300gg-41 et seq.) is amended by inserting after section 2752 the following new section:

“SEC. 2753. PARITY IN THE APPLICATION OF TREATMENT LIMITATIONS AND FINANCIAL REQUIREMENTS TO SUBSTANCE ABUSE BENEFITS.

“(a) IN GENERAL.—The provisions of section 2707 (other than subsection (e)) shall apply to health insurance coverage offered by a health insurance issuer in the individual market in the same manner as it applies to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.

“(b) NOTICE.—A health insurance issuer under this part shall comply with the notice requirement under section 714(f) of the Employee Retirement Income Security Act of 1974 with respect to the requirements referred to in subsection (a) as if such section applied to such issuer and such issuer were a group health plan.”.

(2) CONFORMING AMENDMENT.—Section 2762(b)(2) of such Act (42 U.S.C. 300gg-62(b)(2)) is amended by striking “section 2751” and inserting “sections 2751 and 2753”.

(c) EFFECTIVE DATES.—

(1) GROUP HEALTH PLANS.—Subject to paragraph (3), the amendments made by subsection (a) apply with respect to group health plans for plan years beginning on or after January 1, 2006.

(2) INDIVIDUAL HEALTH INSURANCE.—The amendments made by subsection (b) apply with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 2006.

(3) SPECIAL RULE.—In the case of a group health plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, the amendments made by subsection (a) shall not apply to plan years beginning before the later of—

(A) the date on which the last collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of enactment of this Act), or

(B) January 1, 2006.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by subsection (a) shall not be treated as a termination of such collective bargaining agreement.

(d) COORDINATED REGULATIONS.—Section 104(1) of the Health Insurance Portability and Accountability Act of 1996 is amended by striking “this subtitle (and the amendments made by this subtitle and section 401)” and inserting “the provisions of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, and the provisions of parts A and C of title XXVII of the Public Health Service Act, and chapter 100 of the Internal Revenue Code of 1986”.

(e) PREEMPTION.—Nothing in the amendments made by this section shall be construed to preempt any provision of State law that provides protections to individuals that are greater than the protections provided under such amendments.

By Mr. CRAIG (for himself and Mr. AKAKA):

S. 806. A bill to amend title 38, United States Code, to provide a traumatic injury protection rider to servicemembers insured under section 1967(a)(1) of such title; to the Committee on Veterans' Affairs.

Mr. CRAIG. Mr. President, I rise on behalf of myself and the distinguished ranking member of the Veterans Committee, Senator AKAKA, to introduce legislation providing a traumatic injury protection rider for servicemembers. I urge all my colleagues to review this important legislation and support its enactment, and 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. 806

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

SECTION 1. TRAUMATIC INJURY PROTECTION.

(a) IN GENERAL.—Subchapter III of chapter 19 of title 38, United States Code, is amended—

(1) in section 1965, by adding at the end the following:

“(11) The term ‘activities of daily living’ means the inability to independently perform 2 of the 6 following functions:

- “(A) Bathing.
- “(B) Containment.
- “(C) Dressing.
- “(D) Eating.
- “(E) Toileting.
- “(F) Transferring.”; and

(2) by adding at the end the following:

“§ 1980A. Traumatic injury protection

“(a) A member who is insured under subparagraph (A)(i), (B), or (C)(i) of section 1967(a)(1) shall automatically be issued a traumatic injury protection rider that will provide for a payment not to exceed \$100,000 if the member, while so insured, sustains a traumatic injury that results in a loss described in subsection (b)(1). The maximum amount payable for all injuries resulting from the same traumatic event shall be limited to \$100,000. If a member suffers more than 1 such loss as a result of traumatic injury, payment will be made in accordance with the schedule in subsection (d) for the single loss providing the highest payment.

“(b)(1) A member who is issued a traumatic injury protection rider under subsection (a) is insured against—

- “(A) total and permanent loss of sight;
- “(B) loss of a hand or foot by severance at or above the wrist or ankle;
- “(C) total and permanent loss of speech;
- “(D) total and permanent loss of hearing in both ears;
- “(E) loss of thumb and index finger of the same hand by severance at or above the metacarpophalangeal joints;
- “(F) quadriplegia, paraplegia, or hemiplegia;

“(G) burns greater than second degree, covering 30 percent of the body or 30 percent of the face; and

“(H) coma or the inability to carry out the activities of daily living resulting from traumatic injury to the brain.

“(2) For purposes of this subsection—

“(A) the term ‘quadriplegia’ means the complete and irreversible paralysis of all 4 limbs;

“(B) the term ‘paraplegia’ means the complete and irreversible paralysis of both lower limbs; and

“(C) the term ‘hemiplegia’ means the complete and irreversible paralysis of the upper and lower limbs on 1 side of the body.

“(3) In no case will a member be covered against loss resulting from—

“(A) attempted suicide, while sane or insane;

“(B) an intentionally self-inflicted injury or any attempt to inflict such an injury;

“(C) illness, whether the loss results directly or indirectly;

“(D) medical or surgical treatment of illness, whether the loss results directly or indirectly;

“(E) any infection other than—

“(i) a pyogenic infection resulting from a cut or wound; or

“(ii) a bacterial infection resulting from ingestion of a contaminated substance;

“(F) the commission of or attempt to commit a felony;

“(G) being legally intoxicated or under the influence of any narcotic unless administered or consumed on the advice of a physician; or

“(H) willful misconduct as determined by a military court, civilian court, or administrative body.

“(c) A payment under this section may be made only if—

“(1) the member is insured under Servicemembers' Group Life Insurance when the traumatic injury is sustained;

“(2) the loss results directly from that traumatic injury and from no other cause; and

“(3) the member suffers the loss not later than 90 days after sustaining the traumatic injury, except, if the loss is quadriplegia, paraplegia, or hemiplegia, the member suffers the loss not later than 365 days after sustaining the traumatic injury.

“(d) Payments under this section for losses described in subsection (b)(1) will be made in accordance with the following schedule:

“(1) Loss of both hands, \$100,000.

“(2) Loss of both feet, \$100,000.

“(3) Inability to carry out activities of daily living resulting from traumatic brain injury, \$100,000.

