wireless network technology program, and for other purposes.

S. 308

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 308, a bill to prohibit occupation in United States military forces in Iraq without prior authorization by Congress.

S. RES. 22

At the request of Mr. LEAHY, his name was added as a cosponsor of S. Res. 22, a resolution reaffirming the constitutionality of statutory protections accorded sealed domestic mail, and for other purposes.

AMENDMENT NO. 14

At the request of Mr. DE MINT, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of amendment No. 14 proposed to S. 1, a bill to provide greater transparency in the legislative process.

AMENDMENT NO. 20

At the request of Mr. BENNETT, the names of the Senator from Tennessee (Mr. COOKER), the Senator from Tennessee (Mr. LEAHY), the Senator from Iowa (Mr. GRASSLEY) and the Senator from North Carolina (Mrs. DOLE) were added as cosponsors of amendment No. 20 proposed to S. 1, a bill to provide greater transparency in the legislative process.

AMENDMENT NO. 51

At the request of Mr. COBURN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 51 proposed to S. 1, a bill to provide greater transparency in the legislative process.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA (for himself, Mr. INOUYE, Mr. DORGAN, Ms. CANTWELL, Mr. COLEMAN, Mr. STEVENS, Ms. MURKOWSKI, Mr. SMITH, and Mr. DODD):

S. 310. A bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President, I rise today with the senti- Senator from Hawaii to introduce the Native Hawaiian Government Reorganization Act of 2007. This bill, which is of great importance to the people of Hawaii, establishes a process to extend the Federal policy of self-governance and self-determination to Hawai'i's indigenous people. The bill provides parity in Federal policies that empower our country's other indigenous people—American Indians and Alaska Natives—to participate in a government-to-government relationship with the United States. January 17, 2007, commemorates the 114th anniversary of Hawaii's beloved Queen Liliuokalani being deposed. Although this event may seem like a distant memory, it is a poignant event that expedited the decline of a proud and self-governing people. The overthrow facilitated Native Hawaiians being disenfranchised from not only their culture and land, but from their way of life. Native Hawaiians had to endure the forced imprisonment of their Queen and witness the deterioration and near eradication of their culture and tradition in their own homeland, at the hands of foreigners committed exclusively to propagating Western values and conventions.

While Congress has traditionally treated Native Hawaiians in a manner parallel to American Indians and Alas- ka Natives, the Federal policy of self-governance and self-determination has not been formally extended to Native Hawaiians. The bill itself does not extend Federal recognition—it authorizes the formation of a Native Hawaiian government and the creation of an interagency coordinating group composed of officials from Federal agencies who currently administer programs and services impacting Native Hawaiians.

The Native Hawaiian Government Reorganization Act of 2007 does three things: (1) It authorizes an office in the Department of the Interior to serve as a liaison between Hawaiians and the United States; (2) It forms an interagency coordinating group composed of officials from Federal agencies who currently administer programs and services impacting Native Hawaiians; and (3) It authorizes a process for the reorganization of the Native Hawaiian governing entity for the purposes of a federally recognized government-to-government relationship.

Once the Native Hawaiian governing entity is recognized, the bill establishes an inclusive, democratic negotiations process representing both Native Hawaiians and non-Native Hawaiians. Negotiations between the Native Hawaiian entity and the Federal and State government entities may address issues such as the transfer of lands, assets, and natural resources and jurisdiction over such lands, assets, and natural resources, as well as other longstanding issues resulting from the overthrow of the Kingdom. Any transfers of governmental authority or power will require implementing legislation at the State and Federal levels.

The Hawaii congressional delegation has devoted much time and careful consideration into crafting this legislation. When I first started this process in 1999, our congressional delegation created five working groups to assist with the drafting of this legislation. The working groups were composed of individuals from the Native Hawaiian community, the State of Hawaii, Federal Government, Indian country, Members of Congress, and experts in constitutional law. Collectively, more than 100 people from the Kingdom work together on the initial draft of this legislation. The meetings held with the Native Hawaiian community were open to the public and a number of individuals who had differing views attended the meetings to provide their alternative views on the legislation.

In August 2000, the Senate Committee on Indian Affairs and the House Committee on Resources held joint field hearings on the legislation in Hawaii for 5 days. While the bill passed the U.S. House of Representatives in the 106th Congress, the Senate failed to take action. The bill was subsequently considered by the 107th, 108th, and 109th Congresses. In each Congress, the bill has been favorably reported by the Senate Committee on Indian Affairs and its companion measure has been favorably reported by the House Committee on Resources, as the 106th through the 108th Congress.

Most recently in the 109th Congress, clarifications were made to the bill. I want to inform my colleagues to the fact that this bill is identical to legislative language negotiated between Senator INOUYE and myself, and officials from the Department of Justice, Office of Management and Budget, and the White House. The language satisfactorily addresses concerns expressed in July 2005 by the Bush administration regarding the impact of the United States in land claims, the impact of the bill on military readiness, gaming, and civil and criminal jurisdiction in Hawaii.

The bill does not infringe upon the rights and sovereignty of the United States as it relates to land claims, as the author of the Apology Resolution, P.L. 103–150, as well as the Native Hawaiian Government Reorganization Act, I have always maintained that this legislation is not intended to serve as a settlement nor as a cause of action for any claims. The negotiated language makes clear that any grievances regarding historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii are to be addressed in the negotiations process between the Native Hawaiian governing entity and Federal and State governments.

S. 310 was favorably reported by the House Committee on Homeland Security and Governmental Affairs, as well as the incoming Chairman on the Subcommittee on Readiness and Management of the Senate Committee on Armed Services, military readiness for our Armed Forces is of great importance to me. Due to concerns raised by the Department of Defense to the consultation requirements expected to be facilitated by the Office of Native Hawaiian Relations in the Department of the Interior and the Native Hawaiian Governmental Affairs, as well as the incoming Chairman on the Subcommittee on Readiness and Management of the Senate Committee on Armed Services, military readiness for our Armed Forces is of great importance to me. Due to concerns raised by the Department of Defense to the consultation requirements expected to be facilitated by the Office of Native Hawaiian Relations in the Department of the Interior and the Native Hawaiian Governmental Affairs, as well as the incoming Chairman on the Subcommittee on Readiness and Management of the Senate Committee on Armed Services, military readiness for our Armed Forces is of great importance to me.
claimed inherent authority or under the authority of any Federal laws or regulations promulgated by the Secretary of the Interior or the National Indian Gaming Commission. The bill also makes clear that the prohibition applies to any efforts to establish gaming by Native Hawaiians and the Native Hawaiian governing entity in Hawai'i and in any other State or Territory. This language only applies to efforts to establish gaming operations as a matter of inherent authority as indigenous peoples or under federal laws pertaining to gaming by native peoples.

The bill makes clear that civil and criminal jurisdiction currently held by the Federal and State governments will remain with the Federal and State governments unless otherwise negotiated and implementing legislation is enacted.

I have described the clarifications that have been made so my colleagues know negotiations with the administration have been successful. This language has been publicly available since September 2005 and has been widely distributed. Although such clarifications have been made, I am proud that the bill remains true to its intent and purpose—to clarify the existing legal and political relationship between Hawaii’s indigenous people, Native Hawaiians and the United States.

Along with our efforts to work with the Bush administration, during the past 4 years, we have worked closely with Hawaii’s first Republican governor in 40 years, Governor Linda Lingle to enact this legislation. We have also worked closely with the Hawaii State legislature which has passed three resolutions unanimously in support of federal recognition for Native Hawaiians. I am pleased to announce today that I am again joined by members of the House of Representatives of the United States to introduce this important measure. I mention this, to underscore the fact that this is a bipartisan legislation.

In addition to its widespread support by both Native Hawaiians and non-Native Hawaiians in Hawaii, in resolutions adopted by the oldest and largest national Indian organization, the National Congress of American Indians, and the largest organization representing the Native people of Alaska, the Alaska Federation of Natives, the members of both groups have consistently expressed their strong support for enactment of a bill to provide for recognition by the United States of a Native Hawaiian governing entity. Organizations such as the American Bar Association, Japanese American Citizen League, and the National Indian Education Association have also passed resolutions in support of federal recognition for Hawaii’s indigenous peoples.

Today I provide my colleagues with a framework to understand the need for this legislation by briefly reviewing (1) Hawaii’s past, ancient Hawaiian society prior to Western contact, (2) Hawaii’s present, the far reaching consequences of the overthrow, and (3) Hawaii’s future.

Hawaii was originally settled by Polynesian voyagers arriving as early as 300 A.D. 1200 years before Europe’s great explorers Magellan and Columbus. The Hawaiians braved immense distances guided by their extensive knowledge of navigation and understanding of the environment. Isolation followed the era of long voyages, enabling Native Hawaiians to develop distinct political, economic, and social structures which were mutually supportive. As stewards of the land and sea, Native Hawaiians were intimately linked to the environment and they developed innovative methods of agriculture, aquaculture, navigation and irrigation.

With an influx of foreigners into Hawaii, Native Hawaiian populations plummeted due to death from common Western diseases. Those that survived witnessed foreign interest and involvement in their government grow until 1900 when the 8th Queen of England was followed by American citizens to abdicate her right to the throne. This devastated the Native Hawaiian people, forever tainting the waters of their identity and tainting the very fabric of their society. For some this injustice, this wound has never healed, manifesting itself in a sense of inferiority and hopelessness leaving many Native Hawaiians at the lowest levels of achievement by all social and economic measures.

Mr. President, 14 years ago the United States enacted the Apology Resolution, 103-150, which acknowledged the 100th anniversary of the overthrow of the Kingdom of Hawaii in which the United States offered an apology to Native Hawaiians and declared its policy to support reconciliation efforts. This is a landmark declaration for it recognizes not only are Native Hawaiians the indigenous people of Hawaii, but the urgent need for the U.S. to actively engage in reconciliation efforts. This acknowledgment played a crucial role in initiating a healing process and although progress has been made, the path ahead is uncertain.

Frustration has led to anger and fostered in the hearts of Hawaii’s younger generations, with each child that is taught about this period of Hawaiian history, a sense of loss is relived. It is a burden that Native Hawaiians since the overthrow continue to carry, to know that they were violated in their own homelands and their governance was ripped away unjustly. Despite the perceived harm, it is the generation of my grandchildren that is growing impatient and frustrated with the lack of progress being made. Influenced by a deep sadness and growing intolerance, an active minority within this generation seeks independence from the United States.

It is for this generation that I work to enact this bill so that there is the structured process to deal with these emotional issues. It is important that discussions are held and that there is a framework to guide appropriate action. For Hawaii is the homeland of the Native Hawaiian people.

A lack of action by the U.S. will only incite and fuel us down a path to a divided Hawaii. A Hawaii where lines and boundaries are drawn and unity severed. However, the legislation I introduce today seeks to build upon the foundation of reconciliation. It provides a structured process to bring together the people of Hawaii, along a path of healing to a Hawaii where its indigenous people are respected and culture is embraced.

Respecting the rights of America’s first people—American Indians, Alaska Natives, and Native Hawaiians is not un-American. Through enactment of this legislation, we have the opportunity to demonstrate that our country does not just preach its ideals, but lives according to its founding principles. That the United States will admit when it has trespassed against a people and remain resolve to make amends. We demonstrate our character to ourselves and to the world by respecting the rights of our country’s indigenous people. As it has for America’s other indigenous peoples, I believe the United States must fulfill its responsibility to Native Hawaiians.

I am proud of the fact that this bill respects the rights of Hawaii’s indigenous peoples through a process that is consistent with Federal law, and it provides the structured process for the people of Hawaii to address the long-standing issues which have plagued both Native Hawaiians and non-Native Hawaiians since the overthrow of the Kingdom of Hawaii. We have an established record of the United States’ commitment to the reconciliation with Native Hawaiians. This legislation is another step building upon that foundation and honoring that commitment.

I ask my colleagues to join me in enactment of this legislation which is of great importance to all the people of Hawaii.

Mr. President, I ask unanimous consent that the text of this measure be printed in the RECORD.

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

S. 310

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Native Hawaiian Government Reorganization Act of 2007”.

SEC. 2. FINDINGS.

Congress finds that—

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

(2) Native Hawaiians, the native people of the Hawaiian archipelago, which is part of the United States, are indigenous, native people of the United States;
(3) the United States has a special political and legal relationship to promote the welfare of the native people of the United States, including Native Hawaiians;
(4) Congress, recognizing the political status of the United States, Congress exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States—
(A) recognized the sovereignty of the Kingdom of Hawaii;
(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and
(C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;
(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 200,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;
(6) by setting aside 200,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii;
(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and about 14,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;
(8) (a) in 1859, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the “ceded lands trust”), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians;
(B) the public trust consists of lands, including ceded lands, natural resources, and the revenues derived from the lands; and
(C) the assets of this public trust have never been completely inventoried or segregated;
(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and develop native communities throughout the State;
(10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the distinct and economically self-sufficient culture of Native Hawaiians;
(11) Native Hawaiians continue to maintain distinct native areas in Hawaii;
(12) on November 23, 1963, Public Law 103–150 (107 Stat. 1510) (commonly known as the “Apology Resolution”) was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the actions of the United States in the overthrow of the Kingdom of Hawaii;
(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred without the participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States or the permanent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;
(14) the Apology Resolution expresses the commitment of Congress and the President—
(A) to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii;
(B) to condone events between the United States and Native Hawaiians; and
(C) to consult with Native Hawaiians on the reconciliation process as called for in the Apology Resolution;
(15) despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a single distinct native community through cultural, social, and political institutions established to express their rights as native people to self-determination, self-governance, and economic self-sufficiency;
(16) Native Hawaiians have also given expression to their rights as native people to self-determination, self-government, and economic self-sufficiency—
(A) through the provision of governmental services to Native Hawaiians, including the provision of—
(i) health care services;
(ii) educational programs;
(iii) employment and training programs;
(iv) economic development assistance programs;
(v) children’s services;
(vi) conservation programs;
(vii) fish and wildlife protection;
(viii) agriculture programs;
(ix) language immersion programs;
(x) language immersion schools from kindergarten through high school;
(xi) college degree programs in native language instruction; and
(xii) traditional justice programs, and
(B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;
(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and traditional fishing sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;
(18) the Native Hawaiian wish to preserve, develop, and transmit to future generations Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control and manage their own lands, including ceded lands, and to exercise their self-determination over their own affairs;
(19) this Act provides a process within the framework of the Native Hawaiian homesteads and farms for Native Hawaiians to exercise their inherent rights as a distinct, indigenous, native community to reorganize a single Native Hawaiian governing entity for the purposes of giving expression to their rights as native people to self-determination and self-governance;
(20) Congress—
(A) has declared that the United States has a special political and legal relationship for the welfare of the native peoples of the United States, including Native Hawaiians;
(B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf; and
(C) has delegated broad authority to the State of Hawaii to administer some of the United States’ responsibilities as they relate to the Native Hawaiian people and their lands;
(21) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, “An Act to provide for the admission of the Hawaiian State (or the United Nation), approved March 18, 1959 (Public Law 86–3; 73 Stat. 4), by—
(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians; and
(B) transferring the United States’ responsibility for the administration of the Hawaiian Islands to the United States, retaining the exclusive right of the United States to consent to any actions affecting the lands included in the trust and any amendments to the Act; and
(22) the United States has continually recognized and reaffirmed that—
(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;
(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;
(C) the United States extends services to Native Hawaiians because of their unique status as the indigenous group of a one-sovereign nation with whom the United States has a special political and legal relationship; and
(D) the special relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arose out of their status as aboriginal, indigenous, native people of the United States;
(23) the State of Hawaii supports the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003, and March 1, 2005.
SEC. 3. DEFINITIONS.
In this Act:
(1) ABORIGINAL, INDIAN, NATIVE PEOPLE.—The term “aboriginal, indigenous, native people” means a Native Hawaiian who has at least partial bloodline or lineage from a person who was a member of a tribe) because of the status of the members of the Indian tribe as Indians.
(B) INCLUSIONS.—The term ‘‘Indian program or service’’ includes a program or service provided by the Bureau of Indian Affairs, the Indian Health Service, or any other Federal agency or component of the Department of Defense.

(7) 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. 450c).

(8) INDIGENOUS, NATIVE PEOPLE.—The term ‘‘indigenous, native people’’ means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(9) INTERAGENCY COORDINATING GROUP.—The term ‘‘Interagency Coordinating Group’’ means the Native Hawaiian Interagency Coordinating Group established under section 6.

(10) NATIVE HAWAIIAN.—

(A) IN GENERAL.—Subject to subparagraph (B), for the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the special political and legal relationship between the United States and the Native Hawaiian governing entity, the term ‘‘Native Hawaiian’’ means—

(i) an individual who is 1 of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(I) resided in the islands that now comprise the State of Hawaii on or before January 1, 1898; and

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

(ii) an individual who is 1 of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42); a direct lineal descendant of that individual.

(B) NO EFFECT ON OTHER DEFINITIONS.—Nothing in this paragraph affects the definition of the term ‘‘Hawaiian’’ under any other Federal or State law (including a regulation).

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

(12) NATIVE HAWAIIAN PROGRAM OR SERVICE.—The term ‘‘Native Hawaiian program or service’’ means any program or service provided by Native Hawaiians because of their status as Native Hawaiians.

(13) OFFICE.—The term ‘‘Office’’ means the United States Office for Native Hawaiian Relations established by section 5(c).

(14) SECRETARY.—The term ‘‘Secretary’’ means the Secretary of the Interior.

(15) SPECIAL, POLITICAL AND LEGAL RELATIONSHIP.—The term ‘‘special political and legal relationship’’ shall refer, except where differences are specifically indicated elsewhere in the Act, to the type of and nature of the relationship between the United States and the Native Hawaiian governing entity, the term ‘‘Native Hawaiian in section 3(10).

SEC. 4. UNITED STATES POLICY AND PURPOSE.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct, indigenous, native people with whom the United States has a special political and legal relationship;

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation affecting the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled ‘‘An Act to provide for the admission of the State of Hawaii into the Union’’ approved March 18, 1959 (Public Law 86-3, 73 Stat. 4); and

(C) more than 190 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians who are a direct lineal descendant of that individual.

(5) the right to self-determination and self-governance;

(6) the right to reorganization of a Native Hawaiian governing entity; and

(7) the right to become economically self-sufficient; and

(8) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

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

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

(a) ESTABLISHMENT.—There is established within the Department of the Interior, the United States Office for Native Hawaiian Relations.

(b) DUTIES.—The Office shall—

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

(2) upon the reaffirmation of the special political and legal relationship between the single Native Hawaiian governing entity and the United States, effectuate and coordinate the special political and legal relationship between the single Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies; and

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

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

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

(c) APPLICABILITY TO DEPARTMENT OF DEFENSE.—The section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

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

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

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely affect Native Hawaiian resources, rights, or lands; and

(2) the Office.

(c) LEAD AGENCY.—(1) In general.—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.

(2) MEETING.—The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) DUTIES.—The Interagency Coordinating Group shall—

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) consult with the Native Hawaiian governing entity, through the Secretary, the United States Office for Native Hawaiian Relations referred to in section 6(d)(1), but the consultation obligation established in this provision shall apply only after the satisfaction of all of the conditions referred to in section 7(c)(6); and

(3) ensure the participation of each Federal agency in the development of the report to Congress authorized in section 5(b)(5).

(e) APPLICABILITY TO DEPARTMENT OF DEFENSE.—This section shall have no applicability to the Department of Defense or to any agency or component of the Department of Defense, but the Secretary of Defense may designate 1 or more officials as liaison to the Interagency Coordinating Group.

SEC. 7. PROCESS FOR THE REORGANIZATION OF THE SINGLE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE SPECIAL POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.

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

(b) CERTIFICATION.—(1) IN GENERAL.—There is authorized to be established a Commission to be composed of 9 members for the purposes of—

(a) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the single Native Hawaiian governing entity; and

(b) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in section 3(10).

(2) MEMBERSHIP.—

(A) APPOINTMENT.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subparagraph (B).

(B) CONSIDERATION.—In making an appointment under clause (i), the Secretary may take into consideration a recommendation made by any Native Hawaiian organization.

