

for the federally compelled disclosure of information by certain persons connected with the news media.

S. 2042

At the request of Ms. STABENOW, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 2042, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 2505

At the request of Ms. CANTWELL, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2505, a bill to allow employees of a commercial passenger airline carrier who receive payments in a bankruptcy proceeding to roll over such payments into an individual retirement plan, and for other purposes.

S. 2510

At the request of Ms. LANDRIEU, the names of the Senator from Washington (Ms. CANTWELL) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 2510, a bill to amend the Public Health Service Act to provide revised standards for quality assurance in screening and evaluation of gynecologic cytology preparations, and for other purposes.

S. 2785

At the request of Ms. STABENOW, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 2785, a bill to amend title XVIII of the Security Act to preserve access to physicians' services under the Medicare program.

S. 2799

At the request of Mrs. MURRAY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2799, a bill to amend title 38, United States Code, to expand and improve health care services available to women veterans, especially those serving in Operation Iraqi Freedom and Operation Enduring Freedom, from the Department of Veterans Affairs, and for other purposes.

S. 2836

At the request of Mr. CHAMBLISS, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2836, a bill to amend title 10, United States Code, to include service after September 11, 2001, as service qualifying for the determination of a reduced eligibility age for receipt of non-regular service retired pay.

S. 2908

At the request of Mr. BROWN, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2908, a bill to amend title II of the Social Security Act to prohibit the display of Social Security account numbers on Medicare cards.

S. 3070

At the request of Mr. SESSIONS, the names of the Senator from New Hamp-

shire (Mr. SUNUNU) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 3070, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centennial of the Boy Scouts of America, and for other proposes.

S. 3073

At the request of Mr. CORNYN, the names of the Senator from New Mexico (Mr. DOMENICI) and the Senator from New Hampshire (Mr. SUNUNU) were added as cosponsors of S. 3073, a bill to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of absentee ballots of absent overseas uniformed services voters, and for other purposes.

S. 3155

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 3155, a bill to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes.

S. 3199

At the request of Mr. LAUTENBERG, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 3199, a bill to amend the Internal Revenue Code of 1986 to exempt certain shipping from the harbor maintenance tax.

S. 3237

At the request of Mr. CASEY, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Michigan (Mr. LEVIN) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 3237, a bill to assist volunteer fire companies in coping with the precipitous rise in fuel prices.

S. 3277

At the request of Mr. MENENDEZ, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 3277, a bill to amend title 31 of the United States Code to require that Federal children's programs be separately displayed and analyzed in the President's budget.

S. 3302

At the request of Mr. BARRASSO, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 3302, a bill to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements with State foresters authorizing State foresters to provide certain forest, rangeland, and watershed restoration and protection services.

S.J. RES. 44

At the request of Mr. ROCKEFELLER, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S.J. Res. 44, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule set forth as requirements contained in the August 17, 2007, letter to State Health Officials

from the Director of the Center for Medicaid and State Operations in the Centers for Medicare and Medicaid Services and the State Health Official Letter 08-003, dated May 7, 2008, from such Center.

S. CON. RES. 60

At the request of Mr. BAUCUS, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. Con. Res. 60, a concurrent resolution expressing the sense of Congress relating to negotiating a free trade agreement between the United States and Taiwan.

S. CON. RES. 80

At the request of Mr. HAGEL, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. Con. Res. 80, a concurrent resolution urging the President to designate a National Airborne Day in recognition of persons who are serving or have served in the airborne forces of the Armed Services.

S. RES. 300

At the request of Mr. MENENDEZ, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 300, a resolution expressing the sense of the Senate that the Former Yugoslav Republic of Macedonia (FYROM) should stop the utilization of materials that violate provisions of the United Nations-brokered Interim Agreement between FYROM and Greece regarding "hostile activities or propaganda" and should work with the United Nations and Greece to achieve longstanding United States and United Nations policy goals of finding a mutually-acceptable official name for FYROM.

S. RES. 331

At the request of Mr. MENENDEZ, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. Res. 331, a resolution expressing the sense of the Senate that Turkey should end its military occupation of the Republic of Cyprus, particularly because Turkey's pretext has been refuted by over 13,000,000 crossings of the divide by Turkish-Cypriots and Greek Cypriots into each other's communities without incident.

S. RES. 580

At the request of Mr. BAYH, the name of the Senator from Kentucky (Mr. MCCONNELL) was added as a cosponsor of S. Res. 580, a resolution expressing the sense of the Senate on preventing Iran from acquiring a nuclear weapons capability.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN:

S. 3311. A bill to amend the Public Health Service Act to improve mental and behavioral health services on college campuses; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN: Mr. President, this February, on Valentine's Day, a young

man walked into a lecture hall at Northern Illinois University and opened fire. Five students were killed and 17 were wounded before the shooter took his own life. Northern Illinois University was not the first college to experience this kind of tragedy. We all remember the horrific events at Virginia Tech only months earlier—where 32 lives were taken by a gunman. The magnitude of heartbreak for friends and families and communities of those killed is hard to imagine. So, too, is the continuing trauma experienced by those who survived. These tragedies opened our eyes to a reality that needs attention.