“(4) Burns greater than second degree, covering 30 percent of the body or 30 percent of the face, \$100,000.

“(5) Loss of sight in both eyes, \$100,000.

“(6) Loss of 1 hand and 1 foot, \$100,000.

“(7) Loss of 1 hand and sight of 1 eye, \$100,000.

“(8) Loss of 1 foot and sight of 1 eye, \$100,000.

“(9) Loss of speech and hearing in 1 ear, \$100,000.

“(10) Total and permanent loss of hearing in both ears, \$100,000.

“(11) Quadriplegia, \$100,000.

“(12) Paraplegia, \$75,000.

“(13) Loss of 1 hand, \$50,000.

“(14) Loss of 1 foot, \$50,000.

“(15) Loss of sight one eye, \$50,000.

“(16) Total and permanent loss of speech, \$50,000.

“(17) Loss of hearing in 1 ear, \$50,000.

“(18) Hemiplegia, \$50,000.

“(19) Loss of thumb and index finger of the same hand, \$25,000.

“(20) Coma resulting from traumatic brain injury, \$50,000 at time of claim and \$50,000 at end of 6-month period.

“(e)(1) During any period in which a member is insured under this section and the member is on active duty, there shall be deducted each month from the member's basic or other pay until separation or release from active duty an amount determined by the Secretary of Veterans Affairs as the premium allocable to the pay period for providing traumatic injury protection under this section (which shall be the same for all such members) as the share of the cost attributable to provided coverage under this section, less any costs traceable to the extra hazards of such duty in the uniformed services.

“(2) During any month in which a member is assigned to the Ready Reserve of a uniformed service under conditions which meet the qualifications set forth in section 1965(5)(B) of this title and is insured under a

policy of insurance purchased by the Secretary of Veterans Affairs under section 1966 of this title, there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Secretary of Veterans Affairs (which shall be the same for all such members) as the share of the cost attributable to provided coverage under this section, less any costs traceable to the extra hazards of such duty in the uniformed services. Any amounts so contributed on behalf of any member shall be collected by the Secretary of the concerned service from such member (by deduction from pay or otherwise) and shall be credited to the appropriation from which such contribution was made in advance on a monthly basis.

“(3) The Secretary of Veterans Affairs shall determine the premium amounts to be charged for traumatic injury protection coverage provided under this section.

“(4) The premium amounts shall be determined on the basis of sound actuarial principles and shall include an amount necessary to cover the administrative costs to the insurer or insurers providing such insurance.

“(5) Each premium rate for the first policy year shall be continued for subsequent policy years, except that the rate may be adjusted for any such subsequent policy year on the basis of the experience under the policy, as determined by the Secretary of Veterans Affairs in advance of that policy year.

“(6) The cost attributable to insuring such member under this section, less the premiums deducted from the pay of the member's uniformed service, shall be paid by the Secretary of Defense to the Secretary of Veterans Affairs. This amount shall be paid on a monthly basis, and shall be due within 10 days of the notice provided by the Secretary of Veterans Affairs to the Secretary of the concerned uniformed service.

“(7) The Secretary of Defense shall provide the amount of appropriations required to pay expected claims in a policy year, as determined according to sound actuarial principles by the Secretary of Veterans Affairs.

“(8) The Secretary of Defense shall forward an amount to the Secretary of Veterans Affairs that is equivalent to half the anticipated cost of claims for the current fiscal year, upon the effective date of this legislation.

“(f) The Secretary of Defense shall certify whether any member claiming the benefit under this section is eligible.

“(g) Payment for a loss resulting from traumatic injury will not be made if the member dies not more than 7 days after the date of the injury. If the member dies before payment to the member can be made, the payment will be made according to the member's most current beneficiary designation under Servicemembers' Group Life Insurance, or a by law designation, if applicable.

“(h) Coverage for loss resulting from traumatic injury provided under this section shall cease at midnight on the date of the member's separation from the uniformed service. Payment will not be made for any loss resulting from injury incurred after the date a member is separated from the uniformed services.

“(i) Insurance coverage provided under this section is not convertible to Veterans' Group Life Insurance.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 19 of title 38, United States Code, is amended by adding after the item relating to section 1980 the following:

“1980A. Traumatic injury protection.”

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall take effect on the first day of the first month beginning more than 180 days after the date of enactment of this Act.

By Mr. CRAIG (for himself, Mr. CRAPO, and Mr. SMITH):

S. 807. A bill to amend the Federal Land Policy and Management Act of 1976 to provide owners of non-Federal lands with a reliable method of receiving compensation for damages resulting from the spread of wildfire from nearby forested National Forest System lands or Bureau of Land Management lands, when those forested Federal lands are not maintained in the forest health status known as condition class 1; to the Committee on Energy and Natural Resources.

Mr. CRAIG. Mr. President, I rise today to introduce the Enhanced Safety from Wildfire Act of 2005. I am joined by my colleagues Mr. CRAPO and Mr. SMITH.

The legislation we are introducing would amend the Federal Land Policy and Management Act of 1976 to make it possible for non-federal land owners to receive compensation for a loss of property as a result of wildfire spreading from Federal land that has not been managed as Condition Class 1.

As we all know, in recent years, there has been a significant amount of injury and loss of property resulting from the spread of wildfire from Federal forested lands to non-Federal lands. Recent wildfires on federal forested lands have shown that lands managed under approved forest health management practices are less susceptible to wildfire, or are subjected to less severe wildfire, than similarly forested lands that are not actively managed.

There is a continuing and growing threat to the safety of communities, individuals, homes and other property, and timber on non-Federal lands that adjoin Federal forested lands because of the unnatural accumulation of forest fuels on these Federal lands and the lack of active Federal management of these lands.

The use of approved forest health management practices to create forest fire “buffer zones” between forested Federal lands and adjacent non-Federal lands would reduce the occurrence of wildfires on forested federal lands or, at least, limit their spread to non-Federal lands and the severity of the resulting damage.