(c) ADMINISTRATION.—Any member of the Commission shall demonstrate, as determined by the Secretary—


(i) not less than 10 years of experience in the study and determination of Native Hawaiian genealogy; and
(ii) an ability to read and translate into English documents written in the Hawaiian language.
(C) VACANCIES.—A vacancy on the Commission shall—
(i) not affect the powers of the Commission; and
(ii) shall be filled in the same manner as the original appointment.
(3) REPRESENTATION.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies and organizations listed on the roll published under this subsection for the performance of services for the Commission.
(4) DUTIES.—The Commission shall—
(A) prepare and maintain a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and
(B) certify that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).
(5) STAFF.—
(A) IN GENERAL.—The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.
(B) COMPENSATION.—
(i) IN GENERAL.—Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel specified in subparagraph (A) at rates equivalent to levels V of the Executive Schedule under chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.
(ii) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.
(6) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—
(A) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.
(B) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.
(7) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.
(8) EXPENSES.—The Secretary shall disallow the Commission upon the reaffirmation of the special political and legal relationship between the Native Hawaiian governing entity and the United States.
(c) PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—
(1) ROLL.—
(A) DEFINITIONS.—The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity, as defined in section 3(10) by the Commission.
(B) FORMATION OF ROLL.—Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition of Native Hawaiian in section 3(10).
(C) DOCUMENTATION.—The Commission shall—
(i) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 3(10);
(ii) establish a mechanism for the submission of documentation; and
(iii) publish information related to clauses (i) and (ii) in the Federal Register.
(D) CONSULTING DURING DETERMINATIONS.—The Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendancy.
(E) CERTIFICATION AND SUBMITTAL OF ROLL TO SECRETARY.—
(A) IN GENERAL.—The Commission shall—
(i) submit the roll containing the names of the adult members of the Native Hawaiian community met to the definition of Native Hawaiian in section 3(10) to the Secretary within two years from the date on which the Commission is fully composed; and
(ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 3(10).
(B) PUBLICATION.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 3(10), the Secretary shall publish the roll in the Federal Register.
(C) APPEAL.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 3(10) and to be 18 years of age or older.
(D) PUBLICATION; UPDATE.—The Secretary shall—
(i) publish the roll regardless of whether appeals are pending;
(ii) update the roll and the publication of the roll on the final disposition of any appeal; and
(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 3(10) after the initial publication of the roll or after any subsequent publications of the roll.
(1) FAILURE TO ACT.—If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.
(2) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall be the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.
(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNMENT COUNCIL.—
(A) ORGANIZATION.—The adult members of the Native Hawaiian community listed on the roll published under this section may—
(i) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council; and
(ii) determine the structure of the Council.
(B) POWERS.—
(I) IN GENERAL.—The Council—
(i) may represent those listed on the roll published under this section in the implementation of this Act; and
(ii) shall have the powers and authorities given to the Council under this Act.
(ii) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (i).
(3) ACTIVITIES.—
(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to—
(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;
(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;
(cc) the proposed civil rights and protections of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and
(dd) other issues determined appropriate by the Council.
(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.
(III) DISTRIBUTION.—The Council may distribute copies of the adult members of the Native Hawaiian community listed on the roll published under this subsection—
(aa) a copy of the proposed organic governing documents, as drafted by the Council; and
(bb) a brief impartial description of the proposed organic governing documents;
(ELECTIONS.—The Council may hold elections for the purpose of ratifying the proposed organic governing documents, and on certification of the organic governing documents by the Secretary, in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).
(4) CERTIFICATIONS.—
(A) IN GENERAL.—Within the context of the future negotiations to be conducted under the authority of section 8(b)(1), and the subsequent actions by the Congress and the Commission to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—
(i) establish the criteria for citizenship in the Native Hawaiian governing entity;
(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;
(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;
(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 8(b)(1) and the enactment by the State of Hawaii of the Native Hawaiian governing entity’s organic governing documents to implement the agreements of the 3 governments;
(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;
(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity;
(vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the independent native people of the United States; provided that the provisions of Public Law 106-454, 25 U.S.C. 479a, shall not apply.

(b) Resubmission in Case of Noncompliance with the Requirements of Subparagraph (a).—

(1) Resubmission by the Secretary.—If the Secretary determines that the organic governing documents of the Native Hawaiian governing entity, including any required modifications to the organic governing documents, or any part of the organic governing documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents to the Council, along with a justification for each of the Secretary’s findings as to why the provisions are not in full compliance.

(2) Amendment and Resubmission of Organic Governing Documents.—If the organic governing documents are resubmitted to the Council by the Secretary under clause (1), the Council

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

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

The certifications required under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

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

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

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

(a) Reaffirmation.—Notwithstanding the delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous native people of Hawaii contained in the and approved for the admission of the State of Hawaii into the Union’’ approved March 18, 1959 (Public Law 86-3, 73 Stat. 135), hereby reaffirmed.

(b) Negotiations.—

(1) In General.—Upon the reaffirmation of the special political and legal relationship between the United States and the Special Political and Legal Relationship with the Hawaiian Islands, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity to negotiate an agreement addressing such matters as—

(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;

(B) the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use;

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii;

(E) any residual responsibilities of the United States and the State of Hawaii; and

(F) the recognition of all historical wrongs committed against Native Hawaiians by the United States or by the State of Hawaii.

(2) Amendments to Existing Laws.—Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii, and the Native Hawaiian governing entity, the parties are authorized to submit—

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

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

(3) Governmental Authority and Power.—Any governmental authority or power to be exercised by the Native Hawaiian governing entity which is currently exercised by the State or Federal Governments shall be exercised by the Native Hawaiian governing entity only as agreed to in negotiations pursuant to section 8(b)(1) of this Act and beginning in the date on which legislation to implement such agreement has been enacted by the United States Congress, when applicable, and by the State of Hawaii, when applicable. This includes any provisions of the Hawaii State Constitution in accordance with the Hawaii Revised Statutes.

(c) Claims.—

(1) DISCLAIMERS.—Nothing in this Act—

(A) creates a cause of action against the United States or any other entity or person;

(B) alters existing law, including existing case law, regarding obligations on the part of the United States or the State of Hawaii with regard to Native Hawaiians or any Native Hawaiian entity;

(C) creates obligations that did not exist in any source of Federal law prior to the date of enactment of this Act; or

(D) establishes authority for the recognition of claims against the United States over and above or in addition to the single Native Hawaiian Governing Entity.

(2) Federal sovereign immunity.—

(A) Specific Purpose.—Nothing in this Act is intended to create or allow to be maintained in any court any potential breach-of-contract, land use, and natural resource-management claims, or similar types of claims brought by or on behalf of Native Hawaiians or the Native Hawaiian governing entity for equitable, monetary, or Administrative Procedure Act-based relief against the United States or the State of Hawaii, whether or not such claims specifically assert an alleged breach of trust, call for an accounting, seek declaratory relief, or seek the recovery of or compensation for lands once held by Native Hawaiians or any Native Hawaiian governing entity. Nor shall any preexisting waiver of sovereign immunity (including, but not limited to, any such waiver of any preexisting nature and claims arising out of and the same nucleus of operative facts as could give rise to claims of the specific types referred to in section 8(c)(2)(A), be rendered nonjusticiable in suits brought by plaintiffs other than the Federal Government.

(3) State Sovereign Immunity.—

(A) Notwithstanding any other provision of Federal law, the State of Hawaii retains its sovereign immunity, unless waived in accord with State law, to any claim, established under any provision of law, regarding Native Hawaiians, that existed prior to the enactment of this Act.

(B) Nothing in this Act shall be construed to constitute an override pursuit to section 5 of the Fourteenth Amendment State sovereign immunity held under the Eleventh Amendment.

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) Indian Gaming Regulatory Act.—

(1) The Native Hawaiian governing entity and Native Hawaiians may not conduct gaming activities as a matter of claimed inherent authority or under the authority of any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) or under any regulations therunder promulgated by the Secretary or the National Indian Gaming Commission.

(2) The foregoing prohibition in section 9(a)(1) shall not apply to the use of Indian Gaming Regulatory Act and inherent authority to game apply regardless of whether gaming by Native Hawaiians or the Native Hawaiian governing entity would be within the State of Hawaii or within any other State or Territory of the United States.

(b) Taking Land Into Trust.—Notwithstanding any other provision of law, but not limited to part 151 of title 25, Code of Federal Regulations, the Secretary
shall not take land into trust on behalf of individuals or groups claiming to be Native Hawaiian or on behalf of the native Hawaiian governing entity.

(c) REAL PROPERTY TRANSFERS.—The Indian Trade and Intercourse Act (25 U.S.C. 177), does not, has never, and will not apply after enactment to lands or land transfers present in Hawaii. If the intent of this section is not met herein, a court were to construe the Trade and Intercourse Act to apply to lands or land transfers present in Hawaii before the date of enactment of this Act, then any transfer of land or natural resources located within the State of Hawaii prior to the date of enactment of this Act, by or on behalf of the Native Hawaiian people, or individual Native Hawaiians, shall be deemed to have been made in accordance with the Indian Trade and Intercourse Act and any other provision of Federal law that specifically applies to transfers of land or natural resources from, by, or on behalf of an Indian tribe, Native Hawaiians, or Native Hawaiian entities.

(d) SINGLE GOVERNING ENTITY.—This Act will result in the recognition of the single Native Hawaiian governing entity. Additional Native Hawaiian groups shall not be eligible for acknowledgment pursuant to the Federal Acknowledgment Process set forth in part 83 of title 25 of the Code of Federal Regulations or any other administrative recognition or process.

(e) JURISDICTION.—Nothing in this Act alters tribal jurisdiction of the United States or the State of Hawaii over lands and persons within the State of Hawaii. The status quo of Federal and State jurisdiction can change only as a result of further legislation, if any, enacted after the conclusion, in relevant part, of the negotiation process established in section 8(b).

(f) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 7(c)(6), because of the eligibility of the Native Hawaiian governing entity and its citizens for Native Hawaiian programs and services in accordance with subsection (g), nothing in this Act provides an authorization for eligibility to participate in any Indian program or service to any individual or entity not otherwise eligible for the program or service under applicable Federal law.

(g) NATIVE HAWAIIAN PROGRAMS AND SERVICES.—The Native Hawaiian governing entity and its citizens shall be eligible for Native Hawaiian programs and services to the extent and in the manner provided by other applicable Federal law.

SEC. 10. SEVERABILITY.

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

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Mr. INOUYE. Mr. President, I am pleased to join my colleague, Senator AKAKA, as a cosponsor of the Native Hawaiian Government Reorganization Act of 2007.

Delivered to the 109th Congress, the Administration expressed concerns with this legislation that stem from its experience with Indian tribes. The history of the Native Hawaiians and their treatment by the United States is similar to that of Indian tribes and Alaska Natives. It is my hope to commend the Administration for devoting staff to work with us to achieve consensus on mutually agreeable language. I am confident that this measure not only addresses the Administration’s concerns but also the concerns of some of our colleagues.

Having served on the Indian Affairs Committee for the past 28 years, I know that most of our colleagues are more familiar with the circumstances in Indian country, and naturally, they bring their experience with Indian country to bear in considering this measure, which has been pending in the Senate for the past eight years.

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

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

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

The Native Hawaiian programs do not draw upon funding that is appropriated for American Indians or Alaska Natives. The Native Hawaiian laws, as well as those of the Hawaiian Homes Commission Act, do not apply.

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

Therefore, I am pleased to serve as the cosponsor of the Native Hawaiian Government Reorganization Act of 2007 (H.R. 3222), and the Native Hawaiian Education Act of 2007 (H.R. 3223), to provide the framework for Native Hawaiians to manage their own affairs and to take control of their own resources.

The bill provides a process for the reorganization of the Native Hawaiian government to be consistent with the Hawaiian Homes Commission Act and the Hawaiian Homes Commission Act of 1920, as amended.

The Native Hawaiian government is not an Indian tribe, the body of Federal Indian law that would otherwise customarily apply when their government was overthrown on January 17, 1893.

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

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

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

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

The rationale is that concerns which are premised on the manner in which Federal Indian law provides for the respective governmental authorities of the State governments and Indian tribal governments simply do not apply in Hawaii.

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

By Mr. WARNER (for himself, Mr. WEBB, Mr. GRASSLEY, Mr. CORNYN, Mr. THUNE, and Mr. LEVIN).
Congressional Record — Senate

January 17, 2007

a technology based economy and those who are not.

This legislation will establish a grant program for these institutions of higher education to bring increased access to computers, technology, and the Internet to their student populations. Specifically, this legislation authorizes $250 million in Federal grants for Minority Serving Institutions to acquire equipment, instrumentation, networking capability, hardware and software, digital network technology and wireless infrastructure to develop and provide educational services. In addition, the grants could be used for such activities as campus wiring, equipment upgrades, and technology training. Finally, Minority Serving Institutions could use these funds to offer their students universal access to campus networks, increase connectivity rates, or make infrastructure improvements.

I am proud to say that Virginia is home of two historically Black Colleges and Universities, HBCUs—Norfolk State University, St. Paul’s College, Virginia Union University, Hampton University, and Virginia State University—that are eligible for these technology grants. There are over 200 Hispanic Serving Institutions, over 100 Historically Black Colleges and Universities and over 30 Tribal Colleges throughout the United States.

Again, in 2005, this bill passed in the Senate by unanimous consent. In 2003, this bill passed in the Senate with a roll call vote of 97-0. I am pleased to support this legislation, as I have done in the past, and I look forward to strengthening the technology provided to students at Minority Serving Institutions.

By Mr. KOHL, for himself, Mr. GRASSLEY, Mr. LEAHY, Mr. SCHUMER, and Mr. FEINGOLD:

S. 316. A bill to prohibit brand name pharmaceutical drug companies from compensating generic drug companies to delay the entry of a generic drug into the market; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Preserve Access to Affordable Generics Act. This legislation will stop one of the most egregious tactics used by the brand-name pharmaceutical industry to keep generics off the market, leaving consumers with unnecessary high drug prices.

The way it is done is simple—a drug company that holds a patent on a blockbuster brand-name drug, pays a generic drug maker off to delay the sale of a competing generic product that might dip into their profits. The brand name company profits so much by delaying competition that it can easily afford to pay off the generic company, leaving consumers the big losers who continue to pay unnecessarily high drug prices.

Last year, the Supreme Court refused to consider an appeal by the Federal Trade Commission to reinstate antitrust charges against a brand-name drugs maker. Since the recent court decisions allowing these backroom deals, there has been a sharp rise in the number of settlements in which brand-name companies pay off generic competitors to keep them off the market. In a report issued last year, the FTC found that more than two-thirds of the 10 settlement agreements made in 2006 included a pay-off from the brand in exchange for a promise by the generic company to delay entry into the market.

The decision by the Supreme Court is a blow to consumers who save billions of dollars on generics every year. When brand, name drugs lose patent rights, this opens the door for consumers, employers, third-party payers, and other purchasers to save billions—63 percent on average—by using generic versions of these drugs. A recent study released earlier this year by Pharmaceutical Care Management Association, showed that health plans and consumers could save $22 billion over the next 5 years by using the generic versions of 14 popular drugs that are scheduled to lose their patent protections before 2010.

Last year, I was successful in including an additional $10 million in the fiscal year 07 Agriculture Appropriations bill for the Food and Drug Administration’s Office of Generic Drugs, an effort to help reduce the growing backlog of generic drug applications. The FDA Office of Generic Drugs has reported a backlog of more than 800 generic drug applications with more applications for new generics being received than ever before.

But even approval by the FDA doesn’t always guarantee that consumers will have access to these affordable drugs. Brand-name pharmaceutical manufacturers have learned to circumvent the market competition and Patent Term Restoration Act, commonly referred to as Hatch-Waxman, using litigation and other means to extend the life of patents and keep generics from entering the market. Of the six approved first generics for LA popular brand-name drugs taken by seniors over the last year, only two have actually reached the market, while the others are being kept of the shelves by patent disputes.

We cannot profess to care about the high cost of prescription drugs while turning a blind eye to anticompetitive backroom deals between brand and generic drug companies. It’s time to stop these drug company pay-offs that only serve the companies involved and deny consumers to affordable generic drugs. I urge my colleagues to join me in this effort.

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

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

SEC. 3. UNLAWFUL COMPENSATION FOR DELAY.

(a) FINDINGS. The Congress finds that—

(1) prescription drugs make up 11 percent of the national health care spending but are 1 of the largest and fastest growing health care expenditures;

(2) 56 percent of all prescriptions dispensed in the United States are generic drugs, yet they account for only 13 percent of all expenditures;

(3) generic drugs, on average, cost 63 percent less than their brand-name counterparts;

(4) consumers and the health care system would benefit from free and open competition in the pharmaceutical market and the removal of obstacles to the introduction of generic drugs;

(5) full and free competition in the pharmaceutical industry, and the full enforcement of antitrust law to prevent anti-competitive practices in this industry, will lead to lower prices, greater innovation, and inure to the benefit of consumers;

(6) the Federal Trade Commission has determined that some brand name pharmaceutical manufacturers collude with generic drug manufacturers to delay the marketing of competing, low-cost, generic drugs;

(7) collusion by the brand name pharmaceutical manufacturers is contrary to free competition, to the interests of consumers, and to the principles underlying antitrust law;

(8) in 2005, 2 appellate court decisions reversed the Federal Trade Commission’s longstanding position, and upheld settlements that include pay-offs by brand name pharmaceutical manufacturers to generic manufacturers designed to keep generic competition off the market;

(9) in the 6 months following the March 2005 court decisions, the Federal Trade Commission found there were three settlement agreements in which the generic received compensation and agreed to a restriction on its ability to market the product;

(10) the FTC found that more than 9 of the approximately 10 settlement agreements made in 2006 include a pay-off from the brand in exchange for a promise by the generic company to delay entry into the market; and

(11) settlements which include pay-offs by brand name pharmaceutical manufacturers to generic manufacturers designed to keep generic competition off the market;

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

(1) to enhance competition in the pharmaceutical market by prohibiting anticompetitive agreements and collusion between brand name and generic drug manufacturers intended to keep generic drugs off the market;

(2) to support the purpose and intent of antitrust law by prohibiting anticompetitive agreements and collusion in the pharmaceutical industry; and

(3) to clarify the law to prohibit payments from brand name to generic drug manufacturers with the purpose to prevent or delay the entry of competition from generic drugs.

S. 316. PRESERVE ACCESS TO AFFORDABLE GENERICS ACT.

The Clayton Act (15 U.S.C. 12 et seq.) is amended—

(1) by redesigning section 25 as section 25A; and

(2) by inserting after section 27 the following:
SEC. 28. UNLAWFUL INTERFERENCE WITH GENERIC MARKETING.

(a) It shall be unlawful under this Act for any entity, with or without the knowledge of the NDA holder, to directly or indirectly be a party to any agreement resolving or settling a patent infringement claim which—

(1) an ANDA filer receives anything of value; and

(2) the ANDA filer agrees not to research, develop, manufacture, market, or sell the ANDA product for a period of time of which the value paid by the NDA holder to the ANDA filer is a part of the resolution or settlement of the patent infringement claim. In no event shall the resolution or settlement of the patent infringement claim include more than the right to market an ANDA product after the expiration of the patent that is the basis for the patent infringement claim.

(b) Nothing in this section shall prohibit a resolution or settlement of patent infringement claims in which the value paid by the NDA holder to the ANDA filer as part of the resolution or settlement of the patent infringement claim includes no more than the right of the ANDA filer to market a generic product for any period of time after the expiration of the patent that is the basis for the patent infringement claim.

(c) In this section—

(1) the term ‘agreement’ means anything that would constitute an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(2) The term ‘agreement resolving or settling a patent infringement claim’ includes, any agreement that is contingent upon, provides for a condition for, or is otherwise related to the resolution or settlement of the claim.

(3) The term ‘ANDA’ means an abbreviated new drug application, as defined under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(4) The term ‘ANDA filer’ means a party who has filed an ANDA with the Federal Drug Administration.

(5) The term ‘ANDA product’ means the product to be manufactured under the ANDA that is the subject of the patent infringement claim.