Since February I have learned just how thin colleges and universities are stretched when it comes to providing counseling and other support services to students, and I think we need to help them. So today I am introducing the Mental Health on Campus Improvement Act, which would establish grant programs to help schools meet the rising need for mental health services on campus.

The ratio of counselors to students on campus is widening. Currently there is only one counselor for every 2,000 students on our college campuses. At some colleges, the situation is even more dismal. Studies show that 10 percent of college students have contemplated suicide. Mr. President, 45 percent have felt so depressed that it was difficult to function. Colleges are also encountering students who 10 or 20 years ago would not have been able to attend school due to mental illness, but who can today because of advances in treatment of mental illness.

Taking care of mental health needs on our college campuses is somewhat unique. Many mental illnesses start to manifest in this period when young people leave the security of home and regular medical care. The responsibility for the students' well-being often shifts from parents to students, who aren't always completely prepared. The colleges try to fill in the gaps, but with so few services and counselors, we are beginning to recognize how many needs are overlooked. This is a very real problem, even for schools that have made mental health services a dedicated priority.

Take Southern Illinois University in Carbondale. SIUC has eight full-time counselors for 21,000 students. That is one counselor for every 2,500 students. And there is another problem. Like many rural communities, Carbondale only has one community mental health agency. That agency is overwhelmed by the mental health needs of the community and refuses to serve students from SIUC. The campus counseling center is the only mental health option for students. The eight hard-working counselors at SIUC do their best under impossible conditions. They triage students who come in seeking help so that the ones who might be a threat to themselves or others are seen first. The waitlist of students seeking services has reached 45 students.

With so many students looking for help and so few counselors to see them, the counseling center has to cut back on outreach. Without outreach, the chances diminish of finding students who need help but don't ask for it. This is a serious problem. We know that the shooter at Virginia Tech exhibited many warning signs of a tortured mental state. But faculty and students did not know how or where to express their concerns. Outreach efforts by campus counseling centers can help educate the community about warning signs to look for as well as how to intervene. Of the students who committed suicide across the country in 2007, only 22 percent had received counseling on campus. That means that of the 1,000 college students who took their own lives, 800 may never have looked for help. How many of those young lives could have been saved if our college counseling centers had the resources they needed to identify those students and help them? Our students deserve better.

The Mental Health on Campus Improvement Act would create a grant program to provide funding for colleges and universities to improve their mental health services. Colleges could use the funding to hire personnel, increase outreach, and educate the campus community about mental health. The bill also would direct the Department of Health and Human Services to develop a public, nation-wide campaign to educate campus communities about mental health.

Reflecting on the loss of his own son, the well known minister Rev. William Sloan Coffin once said, "When parents die, they take with them a portion of the past. But when children die, they take away the future as well." I hope the bill I am introducing today will help prevent the unnecessary loss of more young lives and bright futures.

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

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

S. 3311

*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 "Mental Health on Campus Improvement Act".

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The 2007 National Survey of Counseling Center Directors found that the average ratio of counselors to students on campus is nearly 1 to 2,000 and is often far higher on large campuses. The International Association of Counseling Services accreditation standards recommend 1 counselor per 1,000 to 1,500 students.

(2) College counselors report that 8.5 percent of enrolled students sought counseling in the past year, totaling an estimated 1,600,000 students.

(3) Over 90 percent of counseling directors believe there is an increase in the number of students coming to campus with severe psychological problems. The majority of coun-

seling directors report concern that the demand for services is growing without an increase in resources.

(4) A 2006 American College Health Association survey revealed that 44 percent of students at colleges and universities report having felt so depressed it was difficult to function, and one out of every 11 students seriously considered suicide within the past year.

(5) Research conducted from 1989 to 2002 found that students seen for anxiety disorders doubled, for depression tripled, and for serious suicidal intention tripled.

(6) Many students who need help never receive it. Counseling directors report that of the students who committed suicide on their campuses, only 22 percent were current or former counseling center clients. Directors did not know the previous psychiatric history of 60 percent of these students.

(7) A survey conducted by the University of Idaho Student Counseling Center (2000) found that 77 percent of students who responded reported that they were more likely to stay in school because of counseling and that their school performance would have declined without counseling.

(8) A 6-year longitudinal study of college students found that personal and emotional adjustment was an important factor in retention and predicted attrition as well as or better than academic adjustment (Gerdes & Mallinckrodt, 1994).