This legislation requires the agencies to manage a “buffer zone” on Federal land, greater than 6,400 acres, that is adjacent to non-Federal land. When forested Federal lands adjacent to non-Federal lands are not adequately managed with a “buffer zone” and wildfire occurs, the legislation states the owners of the non-Federal lands are eligible for compensation for damages resulting from the spread of wildfire to their lands. The legislation sets minimum criteria for non-Federal land to be eligible for compensation.

Our federal land management agencies need to take responsibility for the impacts that occur on non-Federal land as a result of a lack of management on federal land. As a society, we have

come to expect that our neighbors take responsibility for their actions and I feel the federal land management agencies should not escape this responsibility either.

In the next few weeks, the weather will heat up, the drought ridden West will become drier, wildfire danger will rise, and I fear we will once again hear reports regarding the loss of property.

I know this legislation may not be the answer to solving our Federal land management problems and I am willing to discuss other options, but I know that until we address the heart of this issue, homes, private land, and communities will continue to be at risk because of poor Federal land management. Being a good neighbor means being responsible for your actions.

By Mr. DURBIN (for himself and Ms. COLLINS):

S. 808. A bill to encourage energy conservation through bicycling; to the Committee on Commerce, Science, and Transportation.

Mr. DURBIN. Madam President, I rise today to introduce the Conserve by Bike Act to promote energy conservation and improve public health. I am pleased to be joined by my colleague from Maine, Senator SUSAN COLLINS, in introducing this measure. This legislation addresses one part of our Nation's energy challenges. Although there is no single solution to solve our energy problems, I believe that every possible approach must be considered.

Our Nation would realize several benefits from the increased use of bicycle transportation, including lessened dependence on foreign oil and prevention of harmful air emissions. Currently, less than one trip in one hundred, .88 percent, is by bicycle. If we can increase cycling use to one and a half trips per hundred, which is less than one bike trip every two weeks for the average person, we will save more than 462 million gallons of gasoline in a year, worth more than \$721 million. That is the equivalent of one full day per year in which the U.S. will not need to import any foreign oil.

In addition to fostering greater energy security, this bill will help mitigate air quality challenges, which can be harmful to public health and the environment. Unlike automotive transportation, bicycling is emission-free.

The Conserve by Bike Act encourages bicycling through two key components: a pilot program and a research project. The Conserve by Bike Pilot Program established by this legislation would be implemented by the U.S. Department of Transportation. The Department would fund up to ten pilot projects throughout the country that would utilize education and marketing tools to encourage people to convert some of their car trips to bike trips. Each of these pilot projects must: (1) document project results and energy conserved; (2) facilitate partnerships among stakeholders in two or more of the following fields: transportation, law enforcement, education, public health,

and the environment; (3) maximize current bicycle facility investments; (4) demonstrate methods that can be replicated in other locations; and (5) produce ongoing programs that are sustained by local resources.

This legislation also directs the Transportation Research Board of the National Academy of Sciences to conduct a research project on converting car trips to bike trips. The study will consider: (1) what car trips Americans can reasonably be expected to make by bike, given such factors as weather, land use, and traffic patterns, carrying capacity of bicycles, and bicycle infrastructure; (2) what energy savings would result, or how much energy could be conserved, if these trips were converted from car to bike, (3) the cost-benefit analysis of bicycle infrastructure investments; and (4) what factors could encourage more car trips to be replaced with bike trips. The study also will identify lessons we can learn from the documented results of the pilot programs.

The Conserve by Bike Program is a small investment that has the potential to produce significant returns: greater independence from foreign oil and a healthier environment and population. The Conserve by Bike Act authorizes a total of \$6.2 million to carry out the pilot programs and research. A total of \$5,150,000 will be used to implement the pilot projects; \$300,000 will be used by the Department of Transportation to coordinate, publicize, and disseminate the results of the program; and \$750,000 will be utilized for the research study.

The provisions in this bill enjoy strong, bipartisan support and have passed by unanimous consent as an amendment to a previous Senate energy package. The measure is endorsed by the League of American Bicyclists, which has over 300,000 affiliates, as well as the Association of Pedestrian and Bicycle Professionals, Rails to Trails Conservancy, Thunderhead Alliance, Bikes Belong Coalition, Adventure Cycling Association, Chicagoland Bicycle Federation, and the League of Illinois Bicyclists.

I ask that the text of the legislation be printed in the RECORD.

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

S. 808

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

SECTION 1. CONSERVE BY BICYCLING PROGRAM.

(a) DEFINITIONS.—In this section:

(1) PROGRAM.—The term “program” means the Conserve by Bicycling Program established by subsection (b).

(2) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(b) ESTABLISHMENT.—There is established within the Department of Transportation a program to be known as the “Conserve by Bicycling Program”.

(c) PROJECTS.—

(1) IN GENERAL.—In carrying out the program, the Secretary shall establish not more than 10 pilot projects that are—

(A) dispersed geographically throughout the United States; and

(B) designed to conserve energy resources by encouraging the use of bicycles in place of motor vehicles.

(2) REQUIREMENTS.—A pilot project described in paragraph (1) shall—

(A) use education and marketing to convert motor vehicle trips to bicycle trips;

(B) document project results and energy savings (in estimated units of energy conserved);

(C) facilitate partnerships among interested parties in at least 2 of the fields of—

- (i) transportation;
- (ii) law enforcement;
- (iii) education;
- (iv) public health;
- (v) environment; and
- (vi) energy;

(D) maximize bicycle facility investments;

(E) demonstrate methods that may be used in other regions of the United States; and

(F) facilitate the continuation of ongoing programs that are sustained by local resources.

(3) COST SHARING.—At least 20 percent of the cost of each pilot project described in paragraph (1) shall be provided from State or local sources.

(d) ENERGY AND BICYCLING RESEARCH STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary shall enter into a contract with the National Academy of Sciences for, and the National Academy of Sciences shall conduct and submit to Congress a report on, a study on the feasibility of converting motor vehicle trips to bicycle trips.