(6) The term ‘drug product’ means a finished dosage form (tablet, capsule, or solution) that contains a drug substance, generally, but not necessarily, in association with 1 or more other ingredients, as defined in section 314(b) of title 21, Code of Federal Regulations.

(7) The term ‘NDA’ means a new drug application, as defined under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

(8) The term ‘NDA holder’ means—

(A) the party that received FDA approval to market a drug product pursuant to an NDA;

(B) a party owning or controlling enforcement of the patent listed in the Approved Drug Product with Therapeutic Equivalence Evaluations (commonly known as the ‘FDA Orange Book’) in connection with the NDA; or

(C) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any of the entities described in subclauses (i) and (ii) (as to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensees, successors, and assigns of each of the entities described in subclauses (i) and (ii).

(9) The term ‘patent infringement’ means infringement of any patent ‘covered patent’ of which the value paid by the NDA holder to the ANDA filer as part of the resolution or settlement of the patent infringement claim includes no more than the right to market a generic product for any period of time after the expiration of the patent that is the basis for the patent infringement claim.

(a) NOTICE OF ALL AGREEMENTS.—Section 1122(c)(4) of the Prescription Drug Marketing Act (21 U.S.C. 335 note) is amended by—

(1) striking ‘‘the Commission the’’ and inserting ‘‘the Secretary, or the Secretary’s designee, the’’; and

(2) inserting before the period at the end the following: ‘‘; and (2) a description of the subject matter of any other agreement the parties enter into within 30 days of an entering into an agreement covered by subsection (a) or (b).’’

(b) CERTIFICATION OF AGREEMENTS.—Section 1122 of such Act is amended by adding at the end the following: ‘‘(d) CERTIFICATION.—The Chief Executive Officer or the company official responsible for negotiating any agreement required to be filed under subsection (a), (b), or (c) shall execute and file with the Assistant Attorney General and the Commission a certification as follows: ‘‘I declare under penalty of perjury that the following is true and correct: The materials filed with the Federal Trade Commission and the Department of Justice under section 1122 of subtitle B of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement referenced in this certification: (1) represent the complete, final, and exclusive agreement between the parties; (2) include any ancillary agreements that are contingent upon, provide for a condition of, or are otherwise related to, the referenced agreement; and (3) include written descriptions of any oral agreements, representations, commitments, or promises between the parties that are responsive to subsection (a) or (b) of such section 1122 and have not been reduced to writing.’’.’’

SEC. 5. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 506 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(5)(D)(1)(V)) is amended by inserting ‘‘section 28 of the Clayton Act or’’ after ‘‘the agreement has violated’’.

SEC. 6. STUDY BY THE FEDERAL TRADE COMMISSION.

(a) REQUIREMENT FOR A STUDY.—Not later than 180 days after the date of enactment of this Act and pursuant to its authority under section 5 of the Federal Trade Commission Act (15 U.S.C. 46(a)) and its jurisdiction to prevent unfair methods of competition, the Federal Trade Commission shall conduct a study regarding—

(1) the prevalence of agreements in patent infringement suits of the type described in section 28 of the Clayton Act, as added by this Act, during the last 5 years;

(2) the impact of such agreements on competition in the pharmaceutical market; and

(3) the prevalence in the pharmaceutical industry of other anticompetitive agreements among competitors or other practices that are contrary to the antitrust laws, and the impact of such agreements or practices on competition in the pharmaceutical market during the last 5 years.

(b) CONSULTATION.—In conducting the study required under this section, the Federal Trade Commission shall consult with the Antitrust Division of the Department of Justice regarding the Justice Department’s findings and recommendations regarding anticompetitive practices in the pharmaceutical market, including criminal antitrust investigations completed by the Justice Department with respect to generic manufacturers or conduct in the pharmaceutical market.

(c) REQUIREMENT FOR A REPORT.—Not later than 1 year after the date of enactment of this Act and pursuant to its authority under section 5 of the Federal Trade Commission Act, the Federal Trade Commission shall submit a report to the Judiciary Committees of Senate and House of Representa-

tives, and to the Department of Justice regarding the findings of the study conducted under subsection (a). This report shall contain the Federal Trade Commission’s recommendations as to whether any amendment to the antitrust laws should be enacted to correct any substantial lessening of competition found during the study.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Federal Trade Commission such sums as may be necessary to carry out the provisions of this Act.

Mr. LEAHY. Mr. President, I am pleased to join Senators Kohn, Feingold, Grassley and Brown in introducing the Preserve Access to Affordable Generics Act of 2007. This legislation is a continuation of a longstanding, bipartisan effort to provide consumers with more choices for medicines at lower costs. Access to affordable prescription medication is of vital importance to seniors, families, and consumers across the Nation who are struggling to keep up with the ever increasing costs of health care.

This legislation builds on the Drug Competition Act, which I authored in 2001 and which became law in 2003 in the Medicare Modernization Act. Recently, two Federal courts undermined the intent of this law; the legislation we introduce today will address that problem. The Preserve Access to Affordable Generics Act will result in lower prescription drug costs for all Americans by preventing a pernicious practice in which brand-name pharmaceutical companies pay other drug companies not to market generic drugs—which can be 80 percent less expensive than their brand-name counterparts—as part of private patent settlement agreements.

The Hatch-Waxman Act was intended to facilitate the entry of lower-cost generic drugs into the market, making medication more affordable, while protecting patent rights to foster innovation. It created a process, known as the Abbreviated New Drug Application, under which generic companies could file an application to manufacture and sell a generic drug which was the same chemical entity as the brand-name product. Under ANDA, an applicant can receive expedited approval from the FDA to market a generic product. An applicant using ANDA may certify that the manufacturer of its new drug will either not infringe on a previously patented drug on which it is based, or that the existing patent is invalid. After certifying an ANDA, the generic applicant must give notice to the patent-holder, at which point the patent-holder has 45 days to file a patent infringement action against the applicant.

More times than not, disputes over an ANDA are resolved through private settlements. Unfortunately, the
underpinnings of these private settlements are becoming more and more questionable; drug companies are abusing Hatch-Waxman provisions, and using settlement opportunities to limit consumer choices and keep consumer prices artificially high. The PTC has been a source of deals to secure they were not anticompetitive until two recent appellate court decisions limited its role.

Hatch-Waxman created a good framework for promoting innovation while speeding the market entry of affordable drugs. The trend of anticompetitive agreements between brand-name pharmaceutical companies and generic companies to delay entry into the market is a troubling abuse of that good law. Some drug firms have colluded to pad their profits by forcing consumers to pay higher prices than they would pay for lower-cost generics. Congress never intended for brand-name drug companies to be able to grease the palms of generic companies by paying them not to produce generic medicines.

Rarely do we have such a clear-cut opportunity as this to remove obvious impediments that prevent the marketplace from working as it should—to the benefit of consumers. Congress should seize the opportunity and enact legislation that plainly makes anticompetitive deals, such as those I have outlined, illegal.

The Preserve Access to Affordable Generics Act will accomplish this goal. I look forward to working with my colleagues on both sides of the aisle to pass this timely and needed legislation.

The Preserve Access to Affordable Generics Act will accomplish this goal. I look forward to working with my colleagues on both sides of the aisle to pass this timely and needed legislation.

By Mrs. FEINSTEIN (for herself and Mr. CARPER):
S. 317. A bill to amend the Clean Air Act to establish a program to regulate the emission of greenhouse gases from electric utilities; to the Committee on Environment and Public Works.

Mr. President, I am pleased to join with Senator CARPER to introduce the Electric Utility Cap and Trade Act.

Today, we are introducing the first of five bills to address the number one environmental issue facing this planet—global warming.

This bill establishes a national cap and trade system over the electricity sector. It will reduce emissions from this sector by 25 percent by 2020.

What distinguishes this bill is that it has the support of 6 major energy companies.

Together, these companies operate in 42 States and produce approximately 150,000 megawatts of energy. This is greater than 15 percent of the U.S. electricity market.

These companies include, first, Pacific Gas & Electric (PG&E) Corporation, which is the parent of Pacific Gas and Electric Company. PG&E is California’s largest utility and serves approximately 20 million customers. PG&E Corporation currently owns approximately 6,500 megawatts of generating capacity.

Second, Calpine, which operates in 20 States and Canada, generating 26,000 megawatts of energy.

Third, Florida Power & Light, which operates in 26 States, generating more than 30,000 megawatts.

Fourth, Entergy, which operates in Arkansas, Louisiana, Mississippi, and Texas, generating approximately 30,000 megawatts.

Fifth, Exelon, which operates in Illinois and Pennsylvania, generating 38,000 megawatts of energy.

Sixth, Public Service Enterprise Group, which is the largest provider of energy in New Jersey, generating approximately 15,000 megawatts.

These companies’ support is greatly appreciated, and I think it signals a new willingness in the energy industry to seriously tackle global warming.

This bill is just the beginning of a major program. Over the next weeks and months, we will also introduce a cap and trade bill for the industrial sector, which is the largest emitter of greenhouse gases.

This is an ambitious agenda, but I believe it is the right way to go if we are to slow global warming.

A great debate has raged in the halls of Congress, in academia, and in the field over the last decade.

At issue were three fundamental questions: First, is the earth warming? Second, if so, is the warming caused by human activity? And third, can it be stopped?

Over the past few years, a consensus has been forged. An overwhelming body of evidence has been gathered. And, an inescapable conclusion has been reached: The earth is warming. The warming is caused by human activity, namely the combustion of fossil fuels. It cannot be stopped, because carbon dioxide does not dissipate. It stays in the atmosphere for 30, 40, or 50 years or more.

When we pick up the newspaper each day we see the results. We read about ice sheets the size of small nations breaking off the ice shelves in the Arctic and Antarctic. We read about polar bears committing acts of cannibalism, something unknown in recent memory. We read about species disappearing, sea rising, coral reefs dying, and glaciers melting.

But, all this dire news does not mean we should throw up our hands and do nothing. If we act now, and if we act with purpose, the most serious consequences of the past two decades can be averted. Global warming can be contained to 1-2 degrees Fahrenheit.

But if we do not act, and temperatures spike by 5 degrees or more, the world around us will change forever. There’s no going back.

The question becomes what can we do? I’ve spent the last year trying to answer this question. And the conclusion I’ve reached is that there is no single answer, no silver bullet, no one thing to turn the tide. But rather, we need many answers in many different areas.

And more importantly, we need people of common purpose, working together, to find innovative solutions. And that’s why we’re here today.

As I was searching for answers, I picked up the phone and called PG&E Corporation’s CEO, Peter Darbee. I said, “Peter, would you help me out on Global Warming legislation?”

To his immense credit, Peter went back, studied the issue, and said: “Sure, Mr. President, something must be done.” And he’s been terrific. He’s helped at every step of the way.

It means so much to me that PG&E, Calpine, Florida Power and Light, and all the companies that comprise the Clean Energy Group’s Clean Air Policy Initiative have endorsed the legislation we are introducing today.

This is the most aggressive global warming bill that industry has supported to date. And I applaud the CEOs of these companies today for their courage and leadership in taking this step.

Here’s what the bill will do. The bill would establish a cap and trade program for the electricity sector, which is the single largest piece of the global warming puzzle, accounting for 33 percent of all U.S. emissions.

First, the bill would cap greenhouse gas emissions at 109,000 gigatons by 2016—16 percent reduction from anticipated levels of greenhouse gases from the electric sector.

In 2015, it would ratchet the cap down to 2001 levels—a 16 percent reduction from anticipated levels.

In 2016, the bill would reduce the cap further to 1 percent below 2001 levels. And, from 2017 to 2019 it would require additional annual 1 percent reductions.

By 2020, emissions would be reduced 23 percent below the year 2000 level.

And after that, emissions will be reduced even further—by an additional 1.5 percent a year and potentially more, if the EPA, based on scientific evidence, believes that more needs to be done to avert the most dire consequences of global warming.

That’s the cap.

The trade part of the bill gives companies flexibility to embrace new technologies, encourage innovation, and promote green practices—not just in this area, but across the economy.

As I said, this bill is only one part of the answer. One piece of the puzzle. Congress has a window of opportunity to act. If we act boldly and quickly, then perhaps we can make a difference.

But if we resort to the feuding which has characterized past Congresses, our world will be the poorer for it. I think there is but one choice.

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

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:
TITLE VII—GLOBAL CLIMATE CHANGE

SEC. 701. DEFINITIONS.

In this title:

(1) AFFECTED UNIT.—

(A) in general.—The term ‘affected unit’ means an electric generating facility that—

(i) has a nameplate capacity greater than 25 megawatts;

(ii) combusts greenhouse gas-emitting fuels or products;

(iii) generates electricity for sale.

(B) INCLUSIONS.—The term ‘affected unit’ includes—

(i) a cogeneration facility; and

(ii) a facility owned or operated by any instrumentality of—

(I) the Federal Government; or

(II) any State, local, or tribal government.

(2) AFFORESTATION.—The term ‘afforestation’ means the conversion to a forested condition of land that has been in a nonforested condition for at least 15 years.

(3) ALLOCATION.—The term ‘allocation’, with respect to an allowance, means the issuance of an allowance directly to covered units, at no cost, under this title.

(4) ALLOWANCE.—The term ‘allowance’ means an authorization under this title to emit a metric ton of carbon dioxide equivalent, as determined by the Administrator.

(5) CARBON DIOXIDE EQUIVALENT.—The term ‘carbon dioxide equivalent’, means, with respect to a greenhouse gas, the quantity of the greenhouse gas that makes the same contribution to global warming as 1 metric ton of carbon dioxide, as determined by the Administrator.

(6) COGENERATION FACILITY.—The term ‘cogeneration facility’ means a facility that—

(A) cogenerates steam and electricity; and

(B) supplies, on a net annual basis, to the electric power grid—

(i) more than 1/5 of the potential electric output capacity of the facility; and

(ii) more than 25 megawatts of electrical output from the facility.

(7) COVERED UNIT.—The term ‘covered unit’ means—

(A) an affected unit;

(B) a nuclear generating unit (including a facility owned or operated by any instrumentality of the Federal Government or of any State, local, or tribal government, but only to the extent of incremental nuclear generation of the unit); and

(C) a covered unit pursuant to section 706.

(8) CREDIT.—

(A) IN GENERAL.—The term ‘credit’ means an authorization under this title to emit greenhouse gases equivalent to 1 metric ton of carbon dioxide.

(B) INCLUSIONS.—The term ‘credit’ includes—

(i) an allowance;

(ii) an offset credit;

(iii) an early reduction credit; or

(iv) an international credit.

(9) EARLY REDUCTION CREDIT.—The term ‘early reduction credit’ means a credit issued under section 715 on the quantity of emissions or an increase in sequestration equivalent to 1 metric ton of carbon dioxide.

(10) FUND.—The term ‘Fund’ means the Climate Action Trust Fund established by section 717(a)(1).

(11) GREENHOUSE GAS.—The term ‘greenhouse gas’ means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons; and

(F) sulfur hexafluoride.

(12) GREENHOUSE GAS AUTHORIZED ACCOUNT REPRESENTATIVE.—The term ‘greenhouse gas authorized account representative’ means, for a covered unit, an individual who is authorized by the owner and operator of the covered unit to represent and legally bind the owner and operator in matters pertaining to this title.

(13) GREENHOUSE GAS-EMITTING FUEL.—

(A) IN GENERAL.—The term ‘greenhouse gas-emitting fuel’ means any fuel that produces a greenhouse gas as a combustion product.

(B) INCLUSIONS.—The term ‘greenhouse gas-emitting fuel’ includes—

(i) fossil fuels;

(ii) municipal waste;

(iii) agricultural waste; and

(iv) biomass that is not grown using sustainable techniques.

(14) INCREMEN TAL NUCLEAR GENERATION.—

The term ‘incremental nuclear generation’ means, as determined by the Administrator and measured in megawatt hours, the difference between—

(A) the quantity of electricity generated by a nuclear generating unit in a calendar year; and

(B) the quantity of electricity generated by the nuclear generating unit in calendar year 1990.

(15) INDUSTRY SECTOR.—The term ‘industry sector’ means any sector of the economy of a country (including, where applicable, the forestry sector) that is responsible for significant quantities of greenhouse gas emissions.

(16) INTERNATIONAL CREDIT.—The term ‘international credit’ means a credit recognized for a reduction in the quantity of emissions or an increase in sequestration equivalent to 1 metric ton of carbon dioxide that—

(A) arises from activities outside the United States; and

(B) is authorized for use under section 719.

(17) INVASIVE SPECIES.—The term ‘invasive species’ means a species (including pathogens, seeds, spores, or any other biological material relating to a species) the introduction of which causes or is likely to cause economic or environmental harm or harm to human health.

(18) LAND-GRANT COLLEGES AND UNIVERSITIES.—The term ‘land-grant colleges and universities’ has the meaning given the term in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3133).

(19) LEAKAGE.—The term ‘leakage’ means an increase in greenhouse gas emissions or a decrease in sequestration of greenhouse gases that is—

(A) outside the area of a project; and

(B) attributable to the project.

(20) NATIVE PLANT.—The term ‘native plant’ means an indigenous, terrestrial, or aquatic plant species that evolved naturally in an ecosystem.

(21) NEW AFFECTED UNIT.—The term ‘new affected unit’ means an affected unit that has operated for not more than 3 years.

(22) NEW COVERED UNIT.—The term ‘new covered unit’ means a covered unit that has operated for not more than 3 years.

(23) NOXIOUS WEED.—The term ‘noxious weed’ means a plant species that is—

(A) characterized by being—

(i) aggressive and difficult to manage;
on Climate Change, done at New York on May 9, 1992.

"Subtitle A—Stopping and Reversing Greenhouse Gas Emissions"

**SEC. 711. REGULATIONS; GREENHOUSE GAS TONNAGE LIMITATION.**

"(a) REGULATIONS.—Not later than 18 months after the date of enactment of this title, the Administrator shall promulgate regulations under an allocation system to address emissions of greenhouse gases from affected units in the United States.

"(b) GREENHOUSE GAS TONNAGE LIMITATION.—Beginning in calendar year 2011, the annual tonnage limitation for the aggregate quantity of emissions of greenhouse gases from affected units in the United States shall be equal to—

"(1) for each calendar years 2011 through 2014, the aggregate quantity of emissions emitted from affected units in calendar year 2006, as determined by the Administrator based on certified and quality-assured continuous emissions monitoring data for greenhouse gases, or data that the Administrator determines to be of similar reliability for affected units without continuous monitoring systems, reported to the Administrator by affected units in accordance with this subtitle; and

"(2) for calendar year 2015, the aggregate quantity of emissions emitted from affected units in calendar year 2014, the aggregate quantity of emissions from affected units allowed pursuant to this section during the preceding calendar year; and

"(3) for each calendar years 2016 through 2019, the aggregate quantity of emissions emitted from affected units during the calendar year that is 1 percent less than the aggregate quantity of emissions from affected units allowed pursuant to this section during the preceding calendar year; and

"(4) for calendar year 2020 and each calendar year thereafter, the aggregate quantity of emissions emitted during the calendar year that is 1 percent less than the aggregate quantity of emissions from affected units allowed pursuant to this section during the preceding calendar year, except as modified by the Administrator pursuant to section 713.

**SEC. 712. SCIENTIFIC REVIEW OF THE SAFE CLIMATE LEVEL.**

"(a) DEFINITION OF OBJECTIVE OF MAINTAINING THE SAFE CLIMATE LEVEL.—

"(1) FINDING.—Congress finds that ratification by the Senate in 1992 of the UNFCCC, commonly known as the Kyoto Protocol, which was performed by the President in 2002, established for the United States an objective of ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.’

"(2) DEFINITION OF SAFE CLIMATE LEVEL.—In this title, the term ‘safe climate level’ means the climate level referred to in paragraph (1).

"(b) CLIMATE SCIENCE ADVISORY PANEL.—

"(1) ESTABLISHMENT.—Not later than 270 days after the date of enactment of this title, the Administrator shall establish an advisory panel, to be known as the ‘Climate Science Advisory Panel,’ to provide advice and recommendations to the Administrator to address climate change, except that the Administrator may appoint up to 3 additional members of the Climate Science Advisory Panel, if the Administrator so determines.

"(2) DUTIES.—The panel shall—

"(A) inform Congress and the Administrator of the state of climate science;

"(B) not later than January 31, 2011, and not less frequently than every 4 years thereafter, issue a report that is endorsed by at least 7 members of the Panel that describes recommendations for the Administrator, based on the best available information in the fields of climate science, including reports from the Intergovernmental Panel on Climate Change, relating to—

"(i) the specific concentration, in parts per million, of all greenhouse gases in carbon dioxide equivalents at or below which constitutes the safe climate level; and

"(ii) the projected timeframe for achieving the safe climate level.

"(3) COMPOSITION.—

"(A) IN GENERAL.—The panel shall be composed of 8 climate scientists and 3 former Federal officials, as described in subparagraphs (B) through (D).

"(B) CLIMATE SCIENTISTS.—Not later than 270 days after the date of enactment of this title, the President of the United States shall appoint to serve on the panel climate scientists from among individuals who—

"(i) have earned doctorate degrees;

"(ii) have performed research in physical, bio, or in the sciences, nano-micro, economics, or related fields, with a particular focus on or link to 1 or more aspects of climate science;

"(iii) have records of peer-reviewed publications that include—

"(I) publications in main-stream, high-quality scientific journals (such as journals associated with respected scientific societies) that are given a high impact factor, as determined by the Institute for Scientific Information;

"(II) recent publications relating to earth systems, and particularly relating to the climate system; and

"(III) a high publication rate, typically at least 2 or 3 papers per year; and

"(iv) have participated in high-level committees, such as those formed by the National Academy of Sciences or by leading scientific societies.

"(C) FEDERAL OFFICIALS.—

"(1) IN GENERAL.—Subject to clause (i), the Administrator shall appoint as members of the Panel the longest-serving former Administrators of the Environmental Protection Agency for each of the 5 most recent former Presidents.

"(ii) TIMING.—The 3 most recent former Presidents described in clause (i) shall be identified as of the deadline for appointment to the Panel under subparagraph (d) of section 712.

"(III) SUBSTITUTES.—If a former Administrator described in clause (i) declines appointment, or is unable to serve, as a member of the Panel, the President shall appoint in place of the former Administrator who declines appointment another individual who—

"(1) is the longest-serving former Administrator for the applicable President who agrees to serve; or

"(2) if no individual described in subclause (I) accepts appointment as a member of the Panel, the longest-serving Assistant Administrator for Air and Radiation for the applicable President who agrees to serve.

"(D) TERMS OF SERVICE AND VACANCIES.—

"(1) TERMS.—The initial term of a member of the Panel shall be—

"(i) to the maximum extent practicable, the period covered by, and extending through the term of issuance of, each report under paragraph (2)(B); but

"(ii) not longer than 4 years.
‘‘(ii) Subsequent Panels and Reports.—On the issuance of each report under paragraph (2)(B)—

‘‘(I) the Panel that submitted the report shall appoint 3 Federal officials as members of the new Panel by the deadline described in item (aa).

‘‘(II)(aa) pursuant to subparagraphs (B) and (C), the President of the National Academy of Sciences shall appoint climate scientists (including at least 3 climate scientists who served as members of the preceding Panel) to serve as members of a new Panel by not later than 15 months after the deadline for issuance of the report under paragraph (2)(B); and

‘‘(bb) pursuant to subparagraph (D), the Administrator shall appoint 3 Federal officials as members of the new Panel by the deadline described in item (aa).

‘‘(iii) Vacancies.—Vacancies in the membership of the Panel—

‘‘(I) shall not affect the power of the remaining members to execute the functions of the Panel; and

‘‘(II) shall be filled in the same manner in which the original appointment was made.

‘‘(F) Chairperson and Vice Chairperson.—The Panel shall elect a Chairperson and Vice Chairperson as soon as practicable.

‘‘(G) Compensation of Members.—A member of the Panel shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Panel.

‘‘(H) Travel Expenses.—A member of the Panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Panel.

‘‘(I) Staff.—

‘‘(A) in General.—The Chairperson of the Panel may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Panel to perform the duties of the Panel.

‘‘(B) Confirmation of Executive Director.—An executive director so appointed shall be subject to confirmation by the Panel.

‘‘(C) Compensation.—

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

‘‘(II) the rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

‘‘(D) Detail of Federal Government Employees.—

‘‘(I) in General.—An employee of the Federal Government may be detailed to the staff of the Panel without reimbursement.

‘‘(II) Treatment of Details.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

‘‘(I) Procurement of Temporary and Intermitent Services.—The Chairperson or executive director of the Panel may procure temporary and intermittent services in accordance with the provisions of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

‘‘(III) Hearings.—The Panel may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Panel considers advisable to carry out this section.

‘‘(IV) Information from Federal Agencies.—

‘‘(A) in General.—The Panel may secure directly from a Federal agency such information as the Panel considers necessary to carry out this section.

‘‘(B) Provision of Information.—On request of the Chairperson of the Panel, the head of the agency shall provide the information to the Panel.

‘‘(V) Postal Services.—The Panel may use the United States mail in the same manner and under the same conditions as other agencies of the Federal Government.

‘‘SEC. 713. Required Review of Emission Reductions Needed to Maintain the Safe Climate Level.

‘‘(a) Review and Determination Regarding Reduction Rate.—Not later than December 31, 2015, the Administrator, after providing public notice and opportunity to comment, shall promulgate a final rule pursuant to which the Administrator shall review the reduction rate for greenhouse gas emissions required under section 711(b)(4) and determine—

‘‘(1) whether to—

‘‘(A) accept the recommendations of the Panel under section 712(b)(2)(B) regarding the safe climate level and the timeframe for achieving the safe climate level; or

‘‘(B) establish a different safe climate level or timeframe, together with a detailed explanation of the justification of the Administrator for rejection of the recommendations of the Panel; and

‘‘(2) whether, in order to achieve the safe climate level within the timeframe described in paragraph (1)—

‘‘(A) the appropriate level of emission reductions;

‘‘(B) lesser emission reductions than are necessary; or

‘‘(C) greater emission reductions than are necessary.

‘‘(b) Modification of Reduction Rate.—

‘‘(1) in General.—If the Administrator makes a determination described in subparagraph (B) or (C) of subsection (a)(2), the final rule promulgated pursuant to subsection (a) shall establish a required level of emissions reductions for each calendar year, beginning with calendar year 2020, based on the considerations described in paragraph (2).

‘‘(2) Considerations.—

‘‘(A) Primary Consideration.—In establishing the required level of emission reductions pursuant to paragraph (1), the Administrator shall take into consideration primarily the emission reductions necessary to stabilize atmospheric greenhouse gas concentrations at the safe climate level within the timeframe specified under section 712(b)(2)(B).

‘‘(B) Secondary Considerations.—In establishing the required level of emission reductions pursuant to paragraph (1), in addition to the primary consideration described in paragraph (1), the Administrator shall take into consideration—

‘‘(i) technological capability to reduce greenhouse gas emissions;

‘‘(ii) the progress that foreign countries have made toward reducing their greenhouse gas emissions;

‘‘(iii) the economic impacts within the United States of implementing this subtitle, including impacts on the major emitting sectors; and

‘‘(iv) the economic impacts within the United States of inadequate action.

‘‘(c) Enforcement Provision.—If the Administrator fails to meet a deadline for promulgation of any regulation under subsection (a), the Administrator shall withhold from allocation to covered units that would otherwise be entitled to an allocation of allowances under this subtitle a total of 10 percent of the allowances for each covered unit for each year after the deadline until the Administrator promulgates the applicable regulation.

‘‘(2) Return of Allowances.—On promulgation of a delayed regulation described in paragraph (1), the Administrator shall distribute any allowances withheld under that paragraph—

‘‘(A) among the covered units from which the allowances were withheld; and

‘‘(B) in accordance with the applicable formula under section 716.

‘‘(d) Subsequent Rulemakings.—

‘‘(1) in General.—Not later than December 31, 2019, and every 4 years thereafter, the Administrator shall promulgate a new final rule described in subsection (a) in accordance with this section.

‘‘(2) Exception.—If a new final rule promulgated pursuant to paragraph (1) changes a level of emission reductions required under the preceding final rule, the effective date of the new final rule shall be January 1 of the calendar year that is 5 years after the deadline for promulgation of the new final rule under paragraph (1).

‘‘SEC. 714. Distribution of Allowances Between Auctions and Allocations; Nature of Allowances.

‘‘(a) Distribution of Allowances Between Auctions and Allocations.—

‘‘(1) in General.—For each calendar year, the total quantity of allowances to be auctioned and allocated under this subtitle shall be equal to the annual tonnage limitation for emissions of greenhouse gases from affected units specified in section 711 for the calendar year.

‘‘(2) Distribution.—The proportion of allowances to be auctioned pursuant to section 715 and allocated pursuant to section 716 for each calendar year beginning in calendar year 2011 shall be as follows:

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<tr>
<th>Calendar Year</th>
<th>Percentage to be auctioned</th>
<th>Percentage to be allocated</th>
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<tr>
<td>2011</td>
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<td>2017</td>
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“(b) Nature of Allowances.—An allowance—

(1) shall not be considered to be a property right; and

(2) may be terminated or limited by the Administrator.

(c) No Judicial Review.—An auction or allocation of an allowance by the Administrator shall not be subject to judicial review.

§ 715. Allocation of Allowances.

(a) In General.—Not later than 2 years after the date of enactment of this title, the Administrator shall promulgate regulations establishing a procedure for the auction of the quantity of allowances specified in section 714(a) for each calendar year.

(b) Deposit of Proceeds.—The Administrator shall deposit all proceeds from auctions conducted under this section in the Fund for use in accordance with section 717.

§ 716. Allocation of Allowances.

(a) Allocation to New Covered Units.—

(1) Establishment.—For each calendar year, the Administrator, in consultation with the Secretary of Energy, shall, based on projections of electricity output for new covered units, promulgate regulations establishing—

(A) a reserve of allowances to be allocated among new covered units for the calendar year; and

(B) the methodology for allocating those allowances among new covered units.

(2) Limitation.—The number of allowances allocated under paragraph (1) during a calendar year shall be not more than 3 percent of the total number of allowances allocated among covered units for the calendar year.

(3) Unused Allowances.—For each calendar year, the Administrator shall reallocate to each covered unit any unused allowances from the new unit reserve established under paragraph (1) in the proportion that—

(A) the number of allowances allocated to each covered unit for the calendar year; bears to

(B) the number of allowances allocated to all covered units for the calendar year.

(b) Allocation to Covered Units That Are Not New Covered Units.—

(1) Timing of Allocations.—Subject to subsection (c), the Administrator shall allocate allowances among covered units that are not new covered units—

(A) not later than December 31, 2011; and

(B) not later than December 31 of each calendar year thereafter.

(2) Allocations.—

(A) In General.—Subject to subsection (c), the Administrator shall allocate to each covered unit a quantity of allowances that is equal to the product obtained by multiplying—

(i) the quantity of allowances available for allocation under this subsection; and

(ii) the quotient obtained by dividing—

(1) the annual average quantity of electricity generated by the unit (including only incremental nuclear generation for nuclear generating units) during the most recent 3 calendar year period for which data is available, updated each calendar year and measured in megawatt hours; by

(II) the difference between—

(aa) the total of the average quantities calculated under subclause (I) for all covered units; and

(bb) the quantity of electricity generated by all affected units and new affected units that, pursuant to subsection (c), do not receive any allowances.

(B) Quantity to Be Allocated.—For each calendar year, the quantity of allowances allocated under subparagraph (A) to covered units that are not new covered units shall be equal to the difference between—

(i) the annual tonnage limitation for emissions of greenhouse gases from affected units specified in section 714 for the calendar year, as modified, if applicable, under section 715; and

(ii) the quantity of allowances reserved under subsection (a) for the calendar year.

(C) Coal-Fired Affected Units and New Affected Units.—

(1) In General.—Notwithstanding any other provision of this subtitle, no allowance shall be allocated under this subtitle to a coal-fired affected unit or a coal-fired new affected unit unless the affected unit or new affected unit—

(A) is powered by qualifying advanced clean coal technology, as defined pursuant to paragraph (2); or

(B) entered operation before January 1, 2007.

(2) Definition of Qualifying Advanced Clean Coal Technology.—

(A) In General.—Not later than 18 months after the date of enactment of this title, the Administrator, by regulation, shall define the term ‘qualifying advanced clean coal technology’ with respect to electric power generation.

(B) Requirement.—In promulgating a definition pursuant to subparagraph (A), the Administrator shall ensure that the term ‘qualifying advanced clean coal technology’ reflects advances in available technology, taking into consideration—

(i) net thermal efficiency;

(ii) measures to capture and sequester carbon dioxide; and

(iii) output-based emission rates for—

(1) carbon dioxide;

(II) sulfur dioxide;

(III) oxides of nitrogen;

(IV) filterable and condensable particulate matter; and

(V) mercury.

(2) Review and Revision.—

(i) In General.—Not later than July 1, 2009, and each July 1 of every second year thereafter, the Administrator shall review and, if appropriate, revise the definition under subparagraph (A) based on technological advancements in greenhouse gas emissions during the preceding 2 calendar years.

(ii) Notice and Comment Required.—Subject to clause (i), after the initial definition is established under subparagraph (A), no subsequent review or revision under this paragraph shall be subject to the notice and comment provisions of section 307 of this Act or of section 553 of title 5, United States Code.

(iii) Effect.—Nothing in clause (ii) precludes the application of the notice and comment provisions of section 307 of this Act or of section 553 of title 5, United States Code, as the Administrator determines to be practicable.

§ 717. Climate Action Trust Fund.

(a) Establishment and Administration.—

(1) In General.—There is established in the general fund of the Treasury a fund, to be known as the ‘Climate Action Trust Fund’, consisting of—

(A) such amounts as are deposited in the Fund under paragraph (2); and

(B) any interest earned on investment of amounts in the Fund under paragraph (4).

(2) Transfers to Fund.—The Secretary of the Treasury shall deposit in the Fund amounts equivalent to the proceeds received by the Administrator as a result of the conduct of auctions of allowances under section 715.

(3) Expenditures From Fund.—

(A) General.—Subject to subparagraphs (B) and (C), the Administrator shall use amounts in the Fund to carry out the programs described in this section.

(B) Administrative Expenses.—Of amounts in the Fund, there shall be made available to pay the administrative expenses necessary to carry out this title, as adjusted for changes beginning on January 1, 2007, in accordance with the Consumer Price Index for All-Urban Consumers published by the Department of Labor—

(i) $90,000,000 for each fiscal year, to the Administrator; and

(ii) $30,000,000 for each fiscal year, to the Secretary of Agriculture.

(C) Panel.—Of amounts in the Fund, there shall be made available to pay the expenses of the Panel under section 712 of each fiscal year, as adjusted for changes beginning on January 1, 2007, in accordance with the Consumer Price Index for All-Urban Consumers published by the Department of Labor.

(4) Investment of Amounts.—

(A) In General.—The Secretary of Treasury shall invest such portion of the Fund as
is not, in the judgment of the Administrator, required to meet current withdrawals.

"(B) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

"(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

"(i) at the issue price; or

"(ii) by purchase of outstanding obligations at the market price.

"D. SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Administrator at the market price.

"E. RETURN OF PROCEEDS TO FUND.—The interest proceeds from the sale or redemption of any obligations held in the Fund shall be credited to, and form a part of, the Fund.

"F. REGULATIONS.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Energy, shall promulgate such regulations as are necessary to administer the Fund in accordance with this section.

"(b) USES OF FUND.—

"(1) NO FURTHER APPROPRIATION.—The Administrator shall distribute amounts in the Fund for use in accordance with this section, without further appropriation.

"(2) REVISIONS OF CRITERIA.—Not later than 2 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Energy, shall promulgate regulations establishing an innovative low- and zero-emitting carbon technologies program, a clean coal technologies program, and an energy efficiency technology program that include—

"(i) the funding mechanisms that will be available to support the development and deployment of technologies addressed in each program, including loan guarantees, grants, and financial awards; and

"(ii) the criteria for the methods by which proposals will be funded to develop and deploy the technologies.

"(c) ADAPTATION ASSISTANCE FOR WORKERS AND COMMUNITIES.—Not later than 3 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Energy, and the Secretary of Labor, shall promulgate regulations governing the distribution of funds pursuant to subsection (g).

"(d) INNOVATIVE LOW- AND ZERO-EMITTING CARBON ELECTRICITY GENERATION TECHNOLOGIES PROGRAM.—

"(1) IN GENERAL.—For each calendar year, of amounts remaining in the Fund after making the expenditures described in subparagraphs (B) and (C) of subsection (a)(3), the Administrator shall use not more than 20 percent to support the development and deployment of clean coal technologies.

"(2) REGULATIONS.—The regulations establishing the clean coal technologies program referred to in subsection (a)(3)(B) shall establish the criteria for use in defining qualifying clean coal technologies for electric power generation, while ensuring that these technologies are available in a cost-effective and competitive manner.

"(e) ENERGY EFFICIENCY TECHNOLOGY PROGRAM.—

"(1) IN GENERAL.—For each calendar year, of amounts remaining in the Fund after making the expenditures described in subparagraphs (B) and (C) of subsection (a)(3), the Administrator shall use not more than 15 percent to support the development and deployment of technologies for increasing the efficiency of energy end use in buildings and industry.

"(2) REGULATIONS.—The regulations establishing the energy efficiency technology program referred to in subsection (b)(2)(A) shall establish the areas of technology development that will qualify for funding under the energy efficiency program.

"(f) FEDERAL FUNDING OF RESEARCH INTO AND DEVELOPMENT OF ENERGY AND EFFICIENCY TECHNOLOGIES.—Not later than January 1, 2014, and every 3 years thereafter, the Administrator shall use not more than 20 percent of amounts remaining in the Fund after making the expenditures described in subparagraphs (B) and (C) of subsection (a)(3), to establish the areas of technology development that will qualify for funding under the energy efficiency program.

"(g) ADAPTATION ASSISTANCE FOR WORKERS AND COMMUNITIES NEGATIVELY AFFECTED BY CLIMATE CHANGE AND GREENHOUSE GAS REGULATION.—For each calendar year, of amounts remaining in the Fund after making the expenditures described in subparagraphs (B) and (C) of subsection (a)(3), the Administrator shall use at least 10 percent to provide adaptation assistance for workers and communities—

"(i) to address local or regional impacts of climate change and the impacts, if any, from greenhouse gas regulation, including by providing assistance to displaced workers and disproportionately affected communities; and

"(ii) to mitigate impacts of climate change and the impacts, if any, from greenhouse gas regulation on commerce, including by providing assistance to small businesses, industries, and other economic interests that are disproportionately affected by climate change.

"(h) WILDLIFE RESTORATION FUND.—

"(1) IN GENERAL.—For each calendar year, of amounts remaining in the Fund after making the expenditures described in subparagraph (B) of subsection (a)(3), the Administrator shall use at least 10 percent to provide adaptation assistance for workers and communities that will qualify for funding under the program established under subchapter D of part 1 of division B of title I of the American Recovery and Reinvestment Act of 2009 (12 U.S.C. 6693 et seq.).

"(2) REGULATIONS.—The regulations establishing the program referred to in paragraph (1) shall—

"(i) identify the Federal land and water areas that are most vulnerable to damages; and

"(ii) to the Secretary of the Interior under this paragraph shall—

"(i) be available, without further appropriation, for obligation and expenditure;

"(ii) remain available until expended;

"(iii) be obligated not later than 2 years after the date of transfer; or

"(iv) if the amounts are not obligated in accordance with subclause (I), be transferred to the Federal aid to wildlife restoration fund for use in accordance with paragraph (2); and

"(E) FUNDING FOR RESEARCH AND DEVELOPMENT OF ENERGY AND EFFICIENCY TECHNOLOGIES.—Not later than 3 years after the date of enactment of this title, the Administrator, in consultation with the Chief of Engineers, and State and national wildlife conservation organizations, shall transfer not more than 30 percent of the amounts made available under paragraph (a)(3) to the Secretary for use in carrying out Federal and State programs and projects that—

"(i) protect natural communities that are most vulnerable to climate change;

"(ii) to restore and protect natural resources that directly guard against damages from climate change events; and

"(iii) to restore and protect ecosystem services that are most vulnerable to climate change.