(2) COMPONENTS.—The study shall—

(A) document the results or progress of the pilot projects under subsection (b);

(B) determine the type and duration of motor vehicle trips that people in the United States may feasibly make by bicycle, taking into consideration factors such as—

- (i) weather;
- (ii) land use and traffic patterns;
- (iii) the carrying capacity of bicycles; and
- (iv) bicycle infrastructure;

(C) determine any energy savings that would result from the conversion of motor vehicle trips to bicycle trips;

(D) include a cost-benefit analysis of bicycle infrastructure investments; and

(E) include a description of any factors that would encourage more motor vehicle trips to be replaced with bicycle trips.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$6,200,000, to remain available until expended, of which—

(1) \$5,150,000 shall be used to carry out pilot projects described in subsection (c);

(2) \$300,000 shall be used by the Secretary to coordinate, publicize, and disseminate the results of the program; and

(3) \$750,000 shall be used to carry out subsection (d).

Ms. COLLINS. Mr. President, I am pleased to join with my colleague from Illinois in reintroducing the Conserve by Bike Act to recognize and promote bicycling's important impact on energy savings and public health.

With America's dependence on foreign oil, it is vital that we look to the contribution that bike travel can make toward solving our Nation's energy challenges. The legislation we are reintroducing today would establish a Conserve by Bike pilot program that would oversee pilot projects throughout the country designed to conserve energy resources by providing edu-

cation and marketing tools to convert car trips into bike trips. Right now, fewer than 1 trip in 100 nationwide is by bicycle. If we could increase this statistic to 1½ trips per 100, we could save over 462 million gallons of gasoline per year, worth nearly \$1 billion.

While more bike trips would benefit our energy conservation efforts, additional bicycling activity would also help improve the Nation's public health. According to the U.S. Surgeon General, fewer than one-third of Americans meet Federal recommendations to engage in at least 30 minutes of moderate physical activity 5 days a week. Even more disturbing is the fact that approximately 300,000 American deaths a year are associated with obesity. By promoting biking, we are working to ensure that Americans, young and old, will increase their physical activity.

In my home State of Maine, citizen activists have led the way in encouraging their fellow Mainers to use bicycling as an alternative mode of transportation. Founded in 1992, the Bicycle Coalition of Maine, BCM, has grown substantially in its first decade plus of operation. In 1996, when BCM hired its current executive director, Jeffrey Miller, the organization had 200 individual and family memberships. Today, it has over 1,700. For a State of less than 1.3 million residents—many of them elderly—BCM's broad membership is especially impressive.

Over the years, this group has advocated increased bicycle access to Maine's roads and bridges, organized the first “Bike to Work Day” in our State, initiated bicycle safety education in our classrooms—teaching more than 60,000 schoolchildren in over 500 Maine schools—and produced “Share the Road” public service announcements for television stations statewide, among numerous other accomplishments.

No matter how energetic, committed, and organized BCM and other bicycle activists are, however, these groups cannot accomplish their mission alone. There is an important role for Government to play in encouraging more individuals to make bicycling their alternative mode of transportation. In Maine, BCM has built strong, active partnerships with local governments and the State's Department of Transportation. These key relationships have benefitted bicyclists throughout Maine and, in doing so, have encouraged more Mainers to ride their bikes on a regular basis. Indeed, more than 4 percent of Maine's commuters currently bike or walk, ranking the State 14th in that category nationwide. I believe the Federal Government needs to become more engaged in encouraging bicycling as a means of alternative transportation, and the Conserve by Bike Act would contribute to the worthy goal of convincing more Americans to travel by bicycle.

The Senate is already on record in support of this bill. In the previous

Congress, during consideration of the Energy bill, identical legislation was accepted by voice vote as an amendment. I urge my colleagues to maintain their support for the Conserve by Bike Act.

By Mr. LAUTENBERG (for himself, Mr. CORZINE, and Mrs. BOXER):

S. 809. A bill to establish certain duties for pharmacies when pharmacists employed by the pharmacies refuse to fill valid prescriptions for drugs or devices on the basis of personal beliefs, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. LAUTENBERG. Mr. President, today I am introducing the Access to Legal Pharmaceuticals Act (ALPhA). I want to thank Senators CORZINE and BOXER for cosponsoring this important piece of legislation.

This bill is simple. It ensures timely access to contraception and is crucial to protecting a woman's health and autonomy, and to keeping pharmacists and politicians out of personal, private matters.

This bill would protect an individual's access to legal contraception by requiring that if a pharmacist has a personal objection to filling a legal prescription for a drug or device, the pharmacy would be required to ensure that the prescription is filled by another pharmacist employed by the pharmacy who does not have a personal objection.

I came to the Senate 22 years ago. We've made a lot of progress, in women's health and women's rights since then. But today it seems like we're fighting to keep from sliding backward in some areas.

An individual's fundamental right of access to birth control is being attacked. Reports of some pharmacists refusing to fill prescriptions have been documented in twelve states.

The women that were denied were young and old; married and single; with children and without. Even women who were using birth control for other medical reasons aside from preventing conception have been denied access to the birth control pill.

If you told me 10 years ago that a woman's right to use contraception would be in jeopardy, I probably wouldn't have believed it. Today I have to believe it—because it's happening.

In Texas last year, a pharmacist refused to fill a legal prescription for the "morning after" contraceptive for a woman who had been raped. First she was assaulted and violated—then her rights were violated by a self-righteous pharmacist who didn't want to do his job.

In Milwaukee, a married woman in her mid-40s with four children got a prescription from her doctor for a morning-after pill. A pharmacist refused to do his job. He wouldn't fill the prescription.

A handful of pharmacists are saying they have a "right" to ignore prescriptions written by medical doctors.

Well, they do have a right. They have a right to get a new job if they don't want to fill legal prescriptions.

But nobody has a right to come between any person and their doctor. Not the government . . . not an insurance company . . . and not a pharmacist.

The American Pharmaceutical Association has adopted an "Oath of Pharmacists." The last part of the oath states: I take these vows voluntarily with the full realization of the responsibility with which I am entrusted by the public.

People trust pharmacists to fill the prescriptions that are written by their doctors. If pharmacists are allowed to pick and choose which prescriptions get filled, everyone's health will be at risk. Today they might not fill prescriptions for birth control pills. Tomorrow it could be painkillers for a cancer patient. Next year it could be medicine that prolongs the life of a person with AIDS or some other terminal disease.

I'm going to fight to protect all Americans against this radical assault on our rights.