"(2) REGULATIONS.—The regulations establishing the program referred to in paragraph (1) shall—

"(i) identify the Federal programs and projects for which funds may be used under this paragraph include—

"(I) Federal programs and projects to identify climate change risks and develop adaptation strategies for national wildlife refuges, wetlands, migratory corridors, and other habitats vulnerable to climate change on private land enrolled in—

"(II) federal land and water at greatest risk of being damaged or depleted by climate change;

"(III) to monitor Federal land and water to allow for early detection of impacts;

"(IV) to identify Federal land and water at greatest risk of being damaged or depleted by climate change;

"(V) Federal programs and projects to identify climate change risks and develop adaptation strategies for national wildlife refuges, wetlands, migratory corridors, and other habitats vulnerable to climate change on private land enrolled in—

"(VI) to the Secretary under this paragraph include

"(I) for early detection of impacts; and

"(II) for early detection of impacts; and

"(III) to develop adaptation strategies to minimize the damage; and

"(IV) to restore and protect Federal land and water at greatest risk of being damaged or depleted by climate change;

"(V) Federal programs and projects to identify climate change risks and develop adaptation strategies for national wildlife refuges, wetlands, migratory corridors, and other habitats vulnerable to climate change on private land enrolled in—

"(VI) to the Secretary under this paragraph include

"(I) for early detection of impacts; and

"(II) for early detection of impacts; and

"(III) to develop adaptation strategies to minimize the damage; and

"(IV) to restore and protect Federal land and water at greatest risk of being damaged or depleted by climate change;

"(V) Federal programs and projects to identify climate change risks and develop adaptation strategies for national wildlife refuges, wetlands, migratory corridors, and other habitats vulnerable to climate change on private land enrolled in—

"(VI) to the Secretary under this paragraph include

"(I) for early detection of impacts; and

"(II) for early detection of impacts; and

"(III) to develop adaptation strategies to minimize the damage; and

"(IV) to restore and protect Federal land and water at greatest risk of being damaged or depleted by climate change;

"(V) Federal programs and projects to identify climate change risks and develop adaptation strategies for national wildlife refuges, wetlands, migratory corridors, and other habitats vulnerable to climate change on private land enrolled in—

"(VI) to the Secretary under this paragraph include

"(I) for early detection of impacts; and

"(II) for early detection of impacts; and

"(III) to develop adaptation strategies to minimize the damage; and

"(IV) to restore and protect Federal land and water at greatest risk of being damaged or depleted by climate change;

"(V) Federal programs and projects to identify climate change risks and develop adaptation strategies for national wildlife refuges, wetlands, migratory corridors, and other habitats vulnerable to climate change on private land enrolled in—

"(VI) to the Secretary under this paragraph include

"(I) for early detection of impacts; and

"(II) for early detection of impacts; and

"(III) to develop adaptation strategies to minimize the damage; and

"(IV) to restore and protect Federal land and water at greatest risk of being damaged or depleted by climate change;
“(V) to integrate climate change adaptation requirements into State plans developed under the coastal zone management program established under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) and the national estuary program established under section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330), the Coastal and Estuarine Resources Protection Program established under the fourth proviso of the matter under the heading ‘PROCUREMENT, ACQUISITION, AND CONSTRUCTION (INCLUDING TRANSFERS OF FUNDS)’ of title II of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002 (44 U.S.C. 456d), or other comparable State programs;

“(vi) programs and projects to conserve habitat for endangered species and species of conservation concern that are vulnerable to the impact of climate change;

“(vi) programs and projects under the Forest Legacy Program established under section 7 of the Cooperative Forestry Assistance Act (16 U.S.C. 2103c), to support State efforts to protect environmentally sensitive forest land through conservation easements to provide reforestation of forested areas; and

“(vii) other Federal or State programs and projects identified by the heads of agencies described in subparagraph (A) as high priorities—

“(I) to protect natural communities that are most vulnerable to climate change;

“(II) to use allowances to protect natural resources that directly guard against damages from climate change events; and

“(III) to restore and protect ecosystems services that are most vulnerable to climate change;

“(viii) to address climate change in Federal land use planning and plan implementation and to integrate climate change adaptation strategies into—

“(I) comprehensive conservation plans prepared under section 4(e) of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd(e));

“(II) general management plans for units of the National Park System;

“(III) resource management plans of the Bureau of Land Management; and


“(ix) projects to promote sharing of information, experience, and mitigation strategies across agencies, including funding efforts to strengthen and restore habitat that improves the ability of fish and wildlife to adapt successfully to climate change through the Wildlife Conservation and Restoration Account established by section 3(a)(2) of the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669a(a)(2)).

“§ 718. EARLY REDUCTION CREDITS.

“(a) USE OF INTERNATIONAL CREDITS.

“(I) IN GENERAL.—Except as provided in this section and section 720, the owner of each affected unit who submits an international credit under this subsection may use up to 25 percent of the total annual allowance requirements of the affected unit by submitting international credits representing up to 25 percent of the total annual international credit requirements of the affected unit.

“(II) NEW AFFECTED UNITS.—The owner of a new affected unit may use up to 50 percent of the obligation of the new affected unit under section 722 to surrender a quantity of credits associated with the greenhouse gas emissions of the affected unit by submitting international credits representing up to 25 percent of the total annual international credit requirements of the affected unit.

“(b) FACILITY CERTIFICATION.—The owner of an affected unit who submits an international credit under this section shall certify that the international credit—

“(I) has not been retired from use in the registry of the applicable foreign country; and

“(II) satisfies the requirements of subsection (c) or (d).

“(c) INTERNATIONAL CREDITS FROM COUNTRIES WITH MANDATORY GREENHOUSE GAS LIMITS.—The owner of an affected unit may submit an international credit under this subsection if—

“(I) the international credit is issued by a foreign country pursuant to a governmental program that imposes mandatory absolute limits on greenhouse gas emissions from the country or 1 or more industry sectors pursuant to protocols adopted through the UNFCCC process; and

“(II) the Administrator has promulgated regulations, taking into consideration applicable UNFCCC protocols, for use under this subsection international credits from such categories of countries as the Administrator determines to be applicable to the project.

“(d) INTERNATIONAL CREDITS FROM COUNTRIES WITHOUT MANDATORY GREENHOUSE GAS LIMITS.—

“(I) IN GENERAL.—Subject to paragraph (2), the owner of an affected unit who submits an international credit under this subsection if—

“(A) the international credit is issued by a foreign country that has imposed mandatory absolute tonnage limits on greenhouse gas emissions from the country or 1 or more industry sectors pursuant to protocols adopted through the UNFCCC process; and

“(B) the international credit is issued pursuant to protocols adopted through the UNFCCC process; and

“(C) the Administrator has promulgated regulations, taking into consideration applicable UNFCCC protocols, for use under this subsection international credits from such categories of countries as the Administrator determines to be applicable to the project.

“(2) RULES.—The regulations shall—

“(I) establish, and the regulations promote—

“(I) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(II) the costs of the anticipated impacts of climate change in the United States.

“(3) PREVENTION OF ECONOMIC HARM.—If the Administrator determines that allowances have reached and sustained a level that is causing or will cause significant harm to the economy of the United States; and

“(4) take into consideration—

“(I) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(II) the costs of the anticipated impacts of climate change in the United States.

“(4) PREVENTION OF ECONOMIC HARM.—If the Administrator determines that allowances have reached and sustained a level that is causing or will cause significant harm to the economy of the United States; and

“(a) IN GENERAL.—Pursuant to the regulations promulgated under this section, the Administrator may permit affected units—

“(I) to carry forward up to 25 percent of the total annual allowance requirements of the affected unit; and

“(II) to carry forward up to 50 percent of the total annual allowance requirements of the affected unit.

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether additional credits have reached and sustained a level that is causing or will cause significant harm to the economy of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“§ 719. RECOGNITION AND USE OF INTERNATIONAL CREDITS.

“(d) LIMITATION.

“(1) IN GENERAL.—If the Administrator determines that allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(2) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“§ 720. AVOIDING SIGNIFICANT ECONOMIC HARM.

“(a) IN GENERAL.—The Administrator shall promulgate regulations requiring the continuous monitoring of the operation of the carbon market and the effect of that market on the economy of the United States.

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance prices have reached and sustained a level that is causing or will cause significant harm to the economy of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance prices have reached and sustained a level that is causing or will cause significant harm to the economy of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“(2) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance prices have reached and sustained a level that is causing or will cause significant harm to the economy of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“§ 721. REDUCTION OF THE ALLOCATION OF ALLOWANCES.

“(a) IN GENERAL.—If the Administrator determines that allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“(a) IN GENERAL.—If the Administrator determines that allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“(a) IN GENERAL.—If the Administrator determines that allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“(a) IN GENERAL.—If the Administrator determines that allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.

“(b) REQUIREMENTS.—The regulations shall—

“(I) establish the criteria for determining whether allowance credits have reached and sustained a level that is causing or will cause significant harm to the countries of the United States; and

“(II) take into consideration—

“(i) the obligation of the United States under this subtitle to stabilize greenhouse gas concentrations in the atmosphere at the safe climate level; and

“(ii) the costs of the anticipated impacts of climate change in the United States.
Subtitle B—Offset Credits

SEC. 731. OUTREACH INITIATIVE ON REVENUE ENHANCEMENT FOR AGRICULTURAL SECQUESTRATION PROJECTS.

(a) PURPOSES. The purposes of this sub-title are to achieve climate benefits, reduce overall costs to the United States economy, and enhance revenue for domestic agricultural producers, foresters, and other landowners by—

(1) establishing procedures by which domestic agricultural producers, foresters, and other landowners can measure and report reductions in greenhouse gas emissions and increases in sequestration;

(2) publishing a handbook of guidance for domestic agricultural producers, foresters, and other landowners to market emission reductions to companies.

(b) ELIGIBILITY TO CREATE OFFSET CREDITS. Not later than 2 years after the date of enactment of this title, the Secretary of Agriculture, in consultation with the Administrator and the heads of other appropriate federal departments and agencies, shall establish an outreach initiative to provide information to agricultural producers, agricultural organizations, foresters, and other landowners under this sub-title to earn new revenue.

(c) COMPONENTS. The initiative under this section—

(1) shall be designed to ensure that, to the maximum extent practicable, agricultural organizations and individual agricultural producers, foresters, and other landowners receive detailed practical information about—

(A) opportunities to earn new revenue under this sub-title;

(B) measurement protocols, monitoring, verifying, inventorying, registering, insuring, and marketing offsets under this title;

(C) emerging domestic and international markets for energy crops, allowances, and offsets; and

(D) local, regional, and national data bases and aggregation networks to facilitate achievement, measurement, registration, and sales of offsets;

(2) shall provide—

(A) outreach materials, including the handbook published under subsection (a)(1), to interested parties;

(B) workshops; and

(C) technical assistance;

(3) may support the creation and development of regional marketing centers or coordination with existing centers (including centers within the Natural Resources Conservation Service or the Cooperative State Research, Education, and Extension Service or at land-grant colleges and universities).

(2) BANKING OF CREDITS. Not later than 2 years after the date of enactment of this title, the Secretary of Agriculture, in consultation with the Administrator, shall promulgate regulations regarding the issuance, certification, and use of offset credits for greenhouse gas reductions from agricultural, forestry, wetlands, and other land use-related sequestration projects, including requirements—

(1) for a region-specific discount factor for business-as-usual practices for specific types of sequestration projects, in accordance with subsection (c);

(2) that ensure that the reductions are real, additional, verifiable, and enforceable;

(3) that address leaks;

(4) that the reductions are not otherwise required by any law (including a regulation) or other legally binding requirement;

(5) for the quantification, monitoring, reporting, and verification of the reductions;

(6) that ensure that offset credits are limited in duration to the period of sequestration of greenhouse gases, and rectify any loss of sequestration other than a loss caused by an error in calculation identified under this sub-title, by requiring the submission of additional credits of an equivalent quantity to the lost sequestration; and

(7) that quantify sequestration flow.

(d) HANDBOOK. Notwithstanding paragraph (a)(1), the Secretary of Agriculture, in consultation with the Administrator and after public input, shall publish a handbook for use by agricultural producers, agricultural cooperatives, foresters, other landowners, offset buyers, and other stakeholders that provides easy-to-use guidance on achieving, reporting, registering, and marketing offsets.

(3) OFFSET CREDIT PROGRAMS. Not later than 2 years after the date of enactment of this title, the Administrator shall publish a handbook for use by agricultural producers, agricultural cooperatives, foresters, other landowners, offset buyers, and other stakeholders that provides easy-to-use guidance on achieving, reporting, registering, and marketing offsets. (b) ALLOWANCE USE BEFORE APPLICABLE CALENDAR YEAR. Except as provided in section 720, an allowance auctioned or allocated under this subtitle may not be used before the calendar year for which the allowance was auctioned or allocated.

(c) TRANSFER. (1) IN GENERAL. Except as provided in paragraph (2), the transfer of a credit shall not take effect until receipt and recording by the Administrator of a written certification of the transfer that is executed by an authorized official of the person making the transfer.

(2) SPECIAL RULE FOR ALLOWANCES. —Notwithstanding paragraph (1), the transfer of an allowance auctioned or allocated under this subtitle may take effect before the calendar year for which the allowance was auctioned or allocated.

(d) BANKING OF CREDITS. —Any affected unit may use a credit obtained under this subtitle in the calendar year for which the credit was auctioned or allocated, or in a subsequent calendar year, to demonstrate compliance with section 722.

SEC. 732. COMPLIANCE AND ENFORCEMENT.

(a) USE IN OTHER GREENHOUSE GAS ALLOWANCE TRADING PROGRAMS. (1) IN GENERAL. A credit obtained under this title may be used in any other greenhouse gas allowance trading program, including a program of 1 or more States or sub-divisions of States, that is approved by the Administrator and an authorized official for the other program for use of the allowance.

(2) RECIPROCITY. A credit obtained from another greenhouse gas trading program, including a program of 1 or more States or sub-divisions of States, that is approved by the Administrator and an authorized official for the other program may be used in the trading program that authorized the credit.

(b) ALLOWANCE USE BEFORE APPLICABLE CALENDAR YEAR. Except as provided in section 720, an allowance auctioned or allocated under this subtitle may not be used before the calendar year for which the allowance was auctioned or allocated.

(c) TRANSFER. (1) IN GENERAL. Except as provided in paragraph (2), the transfer of a credit shall not take effect until receipt and recording by the Administrator of a written certification of the transfer that is executed by an authorized official of the person making the transfer.

(2) SPECIAL RULE FOR ALLOWANCES. —Notwithstanding paragraph (1), the transfer of an allowance auctioned or allocated under this subtitle may take effect before the calendar year for which the allowance was auctioned or allocated.

(d) BANKING OF CREDITS. —Any affected unit may use a credit obtained under this subtitle in the calendar year for which the credit was auctioned or allocated, or in a subsequent calendar year, to demonstrate compliance with section 722.

SEC. 732. COMPLIANCE AND ENFORCEMENT.

(a) USE IN OTHER GREENHOUSE GAS ALLOWANCE TRADING PROGRAMS. (1) IN GENERAL. A credit obtained under this title may be used in any other greenhouse gas allowance trading program, including a program of 1 or more States or sub-divisions of States, that is approved by the Administrator and an authorized official for the other program for use of the allowance.

(2) RECIPROCITY. A credit obtained from another greenhouse gas trading program, including a program of 1 or more States or sub-divisions of States, that is approved by the Administrator and an authorized official for the other program may be used in the trading program that authorized the credit.

(b) ALLOWANCE USE BEFORE APPLICABLE CALENDAR YEAR. Except as provided in section 720, an allowance auctioned or allocated under this subtitle may not be used before the calendar year for which the allowance was auctioned or allocated.

(c) TRANSFER. (1) IN GENERAL. Except as provided in paragraph (2), the transfer of a credit shall not take effect until receipt and recording by the Administrator of a written certification of the transfer that is executed by an authorized official of the person making the transfer.

(2) SPECIAL RULE FOR ALLOWANCES. —Notwithstanding paragraph (1), the transfer of an allowance auctioned or allocated under this subtitle may take effect before the calendar year for which the allowance was auctioned or allocated.

(d) BANKING OF CREDITS. —Any affected unit may use a credit obtained under this subtitle in the calendar year for which the credit was auctioned or allocated, or in a subsequent calendar year, to demonstrate compliance with section 722.
paragraph (1) shall apply to qualifying offset projects described in sections 733(b)(2), 733(a)(2), and 733(b)(1).

**SEC. 735. OFFSET CREDITS FROM AVOIDED CONVERSION OF FORESTED LAND OR WETLAND**

(a) IN GENERAL.—Offset credits for avoided conversion of forested land or wetland shall be awarded to any State that meets the requirements of the affected unit under section 722 by using forest management offset credits under this section.

(b) REGULATIONS.—Not later than 3 years after the date of enactment of this title, the Secretary of Agriculture, in consultation with the Secretary of the Interior, shall promulgate regulations to implement this section.

(c) PROHIBITIONS.—No new wetlands.—No new wetlands off-set project may be carried out in an area in which underlying local hydrologic processes will not support a wetland.

**SEC. 736. OFFSET CREDITS FROM FOREST MANAGEMENT, GRAZING MANAGEMENT, AND WETLANDS MANAGEMENT**

(a) FOREST MANAGEMENT OFFSETS.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the Secretary of Agriculture, in consultation with the Administrator, shall promulgate regulations providing for the issuance of offset credits for forest management projects other than avoided forest land conversion as described in section 735.

(2) FOREST MANAGEMENT OFFSETS.—Forest management offset projects under this section may include activities that reduce greenhouse gases as a result of forest management sequestration projects other than conversion of forested land or wetland.

**SEC. 737. OFFSET CREDITS FROM THE AVOIDED CONVERSION OF FORESTED LAND OR WETLAND**

(a) IN GENERAL.—Offset credits for avoided conversion of forested land or wetland shall be awarded to any State that reduces the rate of conversion below expected levels for all or a significant portion of the State.

(b) REGULATIONS.—Not later than 3 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture and the Secretary of the Interior, shall promulgate regulations to implement this section.

(c) PROHIBITIONS.—No new wetlands.—No new wetlands offset project may be carried out in an area in which underlying local hydrologic processes will not support a wetland.

**SEC. 738. OFFSET CREDITS FROM THE AVOIDED CONVERSION OF FORESTED LAND OR WETLAND**

(a) IN GENERAL.—Offset credits for avoided conversion of forested land or wetland shall be awarded to any State that reduces the rate of conversion below expected levels for all or a significant portion of the State.

(b) REGULATIONS.—Not later than 3 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture, shall promulgate regulations to implement this section.

(c) PROHIBITIONS.—No new wetlands.—No new wetlands offset project may be carried out in an area in which underlying local hydrologic processes will not support a wetland.
SEC. 736. OFFSET CREDITS FROM GREENHOUSE GAS EMISSIONS REDUCTION OFFSET PROJECTS.

(a) In general.—Not later than 2 years after this title takes effect, the Administrator shall promulgate regulations establishing the requirements regarding the issuance, certification, and use of offset credits for greenhouse gas emissions reduction offset projects, including requirements—

(1) for performance standards for specific types of offset projects, which represent significant improvements compared to recent practices in the geographic area, to be reviewed, and updated if the Administrator determines is appropriate, every 5 years;

(2) that ensure that the reductions are real, additional, verifiable, enforceable, and permanent;

(3) that address leakage;

(4) that the reductions are not otherwise required by any law (including a regulation) or other legally binding requirement;

(5) for the quantification, monitoring, reporting, and verification of the reductions; and

(6) that specify the duration of offset credits for greenhouse gas emissions reduction projects under this section.

(b) Eligibility to create offset credits.—Greenhouse gas emissions reduction offset projects may be performed only under regulations promulgated for a period later than December 31, 2015.

(c) Approved categories of greenhouse gas emissions reduction offset projects.—Greenhouse gas emission reductions from the following types of operations and projects may be eligible to create offset credits under this subtitle if the projects satisfy the other applicable requirements of this subtitle:

(1) commercial fuel combustion.

(2) industrial production processes.

(3) cement production.

(4) steel production.

(5) lime production.

(6) aluminum production.

(7) iron and steel production.

(8) electrical transmission and distribution systems.

(9) natural gas transmission and distribution systems.

(10) semiconductor manufacturing.

(11) air pollution from fossil fuel combustion.

(12) industrial processes.

(b) Approval of qualifying offset projects.—Offset projects that may be approved to create offset credits under this subsection shall be appropriately carried out under this section and in accordance with the regulations promulgated under this subtitle.

(c) Repayment by 2015.—(1) In each calendar year, the affected unit shall submit offset credits to the Administrator for use under this section beginning on the date immediately prior to the first calendar year in which an annual tonnage limitation on the emission of greenhouse gases applies under section 711(b), the Administrator shall promulgate regulations to establish, operate, and maintain a national registry through which the Administrator shall—

(1) record allocations of allowances, the issuance of offset credits or early reduction credits, and the recognition of international credits;

(2) track transfers of credits;

(3) retire all credits used for compliance; and

(4) subject to subsection (b), maintain transparent availability of registry information to the public, including the quarterly reports submitted under section 742a; and

(5) prepare an annual assessment of the emission data in the quarterly reports submitted under section 742a and take such action as is necessary to maintain the integrity of the registry, including adjustments to correct for—

(A) errors or omissions in the reporting of data; and

(B) the prevention of counterfeiting, double-counting, multiple registrations, multiple sales, and multiple retirements of credits.

(b) Exception to public availability of data.—(1) In general.—Subsection (a) shall not apply in any case in which the Administrator, in consultation with the Secretary of Defense, determines that publishing or otherwise making available information in accordance with that paragraph poses a risk to national security.

(2) Statement of reasons.—In a case described in paragraph (1), the Administrator shall publish a description of the determinations and the reasons for the determination.

SEC. 738. REVIEW AND CORRECTION OF ACCOUNTING FOR OFFSET CREDITS.

(a) Duty to monitor.—The Secretary of Agriculture and the Administrator shall monitor regularly whether offset credits under the respective jurisdiction of each agency head under this subtitle are being awarded only for real and additional sequestration or reductions in greenhouse gases, emissions, or sequestration not later than December 31, 2015.

(b) Approval of qualifying offset projects.—Offset projects that may be approved to create offset credits under this subsection shall be appropriately carried out under this section and in accordance with the regulations promulgated under this subtitle.

(c) Repayment by 2015.—(1) In each calendar year, the affected unit shall submit offset credits to the Administrator for use under this section beginning on the date immediately prior to the first calendar year in which an annual tonnage limitation on the emission of greenhouse gases applies under section 711(b), the Administrator shall promulgate regulations to establish, operate, and maintain a national registry through which the Administrator shall—

(1) record allocations of allowances, the issuance of offset credits or early reduction credits, and the recognition of international credits;

(2) track transfers of credits;

(3) retire all credits used for compliance; and

(4) subject to subsection (b), maintain transparent availability of registry information to the public, including the quarterly reports submitted under section 742a; and

(5) prepare an annual assessment of the emission data in the quarterly reports submitted under section 742a and take such action as is necessary to maintain the integrity of the registry, including adjustments to correct for—

(A) errors or omissions in the reporting of data; and

(B) the prevention of counterfeiting, double-counting, multiple registrations, multiple sales, and multiple retirements of credits.

(b) Exception to public availability of data.—(1) In general.—Subsection (a) shall not apply in any case in which the Administrator, in consultation with the Secretary of Defense, determines that publishing or otherwise making available information in accordance with that paragraph poses a risk to national security.

(2) Statement of reasons.—In a case described in paragraph (1), the Administrator shall publish a description of the determinations and the reasons for the determination.

SEC. 734. ESTABLISHMENT AND OPERATION OF NATIONAL REGISTRY.

(a) In general.—Except as provided in subsection (b), not later than July 1 of the year immediately prior to the first calendar year in which an annual tonnage limitation on the emission of greenhouse gases applies under section 711(b), the Administrator shall promulgate regulations to establish, operate, and maintain a national registry through which the Administrator shall—

(1) record allocations of allowances, the issuance of offset credits or early reduction credits, and the recognition of international credits;

(2) track transfers of credits;

(3) retire all credits used for compliance; and

(4) subject to subsection (b), maintain transparent availability of registry information to the public, including the quarterly reports submitted under section 742a; and

(5) prepare an annual assessment of the emission data in the quarterly reports submitted under section 742a.

(b) Exception to public availability of data.—(1) In general.—Subsection (a) shall not apply in any case in which the Administrator, in consultation with the Secretary of Defense, determines that publishing or otherwise making available information in accordance with that paragraph poses a risk to national security.

(2) Statement of reasons.—In a case described in paragraph (1), the Administrator shall publish a description of the determinations and the reasons for the determination.

SEC. 742. MONITORING AND REPORTING.

(a) Requirements.—Each owner or operator of an affected unit, or to the extent applicable, the greenhouse gas authorized account representative for the affected unit, shall—

(1) comply with the monitoring, recordkeeping, and reporting requirements of part 75 of title 40, Code of Federal Regulations (or subsequent regulations); and

(2) submit to the Administrator electronic quarterly reports that describe the greenhouse gas mass emission data, fuel input data, and electricity output data for the affected unit.

(b) Biomass cofiring.—Not later than 18 months after the date of enactment of this Act, the Administrator shall promulgate regulations that provide monitoring, recordkeeping, and reporting requirements for biomass cofiring at affected units.

(c) Information amendments.—(1) Federal enforcement.—Section 113 of the Clean Air Act (42 U.S.C. 7413) is amended—

(1) in subsection (a)(3), by striking "or title VI," and inserting "title VI, or title VII;"
TITLE II—CLIMATE CHANGE RESEARCH INITIATIVES

SEC. 201. RESEARCH GRANTS THROUGH NA

SEC. 202. ABRUPT CLIMATE CHANGE RESEARCH

SEC. 203. DEVELOPMENT OF NEW MEASUREMENT TECHNOLOGIES

SEC. 204. TECHNOLOGY DEVELOPMENT AND DIF

SEC. 205. PUBLIC LAND

SEC. 206. SEA LEVEL RISE FROM POLAR ICE SHEET MELTING

By Mr. AKAKA (for himself, Mr. WYDEN, Mr. BUNNING, Mr. INOUYE, and Mr. DURBEN),

S. 320. A bill to provide for the protection of paleontological resources on Federal lands, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. AKAKA. Mr. President, I rise today along with my distinguished colleagues, Senator WYDEN, Senator BUNNING, and Senator INOUYE, and Senator DURBEN, to introduce the Paleontological Resources Preservation Act in order to protect and preserve the Nation’s important fossil record for the benefit of our citizens. Vertebrate fossils are rare and important natural resources that have become increasingly endangered due to an increase in the illegal collection of fossil specimens for commercial sale. However, at this time there is no unified legislation regarding the treatment of fossils by Federal land management agencies which would help protect and conserve fossil specimens. Consequently, we risk the deterioration or loss of these valuable scientific resources. This Act will correct that omission by providing uniformity to the patchwork of statutes and regulations that currently exist. By creating a comprehensive national policy for preserving and managing paleontological resources on Federal land, this Act will also be instrumental in curtailing and preventing future illegal trade thereby ensuring that many generations to come will have access to these invaluable records of our past. I would like to emphasize that this bill will not cover only paleontological remains on Federal lands and in no way affects archaeological or cultural resources under the Archaeological Resources Protection Act of 1979 or the Native American Graves Protection and Rehabilitation Act.

I would also mention that this bill is exactly the same bill that I introduced in the 109th Congress.
in the 109th Congress. This bill was heard and marked up by the Senate Energy and Natural Resources Committee, and was passed by the Senate.

As a senior member of the Senate Energy and Natural Resources Committee and Chair of the Subcommittee on National Parks, I am very concerned about the preservation of fossils as records of earth’s past upheavals and struggles. While I recognize the value of amateur collecting—and casual collecting—of fossils is protected in this bill—I have become an increasing problem. New fossil fields and insights into the earth’s past are discovered nearly every month. Paleontological resources can be sold on the market for a hefty price. For example, the complete skeleton of a T-Rex was sold for $8.6 million at auction to the Field Museum of Chicago. Consequently, they are being stolen from public lands without regard to science and education. The protections I offer in this bill are not new. Federal and management agencies have individual regulations prohibiting theft of government property. However, Congress has not provided a clear statute stating the value of paleontological resources to our Nation, as we have for archaeological resources. We need to work together to make sure that we fulfill our responsibility as stewards of public lands, and as protectors of our Nation’s natural resources.

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

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

SEC. 2. DEFINITIONS.

(a) In general.—The term "paleontological resource" means the collecting of fossils from public lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Act; or

(b) False labeling offenses.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource except in accordance with this Act.

(c) Penalties.—A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon being fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both; but if the sum of the commercial and non-commercial value of the paleontological or other resources and to paleontological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with section 7 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(d) In general.—The term "paleontological resource" means the collecting of a paleontological resource pursuant to an application if the Secretary determines that:

(ii) the applicant is qualified to carry out the permitted activity.

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 3. MANAGEMENT.

(a) In general.—The Secretary shall manage and protect paleontological resources on Federal lands, as otherwise authorized by law and expertise. The Secretary shall develop appropriate plans for inventory, monitoring, and the scientific and educational use of paleontological resources. In accordance with applicable agency laws, regulations, and policies. These plans shall emphasize interagency coordination and collaborative efforts where possible with non-Federal partners, the scientific community, and the general public.

(b) Coordination.—To the extent possible, the Secretary shall coordinate agency activities with other Federal, State, and other territories or possessions of the United States, the scientific community, and the general public.

(c) Permit specifications.—(1) A permit for casual collecting shall not be issued unless the Secretary determines:

(ii) that the Collecting is consistent with the laws governing the management of those Federal lands and this Act.

(2) A permit for casual collecting shall be issued if the Collecting is consistent with the laws governing the management of those Federal lands and this Act.

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 4. PUBLIC AWARENESS AND EDUCATION PROGRAM

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 5. COLLECTION OF PALEONTOLOGICAL RESOURCES

(a) Permit requirement.—(1) In general.—Except as provided in this Act, a person may not be issued a permit to excavate, remove, sell or purchase or offer to sell or purchase, or receive any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, or purchased from Federal lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Act; or

(b) False labeling offenses.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource except in accordance with this Act.

(c) Penalties.—A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon being fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both; but if the sum of the commercial and non-commercial value of the paleontological or other resources and to paleontological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with section 7 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(d) In general.—The term "paleontological resource" means the collecting of a paleontological resource pursuant to an application if the Secretary determines that:

(ii) that the Collecting is consistent with the laws governing the management of those Federal lands and this Act.

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 6. CURATION OF RESOURCES

The Secretary shall curate paleontological resources, and any data and records associated with the resource, collected under a permit, shall be deposited in an approved repository. The Secretary may enter into agreements with non-Federal repositories regarding the curation of these resources, data, and records.

SEC. 7. PROHIBITED ACTS; CRIMINAL PENALTIES

(a) In general.—A person who knowingly

(i) excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resource located on Federal lands unless such activity is conducted in accordance with this Act;

(ii) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, or purchased from Federal lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Act; or

(ii) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal lands.

(b) False labeling offenses.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource except in accordance with this Act.

(c) Penalties.—A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon being fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both; but if the sum of the commercial and non-commercial value of the paleontological or other resources and to paleontological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with section 7 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(d) In general.—The term "paleontological resource" means the collecting of a paleontological resource pursuant to an application if the Secretary determines that:

(ii) that the Collecting is consistent with the laws governing the management of those Federal lands and this Act.

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 8. MODIFICATION, SUSPENSION, AND REVOCATION OF PERMITS

(a) General.—The Secretary shall modify, suspend, or revoke any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal lands.

(b) False labeling offenses.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource except in accordance with this Act.

(c) Penalties.—A person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon being fined in accordance with title 18, United States Code, or imprisoned not more than 10 years, or both; but if the sum of the commercial and non-commercial value of the paleontological or other resources and to paleontological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with section 7 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

(d) In general.—The term "paleontological resource" means the collecting of a paleontological resource pursuant to an application if the Secretary determines that:

(ii) that the Collecting is consistent with the laws governing the management of those Federal lands and this Act.
was in the lawful possession of such person prior to the date of the enactment of this Act.

SEC. 8. CIVIL PENALTIES.

(a) IN GENERAL.—

(1) PENALTY.—A person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a penalty by the Secretary after the person得知 and upon proper notice for a hearing with respect to the violation. Each violation shall be considered a separate offense for purposes of this section.

(2) AMOUNT OF PENALTY.—The amount of such penalty assessed under paragraph (1) shall be determined under regulations promulgated pursuant to this Act, taking into account the following factors:

(A) The scientific or fair market value, whichever is greater, of the paleontological resource involved, as determined by the Secretary.

(B) The cost of resource, restoration, and repair of the resource and the paleontological site involved.

(C) Any other factors considered relevant by the Secretary assessing the penalty.

(3) MULTIPLE OFFENSES.—In the case of a second or subsequent violation by the same person of a penalty assessed under paragraph (2) may be doubled.

(4) LIMITATION.—The amount of any penalty assessed under subsection (a) may not exceed $500,000, or $50,000 in the case of a violation which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid.

(b) FORFEITURE.—

(1) GENERAL.—The scientific or fair market value, whichever is greater, of the paleontological resource involved; plus double the scientific or fair market value of resources destroyed or not recovered;

(2) PETITION FOR JUDICIAL REVIEW; COLLECTION OF ASSESSMENTS.—

(a) JUDICIAL REVIEW.—Any person against whom an order is issued assessing a penalty under subsection (a) may file a petition for judicial review of the order in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred within the 30-day period beginning on the date the order making the assessment was issued. Upon notice of such filing, the Secretary shall promptly file such a certified copy of the record on which the order was issued. The court shall hear the action on the record made before the Secretary and shall sustain the action if it is supported by substantial evidence on the record considered as a whole.

(b) FAILURE TO PAY.—If any person fails to pay a penalty under this section within 30 days—

(1) after the order making assessment has become final and the person has not filed a petition for judicial review of the order in accordance with paragraph (1); or

(2) after a court in an action brought in paragraph (1) has entered a final judgment upholding the assessment of the penalty, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which the person found, resides, or transacts business, to collect the penalty plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be. The district court shall have jurisdiction to hear and decide any such action. In such action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the penalty shall not be subject to review. Any provision of Federal law shall be exempt from disclosure under section 552 of title 5, United States Code, and any other law unless the Secretary determines that disclosure would—

(1) further the purposes of this Act;

(2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and

(3) be in accordance with other applicable laws.

(c) HEARINGS.—Hearings held during proceedings instituted under subsection (a) shall be conducted in accordance with section 556 of title 5, United States Code.

(d) USE OF RECOVERED AMOUNTS.—Penalties collected under this section shall be available without further appropriation for purposes of this Act, for or in connection with the collection, enforcement, or judicial review of such penalties, and for the education of the public about paleontological resources and sites.

(1) consistent with amounts established in regulations by the Secretary; or

(2) if no such regulation exists, an amount equal to the lesser of one-half of the penalty or $50,000, or $5,000 in the case of a violation which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid.

SEC. 9. REWARDS AND FORFEITURE.

(a) REWARDS.—The Secretary may pay from penalties collected under section 7 or 8—

(1) consistent with amounts established in regulations by the Secretary; or

(2) if no such regulation exists, an amount equal to the lesser of one-half of the penalty or $50,000, or $5,000 in the case of a violation which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid.

(b) FORFEITURE.—All paleontological resources with respect to which a violation under section 7 or 8 occurred and which are in the possession of any person, and all vehicles and equipment used in connection with the violation, shall be subject to civil forfeiture, or upon conviction, to criminal forfeiture. All provisions of law relating to the seizure, forfeiture, and condemnation of property for a violation of this Act, the disposition of such property or the proceeds from the sale thereof, and re- mission or mitigation of such forfeiture, as well as the procedural provisions of chapter 46 of title 18, United States Code, shall apply to the seizure, or the sale of, or any other action, taken to recover the proceeds from the sale thereof.

(c) TRANSFER OF SEIZED RESOURCES.—The Secretary may transfer seized paleontological resources to Federal or non-Federal educational institutions to be used for scientific or educational purposes.

Information concerning the nature and specific location of a paleontological resource the collection of which requires a permit under this Act or any other law, or any other law unless the Secretary determines that disclosure would—

(1) further the purposes of this Act;

(2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and

(3) be in accordance with other applicable laws.
elected officials, tribal educators, and health workers and others who work with Indian youth; developing culturally sensitive materials on suicide prevention and intervention; and collecting and reporting of data.

The Senate Committee on Indian Affairs held three hearings during the 109th Congress on the issue of Indian youth suicide, including one hearing that I convened in Bismarck, ND. Although on the Indian reservations of the northern plains, the rate of Indian youth suicide is 10 times higher than it is anywhere else in the country, this tragic issue is not limited to these locations. The committee has heard testimony from people from tribal communities in Arizona, Oregon, Washington, Alaska, New Mexico, and Wyoming, as well.

According to 2004 statistics from the National Center for Injury Prevention and Control, suicide is the second leading cause of death, behind unintentional injuries, for American Indian and Alaska Native young adults 15 to 24 years old, of both sexes—a statistic that has sadly been true for the past 20 years. For North Dakota Indian girls 15 to 24 years old in 2004, suicide was the number one leading cause of death. I am grateful for the efforts of the Indian Health Service and the Substance Abuse and Mental Health Services Administration, in particular, both of which have, in a host of ways, sought to address the very important issue of Native youth suicide in Indian Country.

In this Act:

(1) DEMONSTRATION PROJECT.—The term "demonstration project" means the Indian youth telemental health demonstration project authorized under section 4(a).

(2) DEPARTMENT.—The term "Department" means the Department of Health and Human Services.

(3) INDIAN.—The term "Indian" means any individual who is a member of an Indian tribe or is eligible for health services under the Indian Health Care Improvement Act (25 U.S.C. 1501 et seq.).

(4) 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).

(5) Indian Health Service.—The term "Indian Health Service" means the Secretary of Health and Human Services.

(6) SERVICE.—The term "Service" means the Indian Health Service.

(7) TELEMENTAL HEALTH.—The term "telemental health" means the use of electronic information and telecommunications technologies to support long distance mental health care, patient and professional-related education, public health, and health administration.

(8) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 4. INDIAN YOUTH TELEMENTAL HEALTH DEMONSTRATION PROJECT.

(a) AUTHORIZATION.—

(1) IN GENERAL.—The Secretary is authorized to carry out a demonstration project to award grants for the provision of telemental health services to Indian youth who—

(A) have expressed suicidal ideas;

(B) have attempted suicide; or

(C) have mental health conditions that increase or could increase the risk of suicide.

(2) ELIGIBILITY FOR GRANTS.—Grants described in paragraph (1) shall be awarded to Indian tribes and tribal organizations that operate 1 or more facilities—

(A) located in Alaska and part of the Alaskan Native Health Care Access Network;

(B) reporting active clinical telehealth capabilities; or

(C) offering school-based telemental health services relating to psychiatry to Indian youth.

(3) GRANT PERIOD.—The Secretary shall award grants under this section for a period of up to 4 years.

(4) MAXIMUM NUMBER OF GRANTS.—Not more than 5 grants shall be provided under paragraph (1), without priority consideration given to Indian tribes and tribal organizations that—

(A) serve a particular community or geographic area in which there is a demonstrated need to address Indian youth suicide;

(B) enter into collaborative partnerships with the Service or other tribal health programs or facilities to provide services under this demonstration project;

(C) serve an isolated community or geographic area which has limited or no access to behavioral health services; or

(D) operate a detention facility at which Indian youth are detained.

(b) USE OF FUNDS.—

(1) IN GENERAL.—An Indian tribe or tribal organization shall use a grant received under subsection (a) for the following purposes:

(A) To provide telemental health services to Indian youth, including the provision of—

(i) psychotherapy; psychiatric assessments, diagnostic interviews, therapies for mental health conditions predisposing to suicide, and alcohol and substance abuse treatment;

(ii) the provision of clinical expertise to, consultation services with, and medical advice and training for frontline health care providers working with Indian youth;

(iii) training and related support for community leaders, family members and health and education workers who work with Indian youth;

(iv) the development of culturally-relevant educational materials on suicide; and

(B) data collection and reporting.