I'm proud to introduce a bill that will require pharmacists to do one simple thing: their job.

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. 809

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 "Access to Legal Pharmaceuticals Act".

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) An individual's right to religious belief and worship is a protected, fundamental right in the United States.

(2) An individual's right to access legal contraception is a protected, fundamental right in the United States.

(3) An individual's right to religious belief and worship cannot impede an individual's access to legal prescriptions, including contraception.

SEC. 3. DUTIES OF PHARMACIES WITH RESPECT TO REFUSAL OF PHARMACISTS TO FILL VALID PRESCRIPTIONS.

(a) **IN GENERAL.**—Part B of title II of the Public Health Service Act (42 U.S.C. 238 et seq.) is amended by adding at the end the following section:

"SEC. 249. DUTIES OF PHARMACIES WITH RESPECT TO REFUSAL OF PHARMACISTS TO FILL VALID PRESCRIPTIONS.

"(a) **IN GENERAL.**—A pharmacy that receives prescription drugs or prescription devices in interstate commerce shall maintain compliance with the following conditions:

"(1) If a product is in stock and a pharmacist employed by the pharmacy refuses on the basis of a personal belief to fill a valid prescription for the product, the pharmacy ensures, subject to the consent of the individual presenting the prescription in any case in which the individual has reason to know of the refusal, that the prescription is, without delay, filled by another pharmacist employed by the pharmacy.

"(2) Subject to subsection (b), if a product is not in stock and a pharmacist employed by the pharmacy refuses on the basis of a personal belief or on the basis of pharmacy policy to order or to offer to order the product when presented a valid prescription for the product—

"(A) the pharmacy ensures that the individual presenting the prescription is immediately informed that the product is not in stock but can be ordered by the pharmacy; and

"(B) the pharmacy ensures, subject to the consent of the individual, that the product is, without delay, ordered by another pharmacist employed by the pharmacy.

"(3) The pharmacy does not employ any pharmacist who engages in any conduct with the intent to prevent or deter an individual from filling a valid prescription for a product or from ordering the product (other than the specific conduct described in paragraph (1) or (2)), including—

"(A) the refusal to return a prescription form to the individual after refusing to fill the prescription or order the product, if the individual requests the return of such form;

"(B) the refusal to transfer prescription information to another pharmacy for refill dispensing when such a transfer is lawful, if the individual requests such transfer;

"(C) subjecting the individual to humiliation or otherwise harassing the individual; or

"(D) breaching medical confidentiality with respect to the prescription or threatening to breach such confidentiality.

"(b) **PRODUCTS NOT ORDINARILY STOCKED.**—Subsection (a)(2) applies only with respect to a pharmacy ordering a particular product for an individual presenting a valid prescription for the product, and does not require the pharmacy to keep such product in stock, except that such subsection has no applicability with respect to a product for a health condition if the pharmacy does not keep in stock any product for such condition.

"(c) **ENFORCEMENT.**—

"(1) **CIVIL PENALTY.**—A pharmacy that violates a requirement of subsection (a) is liable to the United States for a civil penalty in an amount not exceeding \$5,000 per day of violation, and not to exceed \$500,000 for all violations adjudicated in a single proceeding.

"(2) **PRIVATE CAUSE OF ACTION.**—Any person aggrieved as a result of a violation of a requirement of subsection (a) may, in any court of competent jurisdiction, commence a civil action against the pharmacy involved to obtain appropriate relief, including actual and punitive damages, injunctive relief, and a reasonable attorney's fee and cost.

"(3) **LIMITATIONS.**—A civil action under paragraph (1) or (2) may not be commenced against a pharmacy after the expiration of the five-year period beginning on the date on which the pharmacy allegedly engaged in the violation involved.

"(d) **DEFINITIONS.**—For purposes of this section:

"(1) The term 'employ', with respect to the services of a pharmacist, includes entering into a contract for the provision of such services.

"(2) The term 'pharmacist' means a person authorized by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

"(3) The term 'pharmacy' means a person who—

"(A) is authorized by a State to engage in the business of selling prescription drugs at retail; and

"(B) employs one or more pharmacists.

"(4) The term 'prescription device' means a device whose sale at retail is restricted under section 520(e)(1) of the Federal Food, Drug, and Cosmetic Act.

“(5) The term ‘prescription drug’ means a drug that is subject to section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act.

“(6) The term ‘product’ means a prescription drug or a prescription device.

“(7) The term ‘valid’, with respect to a prescription, means—

“(A) in the case of a drug, a prescription within the meaning of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act that is in compliance with applicable law, including, in the case of a prescription for a drug that is a controlled substance, compliance with part 1306 of title 21, Code of Federal Regulations, or successor regulations; and

“(B) in the case of a device, an authorization of a practitioner within the meaning of section 520(e)(1) of such Act that is in compliance with applicable law.

“(8) The term ‘without delay’, with respect to a pharmacy filling a prescription for a product or ordering the product, means within the usual and customary timeframe at the pharmacy for filling prescriptions for products for the health condition involved or for ordering such products, respectively.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect upon the expiration of 30 days after the date of the enactment of this Act, without regard to whether the Secretary of Health and Human Services has issued any guidance or final rule regarding such amendment.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. THUNE, Mr. TALENT, Mr. ALEXANDER, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BROWNBACK, Mr. BURNS, Mr. BURR, Mr. CHAMBLISS, Mr. COBURN, Mr. COLEMAN, Ms. COLLINS, Mr. CORNYN, Mr. CRAIG, Mr. CRAPO, Mr. DEWINE, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mr. FRIST, Mr. GRAHAM, Mr. GRASSLEY, Mr. INHOFE, Mr. KYL, Mrs. LINCOLN, Mr. LOTT, Mr. LUGAR, Mr. MCCAIN, Mr. ROBERTS, Mr. SANTORUM, Mr. SESSIONS, Mr. SHELBY, Mr. THOMAS, Mr. VITTER, Mr. WARNER, Mr. BOND, Mr. BUNNING, Mr. DEMINT, Mrs. DOLE, Mr. GREGG, Mr. HAGEL, Mrs. HUTCHISON, Mr. JOHNSON, Mr. MARTINEZ, Mr. NELSON of Nebraska, Ms. SNOWE, Mr. SPECTER, and Mr. STEVENS):

S.J. Res. 12. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, it is with a sense of honor that my friend and colleague, Senator FEINSTEIN, and I rise to introduce a bipartisan constitutional amendment that would allow Congress to prohibit the physical desecration of the American flag.

I am proud and privileged to be working again with my California colleague on this important proposal. Among our principal cosponsors are our colleagues Senator THUNE and Senator TALENT. It is heartening to us to see some of the Senate's newest Members come to this issue with the same passion that its original supporters still feel.

This amendment is truly bipartisan. Today, we count 51 original cosponsors

of this resolution. And, nearly two-thirds of the Members of this body have indicated their support. Those numbers seem to grow with each passing year.

No doubt, some will still argue that this amendment is unnecessary. Fortunately, that refrain is gradually losing its punch.

When this amendment eventually passes the Senate, as I believe that it will, our victory will not be attributed to the passions of the moment. Rather, it will be due to the tireless efforts of citizens committed to convincing their elected representatives that this amendment matters.

I have heard from some Utahans who love our country's flag but are opposed to amending the Constitution. To them I would say, amending the Constitution should never be taken lightly. Yet after serious study of the issue, I have concluded there is no other way to guarantee that our flag is protected, as I will discuss in a few minutes.

And, indeed, guaranteeing the physical integrity of the flag is a cause worth fighting for. The American people seem to understand what the opponents of this amendment fail to grasp. This amendment is a necessary statement that citizens still have some control over the destiny of this Nation and in maintaining the traditions and symbols that have helped to bind us together in all our diversity for over 200 years.

Those who oppose protecting the flag through a constitutional amendment are probably not aware of our constitutional history. Indeed, for most of America's history, our Nation's laws guaranteed the physical integrity of the American flag.

These were laws no one questioned. No one every questioned that the simple act of providing legal protection for the flag, a unique symbol of our ties as a Nation, could somehow violate the Constitution.

We should take a moment and recall what we were taught about the flag as schoolchildren. Our flag's 13 stripes show our origins. We started as 13 separate colonies that first became separate States and then one Nation through the Declaration of Independence and the American Revolution. The 50 stars on the field of blue represent what we have become: a Nation unified. And over the past 230 years, we have become ever more united in our commitment to the extension of liberty and equality.

Among all of our differences, differences frequently reflected in this body, we do remain one Nation undivided and indivisible, and our flag is a simple but profound statement of that union. That is why we open the Senate each day by pledging our allegiance to the flag. It is a reminder of all that we have in common.

Supreme Court Justice John Paul Stevens understood the significance of the flag's status when he wrote:

A country's flag is a symbol of more than nationhood and national unity. It also sig-

nifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

There is a certain wisdom to Justice Stevens' statement that our constituents immediately grasp. Some polls show that over 80 percent of the American people support an amendment to protect the flag.

Its unique character is represented in the diversity of the groups that have worked over the years to bring this amendment to fruition. Veterans, police, African Americans, Polish Americans, farmers, and so many more diverse groups see in the flag a symbol of our Nation; they understand that it is perfectly consistent with our constitutional traditions for us to protect it.

Unfortunately, in 1989 the Supreme Court intervened and overrode every State law barring desecration of the American flag.

None of these States has restricted first amendment political speech in any way.

Their laws did not lead us down some slippery slope that would result in restraints on political opinions.

These States drew reasonable distinctions between political speech and inflammatory and frequently violent acts.

Yet in *Texas v. Johnson*, the Supreme Court held that a Texas statute, and others like it, that barred desecration of the American flag, violated core first amendment principles. That certainly would have been news to those who wrote the Constitution and our Bill of Rights.

It was news, bad news, to the American people as well.

So in response to this imprudent decision, the Senate acted quickly and passed The Flag Protection Act. It became law on October 28, 1989.

Then, in 1990, the Court struck down even this legislation in *United States v. Eichman*.

And that is why a constitutional amendment has become necessary.

With due respect to our courts, and to my colleagues who continue to support these decisions, these legal arguments against flag protection just do not hold water.

Detractors of our amendment contend that the first amendment guarantees the right to burn the American flag. It does no such thing.

They contend it would carve out an exception to the first amendment as some say. It would not. Rather, it would reaffirm what was understood not only by those who ratified the Constitution but also by citizens of today: that the first amendment never guaranteed such expressive conduct. Whether one is an originalist or whether one believes in a living Constitution, this argument falls short.

The American people have long distinguished between the first amendment's guarantee of an individual's right to speak his or her mind and the repulsive expression of desecrating the flag. For many years, the people's elected representatives in Congress and 49 State legislatures passed statutes prohibiting physical desecration of the flag, and our political speech thrived. It was just as robust as it is today.

Yet in 1989, the Supreme Court's novel interpretation of the first amendment concluded that the people, their elected legislators, and the courts are no longer capable of making these reasonable distinctions, distinctions that we frequently make in this body such as when we prohibit speeches or demonstrations of any kind, even in the silent display of signs or banners, in the public galleries.

The American people created the Constitution, and they reserved to themselves the right to amend the Constitution when they saw fit. Is it wrong to give the American people the opportunity to review whether the Supreme Court got it right in this case? I think not.

The fact is, a Senator does not take an oath to support and defend the holdings of the Supreme Court. We take an oath to support the Constitution. And, it is entirely appropriate that when we think the Court gets it wrong, we correct it through proper constitutional devices, devices set out in the Constitution itself. . . . Though it has been forgotten over the years, this is hardly a radical idea. It was one supported by the founders of both the Republican and Democratic parties, Thomas Jefferson and Abraham Lincoln.

As some in this body have noted, our courts are now frequently attempting to identify a national consensus to justify contemporary interpretations of our constitutional guarantees. The progress of this amendment to protect the flag demonstrates to me at least just how such a consensus is supposed to develop. Through argument, through give and take, through debate—over time the American people, as reflected in the actions of their representatives, have become more sure than ever that they should have the opportunity to protect their flag through moderate and reasonable legislation.