(2) IN GENERAL.—The term "demonstration project" means the Indian youth telemental health demonstration project authorized under section 4(a).

(3) INDIAN.—The term "Indian" means any individual who is a member of an Indian tribe or is eligible for health services under the Indian Health Care Improvement Act (25 U.S.C. 1501 et seq.).

(4) 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).

(5) Indian Health Service.—The term "Indian Health Service" means the Secretary of Health and Human Services.

(6) SERVICE.—The term "Service" means the Indian Health Service.

(7) TELEMENTAL HEALTH.—The term "telemental health" means the use of electronic information and telecommunications technologies to support long distance mental health care, patient and professional-related education, public health, and health administration.

(8) TRIBAL ORGANIZATION.—The term "tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 3. DEFINITIONS.

In this Act:
(iii) alcohol and substance abuse treatment.

(B) To provide clinician-interactive medical advice, guidance and training, assistance into interpretation and, related assistance to Service or tribal clinicians and health services providers working with youth being served under the demonstration project.

(C) To assist, educate, and train community leaders, health education professionals and other professionals, tribal outreach workers, and family members who work with the youth receiving telemental health services under the demonstration project, including with respect to suicidal tendencies, crisis intervention and suicide prevention, emergency skill development, and building and expanding networks among those individuals and with State and local health services providers.

(D) To develop and distribute culturally-appropriate community educational materials on—

(i) suicide prevention;

(ii) suicide education;

(iii) suicide screening;

(iv) suicide intervention; and

(v) ways to mobilize communities with respect to the identification of risk factors for suicide.

(E) To conduct data collection and reporting relating to Indian youth suicide prevention efforts.

(2) TRADITIONAL HEALTH CARE PRACTICES.—In carrying out the purposes described in paragraph (1), an Indian tribe or tribal organization may use and promote the traditional health care practices of the Indian tribe from which the youth to be served.

(c) APPLICATIONS.—To be eligible to receive a grant under subsection (a), an Indian tribe or tribal organization shall prepare and submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including—

(1) a description of the project that the Indian tribe or tribal organization will carry out using the funds provided under the grant;

(2) a description of the manner in which the youth who are provided services by the project would—

(A) meet the telemental health care needs of the Indian youth population to be served by the project; or

(B) prove the access of the Indian youth population to be served to suicide prevention and treatment services;

(3) evidence of support for the project from the local community to be served by the project;

(4) a description of how the families and leadership of the communities or populations to be served by the project would be involved in the development and ongoing operations of the project;

(5) a plan to involve the tribal community of the youth who are provided services by the project in planning and evaluating the mental health care and suicide prevention efforts provided, in order to ensure the integration of community, clinical, environmental, and cultural components of the treatment; and

(6) a plan for sustaining the project after Federal assistance for the demonstration project has terminated.

(d) COLLABORATION.—The Secretary, acting through the Service, shall encourage Indian tribes, tribally designated organizations receiving grants under this section to collaborate to enable comparisons about best practices across projects.

(e) FINAL REPORT.—Each grant recipient shall submit to the Secretary an annual report that—

(1) describes the number of telemental health services provided; and

(2) includes any other information that the Secretary may require.

(f) REPORT TO CONGRESS.—Not later than 270 days after the date of termination of the demonstration project, the Secretary shall submit the final report to the Indian Affairs of the Senate and the Committee on Resources and the Committee on Energy and Commerce of the House of Representatives a report that—

(1) describes the results of the projects funded by grants awarded under this section, including any data available that indicate the number of individuals served;

(2) evaluates the impact of the telemental health services funded by the grants in reducing the number of completed suicides among Indian youth;

(3) evaluates whether the demonstration project should be—

(A) expanded to provide more than 5 grants; and

(B) designated a permanent program; and

(4) evaluates the benefits of expanding the demonstration project to include urban Indian organizations.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the provisions of $500,000 for each of fiscal years 2008 through 2011.

By Mr. BOXER: S. 323. A bill to require persons seeking approval for a liquefied natural gas facility to identify employees and agents engaged in activities to persuade communities of the benefits of the approval, to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I rise to discuss liquefied natural gas projects in California. As of August of last year, there are five potential liquefied natural gas projects in California. The projects include the Cabrillo Deepwater Port LNG Facility, Clearwater Port LNG Project, Long Beach LNG Facility, Ocean Way LNG Terminal, and the Pacific Gateway LNG Facility. All the LNG projects have gained approval from the California Public Utilities Commission, the California Energy Commission, the California Air Resources Board, and the Department of the Interior.

Although there is a need for natural gas, there are potential safety concerns with the siting of new LNG facilities. According to the California Energy Commission, LNG hazards result from its three properties: cryogenic temperatures, dispersion characteristics, and flammability characteristics. The extremely cold LNG can directly cause injury or damage. A vapor cloud, formed by an LNG spill, could drift downwind into populated areas. It can ignite if the concentration of natural gas is between five and 15 percent in air and it encounters an ignition source. An LNG fire gives off a tremendous amount of heat.

This is why many people who live near a potential LNG facility have safety concerns. As a result, many companies try to persuade communities of the benefits of LNG facilities.

That is why today I am introducing this common sense bill. This bill is identical to legislation that I introduced in the 109th Congress.

It would require any company seeking Federal Government approval to submit, as part or its application, the dates of employee and business agents who are trying to persuade communities of the benefits of the LNG facility.

This bill does not stop anyone from reaching out to local communities. What this bill says is that if you are trying to get approval for an LNG facility, whether it is onshore or off-shore, you have to be public about it. Today, if someone lobbies the federal government, he or she needs to register so their affiliation and interests before the government are publicly known. We should do the same thing for these projects. As I said, it is common sense.

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

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

S. 323

SECTION 1. IDENTIFICATION OF PROPOSITIONS OF APPEAL OF LIQUEFIED NATURAL GAS FACILITIES REQUIRING FERC APPROVAL.

(a) LIQUEFIED NATURAL GAS FACILITIES REQUIRING FERC APPROVAL.—The Federal Energy Regulatory Commission shall—

(1) require an applicant for approval, by the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.), of the siting, construction, expansion, or operation of a liquefied natural gas facility to identify each of the employees and agents of the applicant that are engaged, directly or indirectly, in activities to persuade communities of the benefits of the approval; and

(2) maintain a publicly available database listing the names of the employees and agents.

(b) OFF-SHORE LIQUEFIED NATURAL GAS FACILITIES.—The Secretary of Transportation shall—

(1) require the appropriate Secretary under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), of the siting, construction, expansion, or operation of a liquefied natural gas facility to identify each of the employees and agents of the applicant that are engaged, directly or indirectly, in activities to persuade communities of the benefits of the approval; and

(2) maintain a publicly available database listing the names of the employees and agents.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 324. A bill to direct the Secretary of the Interior to conduct a study of water resources in the State of New Mexico; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, above-average rainfall in New Mexico last summer and recent snowfall have led many to turn a blind eye to the grim water situation faced by our State only months ago. New Mexico was fast approaching a disaster due to drought. Many of our municipalities were running dry and reservoirs were at dangerously low levels. Providence intervened, narrowly averting a crisis resulting from water scarcity.
The development of the centrifugal pump was an event of great significance in the history of the West. Windmill driven pumps provided enough water for a family and several livestock. The centrifugal pump, on the other hand, was capable of pumping eight to ten gallons of water per minute, making possible the habitation of what was previously barren desert. To a large extent, this invention provided the water for growing towns and agricultural industries. However, it also resulted in a great dependence on groundwater. As such, we need to fully understand the nature and extent of our groundwater resources. This bill will provide us with the information necessary to ensure that the water on which we have come to rely is available for years to come.

During times of drought, when surface water is scarce, we must be able to reliably turn to groundwater reserves. Approximately 90 percent of New Mexicans drink groundwater, and 77 percent of New Mexicans obtain water exclusively from groundwater sources. While groundwater supplies throughout the State are coming under increasing competition, relatively little is known about these resources in order to make sound decisions regarding their use.

Nearly 40 percent of the State’s population resides in the Middle Rio Grande Basin. Once thought to contain vast quantities of water, there are now those who contend with the reality the Middle Rio Grande Basin contains far less water than originally thought. Between 1995 and 2001, the United States Geological Survey undertook a study of the Basin which added greatly to our knowledge regarding the primary source of water for our largest population center. Had we proceeded with our water planning without the information provided by this study, I have little doubt that we would find ourselves in a dire situation. However, there is much more to be learned about this Basin.

Roughly 65 percent of the State’s population lives along the Rio Grande. Also located along the river are the four largest cities in New Mexico: Santa Fe, Albuquerque, Rio Rancho and Las Cruces. While the completion of the San Juan-Chama Diversion by the Albuquerque Bernallillo County Water Utility Authority will allow the County and City of Albuquerque to take advantage of their allocation of San Juan-Chama water, the remainder of the cities and counties located along the Rio Grande will continue to receive the majority of their water from aquifers beneath the Rio Grande. Aside from the Middle Rio Grande Basin, we have limited knowledge of the amount of water contained in the aquifers below the Rio Grande, the rate at which they recharge, aquifer contamination, and the interaction between surface flows and ground water.

Elsewhere in the State, even less is understood regarding groundwater resources. While there is limited unallocated surface water in the State, there are significant quantities of unexplored underground water in the Tularosa and Salt Basins. The Tularosa Basin is approximately 60 miles wide and 200 miles long. Making the conservative estimate that only a quarter of the water contained in that aquifer is available for use through desalination, it would provide 100 years of water for a city the size of Albuquerque. With the development of desalination technology, we now know that even a greater amount of the brackish water contained in the Tularosa Basin will be available for human use.

Another untapped water supply is the Salt Basin located in southern New Mexico. The Basin lies in a geologically complex area and our understanding of the total resource is incomplete. However, initial estimates predict sustainable withdrawals on the order of 100,000 acre-feet per year of potable water from the Middle Rio Grande portion of the aquifer. This is enough water to support a city the size of our largest municipal area. Additional brackish resources in that Basin are highly likely. Because the Basin is located near growing metropolitan areas near the US-Mexico Border, it is a resource of critical importance.

The bill I introduce today would direct the United States Geological Survey, in collaboration with the State of New Mexico, to undertake a groundwater resources study in the State of New Mexico. A comprehensive study of the State’s water resources is critical to effective water planning. Absent such a study, I fear that there is a significant likelihood that we may be depleting aquifers at an unsustainable rate.

I thank Senator BINGAMAN for being an original co-sponsor of this legislation. I look forward to working with him to ensure the bill’s passage.

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

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

S. 324
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “New Mexico Aquifer Assessment Act of 2007”.

SEC. 2. NEW MEXICO AQUIFER ASSESSMENT STUDY
(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the United States Geological Survey (referred to in this Act as the “Secretary”), in coordination with the State of New Mexico (referred to in this Act as the “State”) and any other Federal agencies that the Secretary determines to be appropriate (including other Federal agencies and institutions of higher education), shall, in accordance with applicable Federal laws and any other applicable law, conduct a study of water resources in the State, including—

(1) a survey of groundwater resources, including an analysis of—
(A) aquifers in the State, including the quantity of water in the aquifers; (B) the availability of groundwater resources for human use; (C) the salinity of groundwater resources; (D) the potential of the groundwater resources to recharge; (E) the interaction between groundwater and surface water; (F) the susceptibility of the aquifers to contamination; (G) any other relevant criteria; and (2) a characterization of surface and bedrock geology, including the effect of the geology on groundwater recharge.

(b) STUDY AREAS.—The study carried out under subsection (a) shall include the Estancia Basin, Salt Basin, Tularosa Basin, Hidalgo Basin, and middle Rio Grande Basin in the State.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the results of the study.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. BINGAMAN (for himself and Mr. VOINOVICh):
S. 325. A bill to provide for innovation in health care through State initiatives that expand access and improve quality and efficiency in the health care system; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today to introduce bipartisan legislation with Senator VOINOVICh entitled the “Health Partnership Act of 2007,” which along with a companion House bill introduced by Representatives TAMMI BALDWIN, JOHN TIERNY, and TOM PRICE, intends to set us on a path toward affordable, quality health care for all Americans. The Health Partnership Act creates partnerships between the Federal Government, State and local governments, tribes and tribal organizations, private payers, and health care providers to seek innovation in health care systems.

Under this Act, States, local governments, and tribes and tribal governments would be invited to submit applications to the Federal Government for funding to implement expansion and improvements to current health care programs for review by a bipartisan “State Health Innovation Commission.” Based on funding available through the Federal budget process, the Commission would approve a variety of reform options and innovative approaches.

This federalist approach to health reform would encourage a broad array of reform options subject to monitoring, to determine what works and what does not work. As Supreme Court Justice Louis D. Brandeis wrote in 1932, “It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” Our bipartisan legislation, the “Health Partnership Act,” encourages...
this type of State-based innovation and will help the Nation better address both the policy and the politics of health care reform. Currently, we do not have a “one-size-fits-all” model of reform, so encouraging States, local governments, and tribal communities to adopt a variety of approaches will help us better understand what may or may not work.

Inaction on the growing and related problems of the uninsured and increasing health care costs is unacceptable and unaffordable.

In fact, while spending on health care in our country has reached $2 trillion annually, the number of uninsured has increased to nearly 47 million people, seven million more than in 2000. The consequences are staggering, as uninsured citizens get about half the medical care they need compared to those with health insurance and, according to the Institute of Medicine, about 18,000 unnecessary deaths occur each year in the U.S. because of lack of health insurance.

While gridlock continues to permeate Washington, DC, in regards to this issue, a number of States and local governments are moving ahead with health reform. The “Health Partnership Act” would provide support, in the form of grants, to States, groups of States, local governments, and Indian tribes and tribal organizations to carry out any of a broad range of strategies intended to reduce the number of uninsured, reduce costs, and improve the quality of care.

Responding to urgent needs, State and local governments have not been able to wait for Federal action. We observed this in the early 1990s as States such as New Mexico, Massachusetts, Pennsylvania, Florida, Rhode Island, Hawaii, and Maryland. In fact, Vermont, Maryland, and Washington led the way to expanding coverage to children through the enactment of a variety of health reforms. Evaluation proved that some of these programs worked better than others, so the Federal Government must respond in concert with passage of the “State Children’s Health Insurance Program” or SCHIP. This legislation, built upon experiences of the States, enjoyed broad bipartisan support. SCHIP is a popular and successful State-based model that covers millions of children and continues to have broad-based bipartisan support across this Nation.

So, why not use that successful model and build upon it? In fact, State and local governments are already taking up that challenge and the Federal Government should, through the enactment of the “Health Partnership Act,” do what it can to be helpful with those efforts.

On November 15, 2005, Illinois Governor Rod Blagojevich signed into law the “Covering All Kids Health Insurance Act” which, beginning in July 2006, intended to make insurance coverage available to all uninsured children.

In April, Massachusetts Governor Mitt Romney signed into law legislation that requires all Bay State residents to have health insurance. Their State experiment involves partnerships between the State Medicaid, employer groups, and insurance companies.

Now California’s Governor Schwarzenegger proposed health reforms to include health promotion and wellness services for all, insurance coverage, and cost containment measures.

Other States, including New Mexico, Vermont, Tennessee, Maine, West Virginia, Oklahoma, and New York, have enacted other health reforms that have had mixed success.

All of these efforts add importantly to our knowledge base, and can then lead to a national solution to our uninsured and affordability crisis. We can learn from each and every one of these efforts, including those which failed.

Commonwealth Fund President Karen Davis said it well by noting that State-based reforms, such as that passed in Massachusetts, are very good news. As she notes, “First, any substantive effort to expand access to coverage is worthwhile, given the growing number of uninsured in this country and the large body of evidence showing the dangerous health implications of lacking coverage.” She adds, “But something more important is at work here. While we urgently need a national solution so that all Americans have insurance, it doesn’t appear that we’ll be getting one at the Federal level any time soon. So what Massachusetts has done potentially holds lessons for every State.” I would add that it holds lessons for the Federal Government as well and not just for the mechanics of implementing health reform policy but also to the politics of health reform.

As she concludes, “One particularly cogent lesson is the manner in which the measure was crafted—via a civil process that successfully brought together numerous players from across the political business, health care delivery, and policy sectors.”

Senator Voinovich and I have worked together and reached out to like-minded colleagues in the House of Representatives via a process much like that described by Karen Davis. The legislation stemmed from past legislative efforts by Senators such as Bob Graham, Mark Hatfield, and Paul Wellstone, but also from work across ideological lines by Henry Aaron of the Brookings Institution and Stuart Butler of the Heritage Foundation.

The legislation also benefits from advice and support from health care providers. Dr. Tim Garson who, as Dean of the University of Virginia, brought a much needed provider perspective, ensuring support from the House of Medicine. Supporters include the American Medical Association, the American Academy of Pediatrics, the American College of Physicians, the American College of Cardiology, the American Gas- troenterological Association, the Visiting Nurses Association, the National Association of Community Health Centers, and from state-based health providers such as the New Mexico Medical Society and Ohio Association of Community Health Centers.

The Health Partnership Act supports providers.

The Health Partnership Act received much comment and support from consumer-based groups advocating for national health reform, including that by Dr. Ken Prisof of the Universal Health Care Action Network; John Levendosky of Consumers Union, and from numerous health advocates in New Mexico, including Community Action New Mexico, Health Action New Mexico, Health Care for All Campaign of New Mexico, New Mexico Center on Law and Poverty, New Mexico Health Choices Initiative, New Mexico POZ Coalition, New Mexico Public Health Association, New Mexico Religious Coalition for Reproductive Choice, New Mexico Program for Alliance for Community Empowerment, and the Health Security for New Mexicans Campaign, which includes 115 State-based organizations.

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Oregon have all initiated efforts at the local level for reform, including so-called “three-share” programs in Illinois and Michigan. Under these initiatives, employers, employees, and the community each pick up about one-third of the costs of programs.

Josephine Smith, deputy administrator in the Office of Oregon Health Policy and Research was recently quoted by an Academy Health publication stating, “In recent years it has become apparent that there is a need to consider both state- and community-level approaches to improved access. We want to learn how best to support communities as they play an integral part in addressing the gaps in coverage.”

The Health Partnership Act supports communities.

Our hope is to spawn innovation. Brookings Institution senior health fellow Henry Aaron and Heritage Foundation Avi Subramanian write in a Health Affairs article in March 2004 that lays out the foundation for this legislative effort. They argue that while we remain unable to reconcile how best to expand coverage at the Federal level, we can agree to support states, communities, providers, and consumers, as they adopt important innovations in healthcare coverage and expansion.

I urge my colleagues to break the gridlock and support this legislation, which offers alternative support to states, communities, providers, and consumers, as they adopt important innovations in healthcare coverage and expansion.

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. 325

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 “Health Partnership Act.”

SEC. 2. STATE HEALTH REFORM PROJECTS.

(a) PURPOSE: Establishment of State Health Care Expansion and Improvement Program.—The purposes of the programs approved under this section shall include, but not be limited to—

(1) achieving the goals of increased health coverage and access;

(2) ensuring that patients receive high-quality, appropriate health care;

(3) improving the efficiency of health care spending; and

(4) testing alternative reforms, such as building on the public or private health systems, or creating new systems, to achieve the objectives of this Act.

(b) APPLICATIONS BY STATES, LOCAL GOVERNMENTS, AND TRIBES.—

(1) ENTITIES THAT MAY APPLY.—

(A) IN GENERAL.—A State, in consultation with local governments, Indian tribes, and Indian organizations involved in the provision of health care, may apply for a State health care expansion and improvement program for the entire State (or for regions of the State) under paragraph (2).

(B) REGIONAL GROUPS.—A regional entity consisting of more than one State may apply for a multi-State expansion and improvement program for the entire region involved under paragraph (2).

(C) DEFINITION.—In this Act, the term “State” includes the District of Columbia, and the Commonwealth of Puerto Rico. Such term shall include a regional entity described in subparagraph (B).