After September 11, citizens proudly flew the flag, defying the terrorist challenge to our core values of liberty and equality, and confirming its unique status as a symbol of our nation's strength and purpose. In the struggle that has followed, our flag stands as a reminder of the many personal sacrifices made to protect and strengthen our nation.

And so, to protect this symbol, I am today introducing this amendment.

I thank my colleagues, Senators FEINSTEIN, THUNE, and TALENT for their work on this. I urge those who are not cosponsors of this amendment to keep an open mind as we debate this resolution.

It is my hope that the Judiciary committee will move the resolution to the floor.

And, in turn, I ask that our leadership ensure this resolution gets a vote on the floor.

Mr. THUNE. Mr. President, today, it is my distinct honor and privilege to rise and speak on behalf of Senator HATCH, Senator FEINSTEIN, Senator TALENT, myself, and 47 other senators, as we introduce bipartisan legislation we believe to be long overdue. It is not reform legislation. It does not authorize new government programs, create new sources of tax revenue, or provide incentives to stimulate our economy. It is none of those things, but it is a matter of great importance. The events of 9/11 have reminded us all of that. It is, instead, legislation that speaks to the core of our beliefs and hopes as a Nation, and as a people. It is about a national treasure and a symbol of our country that the vast majority of Americans—and the majority of this great body, I might add—believe is worth special status and worthy of protection. It is about the American flag.

Our American flag is more than mere cloth and ink. It is a symbol of the liberty and freedom that we enjoy today thanks to the immeasurable sacrifices of generations of Americans who came before us.

It represents the fiber and strength of our values and it has been sanctified by the blood of those who died defending it.

I rise today to call upon all members of this body to support a constitutional amendment that would give Congress the power to prohibit the physical desecration of the American flag. It would simply authorize, but not require, Congress to pass a law protecting the American flag.

This amendment does not affect anyone's right to express their political beliefs.

It would only allow Congress to prevent our flag from being used as a prop, to be desecrated in some ways simply not appropriate to even mention in these halls.

This resolution and similar legislation have been the subject of debate before this body before. There is, in fact, a quite lengthy legislative history regarding efforts to protect the American flag from desecration. In 1989, the Supreme Court declared essentially that burning the American flag is "free speech." That is a decision the American people should make, particularly when this country finds itself fighting for democracy and expending American lives for that cause, on battlefields overseas.

South Dakota veterans and members of the armed forces from my State know exactly what I'm talking about, as I'm sure they do from every state represented in the Senate. In recent months, units of the 147th field artillery and 153rd engineer battalions of the South Dakota National Guard returned home after spending a difficult

year in Iraq. Likewise, the 452nd ordnance company of the United States Army Reserve is preparing to depart for Iraq in September.

My father, like many other veterans of World War II, understands the importance of taking this step. Veterans from across South Dakota have asked me to step up and defend the flag of this great Nation and today I am answering that call.

Today, members of both political parties will introduce a proposed constitutional amendment that would give back to the American people the power to prevent the desecration of the American flag. We know the gravity of this legislation. There is nothing complex about this amendment, nor are there any hidden consequences. This amendment provides Congress with the power to outlaw desecration of the American flag, a right that is widely recognized by Madison, Jefferson, and Supreme Court Justice Hugo Black, one of the foremost advocates of first amendment freedoms.

Most states officially advocate Congress passing legislation to protect the flag. Frankly, I do not see this as a first amendment issue.

It is an attempt to restore the traditional protections to the symbol cherished so dearly by our Government and the people of the United States. Some acts are not accepted as "free speech" even in societies like ours where we consider free speech a cherished right. For example, an attempt to burn down this Capitol building as a political statement would never be viewed as someone's right of free speech. Our laws would not tolerate the causing of harm to other's property or life as an act of "free speech." This flag happens to be the property of the American people, in my opinion, and this question should be put before the States and their people to decide how and if to protect it. I think the answer will come back as a resounding "yes".

There is little doubt that the debate over state ratification will trigger a tremendous discussion over our values, beliefs and whether we will ultimately bestow a lasting honor on our traditions. Importantly, it will be an indication of how we recognize our servicemen and women who are sacrificing—right now—in Iraq and Afghanistan, to protect those traditions and values for us. Will we honor them, and all the veterans who served and died in wars for this country and our flag over the last 200 years? That's not a question which a court should hold the final answer.

I believe the time has finally come. I believe our country wants this debate. The majority of this Senate, I believe, wants this amendment. We begin it here, and we begin it now. Let the debate begin.

Mr. BURNS. Mr. President, I come to the floor today to voice my support for the flag amendment.

The flag of the United States of America is a symbol of freedom. The flag of the United States of America

has been sanctified by the blood of thousands of U.S. soldiers who have fought across the world, and it must be protected from desecration. This proposed constitutional amendment would overturn the 1989 U.S. Supreme Court's 5-4 ruling which held that laws banning desecration of the U.S. flag were unconstitutional infringements on free speech and therefore a violation of the first amendment.

I am proud of the first amendment right to free speech and will always ensure all Americans maintain that right. I am also proud of the American flag and the values behind it. The American flag flies over this great country as a symbol of liberty and patriotism. Desecration of the flag would be destruction of the core principles on which this great Nation was founded. I will continue to be an advocate on behalf of the American flag and the values the flag represents.

I encourage my colleagues to support this measure and join me in ensuring the everlasting integrity of the American flag.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 107—COMMENDING ANNICE M. WAGNER, CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS, FOR HER PUBLIC SERVICE

Ms. COLLINS (for herself, Mr. DURBIN, Mr. LIEBERMAN, Mr. STEVENS, Mr. VOINOVICH, Mr. AKAKA, Mr. COLEMAN, Mr. LEVIN, Mr. COBURN, Mr. DEWINE, Ms. LANDRIEU, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. RES. 107

Whereas Annice M. Wagner, Chief Judge of the District of Columbia Court of Appeals, entered Federal Government service in 1973 as the first woman to be appointed General Counsel of the National Capital Housing Authority, then a Federal agency;

Whereas, from 1975 to 1977, the Honorable Annice M. Wagner served as People's Counsel for the District of Columbia, an office created by Congress to represent the interests of utility consumers before the District of Columbia Public Service Commission and the District of Columbia Court of Appeals;

Whereas, in 1977, the Honorable Annice M. Wagner was appointed by President Carter and confirmed by the Senate to serve as an Associate Judge of the Superior Court for the District of Columbia;

Whereas, while serving as an Associate Judge of the Superior Court, the Honorable Annice M. Wagner served in the civil, criminal, family, probate, and tax divisions and served for 2 years as presiding judge of the probate and tax divisions;

Whereas, while serving as an Associate Judge of the Superior Court, Annice M. Wagner served on various commissions and committees to improve the District of Columbia judicial system, including serving as chairperson of the Committee on Selection and Tenure of Hearing Commissioners, and as a member of the Superior Court Rules Com-

mittee and the Sentencing Guidelines Commission;

Whereas, as an Associate Judge of the Superior Court, Annice M. Wagner served as chairperson of the Court's Advisory Committee on Probate and Fiduciary Rules and was largely responsible for the implementation of new rules intended to streamline and clarify procedures regarding missing, protected, and incapacitated individuals;

Whereas, as an Associate Judge of the Superior Court, the Honorable Annice M. Wagner served as chairperson of the Task Force on Gender Bias in the Courts, which conducted a comprehensive study of bias in the courts;

Whereas, under Annice M. Wagner's leadership, the District of Columbia courts established the Standing Committee on Fairness and Access to the Courts to ensure racial, gender, and ethnic fairness;

Whereas Annice M. Wagner was appointed by President George H.W. Bush and confirmed by the Senate in 1990 to be an Associate Judge of the District of Columbia Court of Appeals;

Whereas Annice M. Wagner was appointed in 1994 to serve as Chief Judge of the District Court of Appeals;

Whereas, while Chief Judge of the District of Columbia Court of Appeals, Annice M. Wagner served as Chair of the Joint Committee on Judicial Administration in the District of Columbia;

Whereas, under Annice M. Wagner's leadership, the District of Columbia courts initiated the renovation of the Old District of Columbia Courthouse (Old City Hall) in Judiciary Square, a National Historic Landmark, for future use by the District of Columbia Court of Appeals;

Whereas, under Annice M. Wagner's leadership, the District of Columbia courts initiated the master planning process for the renovation and use of unused or underutilized court properties, which will lead to the revitalization of the Judiciary Square area in the Nation's Capital;

Whereas, under Annice M. Wagner's leadership, the Court of Appeals, along with the District of Columbia Bar, the District of Columbia Bar Foundation, and the District of Columbia Consortium of Legal Service Providers, established the District of Columbia Access to Justice Commission, a commission that will propose ways to make lawyers and the legal system more available for poor individuals in the District of Columbia;

Whereas Annice M. Wagner served as President of the Conference of Chief Justices, an organization of Chief Justices and Chief Judges of the highest court of each of the 50 States, the District of Columbia, and the territories;

Whereas Annice M. Wagner served as Chairperson of the Board of Directors of the National Center for State Courts;

Whereas the Honorable Annice M. Wagner commands wide respect within the legal profession nationally, having been selected to serve as one of 11 members of the American Bar Association's Section on Dispute Resolution's Drafting Committee on the Uniform Mediation Act, which collaborated with the National Conference of Commissioners on Uniform State Laws in promulgating the Uniform Mediation Act, which, in 2001, was approved and recommended for enactment in all of the States, to foster prompt, economical, and amicable resolution of disputes through mediation processes which promote public confidence and uniformity across state lines;

Whereas, since 1979, Annice M. Wagner has been involved with the United Planning Organization, which was established in 1962 to conduct initiatives designed to provide human services in the District of Columbia

and she has served as Interim President of the Organization's Board of Trustees;

Whereas, since 1986, Annice M. Wagner has participated as a member of a teaching team for the Trial Advocacy Workshop at Harvard Law School;

Whereas Annice M. Wagner, Chief Judge of the District of Columbia Court of Appeals, was born in the District of Columbia and attended District of Columbia Public Schools and received her Bachelor's and law degrees from Wayne State University in Detroit, Michigan; and

Whereas Annice M. Wagner's dedication to public service and the citizens of the District of Columbia has contributed to the improvement of the judicial system, increased equal access to justice, and advanced public confidence in the court system: Now, therefore, be it

Resolved, That the Senate commends the Honorable Annice M. Wagner for her commitment and dedication to public service, the judicial system, equal access to justice, and the community.

Ms. COLLINS. Mr. President, today I am submitting a Senate resolution to commend Chief Judge Annice M. Wagner of the District of Columbia Court of Appeals for more than 32 years of public service. As the Chairman of the Committee on Homeland Security and Governmental Affairs, which has oversight jurisdiction of the District of Columbia courts, I believe that it is important to recognize the contributions of Chief Judge Wagner who will be retiring this year. As chief judge of the D.C. Court of Appeals, she has worked closely with the Committee on Homeland Security and Governmental Affairs on various issues related to the D.C. courts and the justice system in the District.

Chief Judge Wagner entered Federal Government service in 1973 as the first woman to be appointed General Counsel of the National Capital Housing Authority, then a Federal agency. Subsequently, she served as People's Counsel for the District of Columbia, an office created by Congress to represent the interests of utility consumers before the District of Columbia Public Service Commission and the District of Columbia Court of Appeals.

Chief Judge Wagner was twice confirmed by the Senate. First, in 1977, when she was nominated by President Jimmy Carter to serve as an Associate Judge of the Superior Court for the District of Columbia and again when she was nominated by President George H. W. Bush, in 1990, to serve as an Associate Judge of the D.C. Court of Appeals. She was later appointed, in 1994, to serve as chief judge. During her 28 years of service in the D.C. courts, she served in every division of the D.C. Superior Court, and served for two years as presiding judge of the Probate and Tax divisions. She also served on various commissions and committees, including serving as chairperson of the Committee on Selection and Tenure of Hearing Commissioners, Chair of the Joint Committee on Judicial Administration in the District of Columbia, and as a member of the Superior Court Rules Committee and the Sentencing Guidelines Commission.