(2) SUBMISSION OF APPLICATION.—In accordance with this section, each State desiring to implement a State health care expansion and improvement program may submit an application to the Commission under subsection (c) (referred to in this section as the “Commission”) for approval.

(3) LOCAL GOVERNMENT APPLICATIONS.—

(A) IN GENERAL.—Where a State declines to submit an application under this section, a unit of local government of such State, or a consortium of such units of local governments, may submit an application directly to the Commission for programs or projects under this subsection. Such an application shall be subject to the requirements of this section.

(B) OTHER APPLICATIONS.—Subject to such additional guidelines as the Secretary may prescribe, a unit of local government of a State, tribe, or Indian health organization may submit an application under this section, whether or not the State submits such an application, if such unit of local government can demonstrate unique demographic needs or a significant population size that warrants a separate program under this title.

(c) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of the enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary;

(ii) four State governors to be appointed by the National Governors Association on a bipartisan basis; and

(iii) two members of a State legislature to be appointed by the National Conference of State Legislators on a bipartisan basis;

(B) be responsible for making recommendations to the Secretary and the Congress, using equivalency or minimum standards, for setting the requirements of State program on national employer groups, provider organizations, and insurers because of
differing State requirements under the programs.

(2) PERIOD OF APPOINTMENT; REPRESENTATION REQUIREMENTS; VACANCIES.—Members shall be appointed for a term of 5 years. In appointing such members under paragraph (1)(A), the designated appointing individuals shall ensure the representation of urban and rural, as well as other appropriate geographic distribution of such members. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(3) CHAIRPERSON, MEETINGS.—

(A) CHAIRPERSON.—The Commission shall select a Chairperson from among its members.

(B) Q UORUM.—A majority of the members of the Commission shall constitute a quorum but a larger number of members may hold hearings.

(C) MEETINGS.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting. The Commission shall meet at the call of the Chairperson.

(4) POWERS OF THE COMMISSION.—

(A) NEGOTIATIONS WITH STATES.—The Commission may conduct detailed discussions and negotiations with States submitting applications under section 3109(a), either individually or in groups, to facilitate a final set of recommendations for purposes of subsection (d)(3)(D). Such negotiations shall include consultation with Indian tribes, and be conducted in a public forum.

(B) H EARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subsection.

(C) M EETINGS.—In addition to other meetings the Commission may hold, the Commission shall hold an annual meeting with the participating States under this section for the purpose of having States report progress toward the purposes in subsection (a)(1) and for an exchange of information.

(D) I NFORMATION.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon the request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission if the head of the department or agency involved determines it appropriate.

(E) P OStAL SERVICES.—The Commission may obtain access to such facilities, and may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(5) OTHER MATTERS.—

(A) C OMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government or of a State or local Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for individuals employed in the Government service at the time at which the rate is to be fixed, but in any event at a rate prescribed for positions of a similar character.

(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of services for the Commission.

(C) STAFF.—The Chairperson of the Commission shall have the power, consistent with the civil service laws and regulations, to appoint and terminate an executive director and such other additional personnel as may be necessary to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(6) F UNDING.—For the purpose of carrying out this subsection, the State plan shall be appropriated $3,000,000 for fiscal year 2007 and each fiscal year thereafter.

(7) R EQUIREMENTS FOR PROGRAMS.—

(A) S UMMARY.—In each determination to submit a State proposal to Congress under paragraph (3)(B), the Congress shall determine whether to submit a State proposal to Congress for approval.

(B) V OTING.—In general.—(I) The determination to submit a State proposal to Congress under sub-paragraph (A) shall be approved by 2/3 of the members of the Congress.

(ii) The determination to submit a State proposal to Congress under sub-paragraph (A) shall be approved by a majority of each house of Congress.

(iii) The determination to submit a State proposal to Congress under sub-paragraph (A) shall be approved by 2/3 of the members who are eligible to vote in such determination.

(iv) The determination to submit a State proposal to Congress under sub-paragraph (A) shall be approved by a majority of each house of Congress.

(C) S UBMISSION.—Not later than 90 days prior to October 1 of each fiscal year, the Commission shall submit to Congress a list, and a report of a legislative judgment, of the State applications for a grant under this section. The report of a legislative judgment shall include a determination that the State application for a grant under this section, when enacted by Congress, will provide the State with an opportunity to develop a State health plan that will be subject to the approval of Congress.

(D) APROVAL.—With respect to a fiscal year, the State proposal that has been recommended for approval under subparagraph (B) shall be approved by 2/3 of the members of the Congress. The determination to submit a State proposal to Congress under sub-paragraph (A) shall be deemed to be approved, and subject to the availability of appropriations, Federal funds or other funds, as available for States to assist such States in developing applications and plans under this section, including technical assistance by private sector entities to determine whether such State proposals are appropriate for approval by the Commission.
subsection (e). Nothing in the preceding sentence shall be construed to include the approval of State proposals that involve waivers or modifications in applicable Federal law.

(5) PROGRAM OR PROJECT PERIOD.—A State program or project may be approved for a period of 5 years and may be extended for subsequent periods in accordance with procedures provided by the Commission and the Secretary, based upon achievement of targets, except that a shorter period may be requested by a State and granted by the Commission.

(e) EXPEDITED CONGRESSIONAL CONSIDERATION.—

(1) INTRODUCTION AND COMMITTEE CONSIDERATION.—

(A) INTRODUCTION.—The legislative proposal submitted pursuant to subsection (d)(4)(B) shall be in the form of a joint resolution (in this subsection referred to as the “resolution”). Such resolution shall be introduced in the House of Representatives by the Speaker, and in the Senate, by the Majority Leader, immediately upon receipt of the language and shall be referred to the appropriate committee of Congress. If the resolution is not introduced in accordance with the preceding sentence, the resolution may be introduced in either House of Congress by any member thereof.

(B) COMMITTEE CONSIDERATION.—A resolution introduced in the House of Representatives shall be referred to the Committee on Ways and Means of the House of Representatives. A resolution introduced in the Senate shall be referred to the Committee on Finance of the Senate. Not later than 15 calendar days after the introduction of the resolution, the committee of Congress to which the resolution was referred shall report the resolution or a committee amendment thereto. If the committee has not reported such resolution (or an identical resolution) at the end of 15 calendar days after its introduction or at the end of the first day after there has been reported to the House involved a resolution, whichever is earlier, such committee shall be deemed to be discharged from further consideration of such resolution and such report shall be placed on the appropriate calendar of the House involved.

(2) CONSIDERATION.—

(A) CONSIDERATION.—Not later than 5 days after the date on which a committee has been discharged from consideration of a resolution introduced in the House of Representatives or the Senate, the President pro tempore of the Senate and the Speaker of the House shall transmit to Congress a resolution of the other House. The resolution shall be in the form of a joint resolution that, if agreed to by either House, shall be subject to a 5-day period. All points of order against the resolution (and against the conclusion of such 5-day period. All points of order against the resolution that were pending or that would be pending at the time the motion to proceed to the consideration of the committee amendment was laid aside shall be disposed of immediately without application of the rules (so far as they relate to the procedure to be followed in that House in the case of the resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) consideration by other house.—If, before the passage by one House of the resolution that is before such House, such House receives from the other House a resolution as passed by such other House—

(i) the resolution of the other House shall not be in the form of a joint resolution, it may only be considered for final passage in the House that receives it under clause (ii);

(ii) the procedure in the House in receipt of the resolution shall be the same as if no resolution had been received from the other House; and

(iii) notwithstanding clause (ii), the vote on final passage shall be on the reform bill of the other House.

Upon disposition of a resolution that is received by one House from the other House, it shall no longer be in order to consider the resolution bill that was introduced in the receiving House.

(C) CONSIDERATION IN CONFERENCE.—Immediately after the resolution that results in a disagreement between the two Houses of Congress with respect to the resolution, conferees shall be appointed and shall continue to confer for a period of 10 days after the date on which conferees are appointed. The conferees shall file a report with the House of Representatives and the Senate resolving the differences between the Houses on the resolution. Notwithstanding any other rule of the House of Representatives or the Senate, it shall be in order to immediately consider a report of a committee of conference on the resolution filed in accordance with this subclause. Debate in the House of Representatives and the Senate on the conference report shall be limited to 10 hours, equally divided and controlled by the Speaker of the House of Representatives and the Minority Leader of the Senate and the Majority and Minority Leaders of the House or their designees. A vote on final passage of the conference report shall occur immediately at the conclusion or yielding back of all time for debate on the conference report.

(3) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate or Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of the resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with the recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent, as in the case of any other rule of that House.

(4) LIMITATION.—The amount of Federal funds provided with respect to any State proposal or committee amendment approved under subsection (d)(3) shall not exceed the cost provided for such proposals within the concurrent resolution on the budget as enacted by Congress for the fiscal year involved.

(f) FUNDING.—

(1) IN GENERAL.—(A) The Secretary shall provide a grant to a State that has an application approved under subsection (d)(3). The amount shall be based on the recommendation of the Commission, subject to the amount appropriated under subsection (k).

(2) AMOUNT OF GRANT.—The amount of a grant under this section shall—

(A) be determined based upon the recommendations of the Commission, subject to

(B) give priority to those States programs that the Commission determines have the greatest opportunity to succeed in providing expanded health insurance and in providing children, youth, and other vulnerable populations with improved access to health care items and services; and

(C) link allocations to the meeting of the goals and performance measures relating to health care coverage, quality, and health care costs established under this Act through the State project application process.

(4) MAINTENANCE OF EFFORT.—A State, in utilizing the proceeds of a grant received under paragraph (1), shall maintain the expenditures of the State for health care coverage programs for the support of direct health care delivery at a level equal to not less than the level of expenditures maintained by the State for the fiscal year preceding the fiscal year for which the grant is received.

(5) REPORT.—At the end of the 5-year period beginning on the date on which the Secretary awards the first grant under paragraph (1), the State Health Innovation Advisory Commission established under subsection (c) shall prepare and submit to the appropriate committees of Congress, a report on the progress made by States receiving grants under paragraph (1) in meeting the goals of expanded coverage, improved quality, and cost containment through performance measures established during the 5-year period preceding the grant.

(g) MONITORING AND EVALUATION.—

(1) ANNUAL REPORTS AND PARTICIPATION BY STATES.—Each State that has received a program approval shall—

(A) submit to the Commission an annual report based on the period representing the 5-year period during which the State has complied with the requirements established by the Commission and the Secretary in the approval and in this section; and

(B) participate in the annual meeting under subsection (c)(4)(B).

(2) EVALUATIONS BY COMMISSION.—The Commission, in consultation with a qualified and independent organization such as the Institute of Medicine, shall prepare and submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce, the Committee on Education and Labor, and the Committee on Ways and Means of the House of Representatives annual reports that shall contain—

(A) a description of the effects of the reforms undertaken in States receiving approvals under this section; and

(B) a description of the recommendations of the Commission and actions taken based on these recommendations;

(C) an evaluation of the effectiveness of such recommendations;

(D) expanding health care coverage for State residents;

(ii) improving the quality of health care provided for State residents; and

(iii) reducing or containing health care costs in the States;
(D) recommendations regarding the advisability of increasing Federal financial assistance for State ongoing or future health program initiatives, including the amount and sources of such assistance; and

(E) as required by the Commission or the Secretary under subsection (f)(5), a periodic, independent evaluation of the program.

(b) The Secretary shall—

(1) CORRECTIVE ACTION PLANS.—If a State is not in compliance with a requirements of this section, the Secretary shall develop a correction plan for such State.

(2) TERMINATION.—For good cause and in consultation with the Commission, the Secretary may revoke any program granted under this section and such decision shall be subject to a petition for reconsideration and appeal pursuant to regulations established by the Secretary.

(1) RELATIONSHIP TO FEDERAL PROGRAMS.—

(1) IN GENERAL.—Nothing in this Act, or in section 1115 of the Social Security Act (42 U.S.C. 300gg–15), shall be construed as authorizing the Secretary, the Commission, a State, or any other person or entity to alter or affect in any way the provisions of title XIX of such Act (42 U.S.C. 1396 et seq.) or the regulations implementing such title.

(2) MAINTENANCE OF EFFORT.—No payment may be made under this section if the State adopts criteria for benefits, income, and resources in any methodology for purposes of determining an individual’s eligibility for medical assistance under the State plan under title XIX that are more restrictive than those applied as of the date of enactment of this Act.

(3) MISCELLANEOUS PROVISIONS.—

(A) RESTRICTION ON APPLICATION OF PREEXISTING CONDITION EXCLUSIONS.—

(i) IN GENERAL.—Subject to subparagraph (B), a State shall not permit the imposition of any preexisting condition exclusion for covered benefits under a program or project under this section.

(ii) GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE.—If the State program or project provides for benefits through payment for, or a contract with, a group health insurance issuer that offers group health insurance coverage in the State, the group health insurance issuer that offers group health insurance coverage in the State would have been required to comply with the requirements of any preexisting condition exclusion that are more restrictive than those applied as of the date of enactment of this Act.

(B) OTHER FEDERAL GOVERNMENTAL PROGRAMS.—Except as provided in any other provision of law, no payment shall be made to a State under this section for expenditures for health assistance that are designed to reduce the extent to which payment has been made or can reasonably be expected to be made promptly (as determined in accordance with the regulations) on (i) Medicare, (ii) any other Federal program operated or financed by the Indian Health Service, or (iii) any other program or project that offers or is provided health assistance under the plan.

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(C) COMPLIANCE WITH OTHER REQUIREMENTS.—Coverage offered under the program or project shall comply with the requirements of part A of title XXVI of the Public Health Service Act insofar as such requirements apply with respect to a health insurance issuer that offers group health insurance coverage.

(2) PREVENTION OF DUPLICATIVE PAYMENTS.—

(A) OTHER HEALTH PLANS.—No payment shall be made to a State under this section for expenditures for health assistance provided for an individual to the extent that a private insurer (as defined by the Secretary by regulation and including a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation to the individual that is not under the plan.

(B) OTHER FEDERAL GOVERNMENTAL PROGRAMS.—Except as provided in any other provision of law, no payment shall be made to a State under this section for expenditures for health assistance that are designed to reduce the extent to which payment has been made or can reasonably be expected to be made promptly (as determined in accordance with the regulations) on (i) Medicare, (ii) any other Federal program operated or financed by the Indian Health Service, or (iii) any other program or project that offers or is provided health assistance under the plan.

(1) OTHER FEDERAL GOVERNMENTAL PROGRAMS.—Except as provided in any other provision of law, no payment shall be made to a State under this section for expenditures for health assistance that are designed to reduce the extent to which payment has been made or can reasonably be expected to be made promptly (as determined in accordance with the regulations) on (i) Medicare, (ii) any other Federal program operated or financed by the Indian Health Service, or (iii) any other program or project that offers or is provided health assistance under the plan.

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care delivery. The bill creates a mechanism for States to apply for grants to a bipartisan “State Health Innovation Commission” housed at the Department of Health and Human Services, HHS. After reviewing the State proposals, the Commission would submit to Congress a recommendation list of prioritized State applications. The Commission would also recommend the amount of Federal grant money each State should receive to carry out the actions described in their plan.

Most importantly, at the end of the 5-year period, the Commission would be required to report to Congress whether the States are meeting the goals of the act and recommend future action Congress should take concerning overall reform, including whether or not to extend the program.

I believe it is important that we pass this legislation and provide a platform from which we can have a thoughtful conversation about health care reform at the Federal level.

Since I have been in the Senate, Congress has made some progress toward improving health care, most notably for our 43 million seniors with the passage of the Medicare Modernization Act.

Yet, we have been at this too long here in Washington without comprehensive, meaningful results. It is my hope that we will have bipartisan support for this very bipartisan comprehensive bill that I hope will move us closer toward a solution to the uninsured.

By Mrs. LINCOLN (for herself, Mr. THOMAS, Mr. BINGAMAN, Mr. DURBIN, Ms. MIKULSKI, Mr. AKAKA, Mr. PYOR, Ms. KLOBuchar, Mr. ENZI, Mr. HARKIN, Mr. ROCKEFELLER, and Mr. KERRY):

S. 320. A bill to amend the Internal Revenue Code of 1986 to provide a special period of limitation when uniform services retirement pay is reduced as result of award of disability compensation; to the Committee on Finance.

Mrs. LINCOLN, Mr. President, I rise today with my colleague, Senator CRAIG THOMAS, to introduce the Disabled Veterans Tax Fairness Act of 2007. This much-needed legislation would protect disabled veterans from being unfairly taxed on the benefits to which they are entitled, simply because their disability claims were not processed in a timely manner. This legislation is supported by the Military Coalition, a group representing more than 5.5 million members of uniformed services and their families.

While the Department of Veterans Affairs, VA, resolves most of its filed disability claims in less than a year, there are also instances of lost paperwork, administrative errors, and appeals that result in thousands of disability awards being delayed each year from the date the VA determines an adverse decision.

The Disabled Veterans Tax Fairness Act of 2007 would add an exception to the IRS statute of limitations for amending returns. This exception would allow disabled veterans whose disability claims have been pending for more than 3 years to receive refunds on previous years’ taxes paid and must file an amended tax return for each applicable year.

The length of time the IRS keeps these records. Affected veterans would have 1 year from the date the VA determination is issued to go back and amend previous years’ tax returns.

My father and grandfather both served our Nation in uniform and they taught me from an early age about the sacrifices our troops and their families have made to keep our Nation free. This is particularly true for our disabled veterans. During a time when a grateful nation should be doing everything it can to honor those who have sacrificed so greatly on our behalf, the very least it can do is ensure they and their families are not unjustly penalized simply because of bureaucratic inefficiencies or administrative delays which are beyond their control. This situation is unacceptable and our veterans deserve better.

That is why I am proud to reintroduce this legislation today to provide relief to our veterans. It is the least we can do for those whom we owe so much, and it is the least we can do to reassure future generations that a grateful nation will not forget them when their military service is complete.

By Mr. McCAIN (for himself and Mr. SALAZAR):

S. 327. A bill to authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of Cesar Estrada Chavez and for the farm labor movement; to the Committee on Energy and Natural Resources.

Mr. McCAIN, Mr. President, I am pleased to be joined today by Senator SALAZAR in reintroducing the Cesar Estrada Chavez Study Act. A similar version of this bill was introduced by Congresswoman HILDA SOLIS last week. This legislation, which is identical to the bill we introduced in the 108th Congress and passed the Senate by unanimous consent during the 108th Congress, would authorize the Secretary of the Interior to conduct a special resource study of sites associated with the life of Cesar Chavez. The bill would direct the Secretary of the Interior to determine whether any of the sites significant to Chavez’s life meet the criteria for being listed on the National Register of Historic Landmarks. The goal of this legislation is to establish a foundation for future legislation that would then designate land for the appropriate sites to become historic landmarks.

Mr. Chavez’s legacy is an inspiration to us all and he will be remembered for helping Americans to transcend distinctions of experience and share equally in the rights and responsibilities of freedom. It is important that we honor his struggle and do what we can to preserve appropriate landmarks that are significant to his life. This legislation has received an overwhelming positive response, not only from my fellow Arizonans, but from Americans all across the Nation. It has also received an endorsement from the Congressional Hispanic Caucus.

Cesar Chavez, an Arizonan born in Yuma, was the son of migrant farm workers. While his formal education ended in the eighth grade, his insatiable intellectual curiosity and determination helped make him known as one of the great American leaders for his successes in ensuring migrant farm workers were treated fairly and honestly. His efforts on behalf of some of the most oppressed individuals in our society is an inspiration, and through his work he made America a bigger and better nation.

While Chavez and his family migrated across the southwest looking for farm work, he evolved into an advocate of migrant farm workers. He founded the National Farm Workers Association in 1962, which later became the United Farm Workers of America. He gave a voice to those who had no voice. In his words, “We cannot seek achievement for ourselves and forget about progress and prosperity for our community . . . our ambitions must be broad enough to include the aspirations and needs of others, for their sakes and our own.”

Cesar Chavez was a humble man of deep conviction, who understood what it meant to serve and sacrifice for others. His motto in life “It Can Be Done,” epitomizes his life’s work and continues to be a positive influence on so many of us. Honoring the places of his life will enable his legacy to inspire and serve as an example for our future leaders.