**SEC. 3. IMPROVING MENTAL AND BEHAVIORAL HEALTH ON COLLEGE CAMPUSES.**

Title V of the Public Health Service Act is amended by inserting after section 520E-2 (42 U.S.C. 290bb-36b) the following:

**"SEC. 520E-3. GRANTS TO IMPROVE MENTAL AND BEHAVIORAL HEALTH ON COLLEGE CAMPUSES.**

**"(a) PURPOSE.**—It is the purpose of this section, with respect to college and university settings, to—

**"(1)** increase access to mental and behavioral health services;

**"(2)** foster and improve the prevention of mental and behavioral health disorders, and the promotion of mental health;

**"(3)** improve the identification and treatment for students at risk;

**"(4)** improve collaboration and the development of appropriate level of mental and behavioral health care; and

**"(5)** improve the efficacy of outreach efforts.

**"(b) GRANTS.**—The Secretary, acting through the Administrator and in consultation with the Secretary of Education, shall award competitive grants to eligible entities to improve mental and behavioral health services and outreach on college and university campuses.

**"(c) ELIGIBILITY.**—To be eligible to receive a grant under subsection (b), an entity shall—

**"(1)** be an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); and

**"(2)** submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including the information required under subsection (d).

**"(d) APPLICATION.**—An application for a grant under this section shall include—

**"(1)** a description of the population to be targeted by the program carried out under the grant, the particular mental and behavioral health needs of the students involved, and the Federal, State, local, private, and institutional resources available for meeting the needs of such students at the time the application is submitted;

**"(2)** an outline of the objectives of the program carried out under the grant;

“(3) a description of activities, services, and training to be provided under the program, including planned outreach strategies to reach students not currently seeking services;

“(4) a plan to seek input from community mental health providers, when available, community groups, and other public and private entities in carrying out the program;

“(5) a plan, when applicable, to meet the specific mental and behavioral health needs of veterans attending institutions of higher education;

“(6) a description of the methods to be used to evaluate the outcomes and effectiveness of the program; and

“(7) an assurance that grant funds will be used to supplement, and not supplant, any other Federal, State, or local funds available to carry out activities of the type carried out under the grant.

“(e) SPECIAL CONSIDERATIONS.—In awarding grants under this section, the Secretary shall give special consideration to applications that describe programs to be carried out under the grant that—

“(1) demonstrate the greatest need for new or additional mental and behavioral health services, in part by providing information on current ratios of students to mental and behavioral health professionals;

“(2) propose effective approaches for initiating or expanding campus services and supports using evidence-based practices;

“(3) target traditionally underserved populations and populations most at risk;

“(4) where possible, demonstrate an awareness of and a willingness to coordinate with a community mental health center or other mental health resource in the community, to support screening and referral of students requiring intensive services;

“(5) identify how the college or university will address psychiatric emergencies, including how information will be communicated with families or other appropriate parties; and

“(6) demonstrate the greatest potential for replication and dissemination.

“(f) USE OF FUNDS.—Amounts received under a grant under this section shall be used to—

“(1) provide mental and behavioral health services to students, including prevention, promotion of mental health, screening, early intervention, assessment, treatment, management, and education services relating to the mental and behavioral health of students;

“(2) provide outreach services to notify students about the existence of mental and behavioral health services;

“(3) educate families, peers, faculty, staff, and communities to increase awareness of mental health issues;

“(4) employ appropriately trained staff;

“(5) expand mental health training through internship, post-doctorate, and residency programs;

“(6) develop and support evidence-based and emerging best practices; and

“(7) evaluate and disseminate best practices to other colleges and universities.

“(g) DURATION OF GRANTS.—A grant under this section shall be awarded for a period of not to exceed 3 years.

“(h) EVALUATION AND REPORTING.—

“(1) EVALUATION.—Not later than 18 months after the date on which a grant is received under this section, the eligible entity involved shall submit to the Secretary the results of an evaluation to be conducted by the entity concerning the effectiveness of the activities carried out under the grant and plans for the sustainability of such efforts.

“(2) REPORT.—Not later than 2 years after the date of enactment of this section, the

Secretary shall submit to the appropriate committees of Congress a report concerning the results of—

“(A) the evaluations conducted under paragraph (1); and

“(B) an evaluation conducted by the Secretary to analyze the effectiveness and efficacy of the activities conducted with grants under this section.

“(i) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to grantees in carrying out this section.

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

**“SEC. 520E-4. MENTAL AND BEHAVIORAL HEALTH OUTREACH AND EDUCATION ON COLLEGE CAMPUSES.**

“(a) PURPOSE.—It is the purpose of this section to increase access to, and reduce the stigma associated with, mental health services so as to ensure that college students have the support necessary to successfully complete their studies.

“(b) NATIONAL PUBLIC EDUCATION CAMPAIGN.—The Secretary, acting through the Administrator and in collaboration with the Director of the Centers for Disease Control and Prevention, shall convene an inter-agency, public-private sector working group to plan, establish, and begin coordinating and evaluating a targeted public education campaign that is designed to focus on mental and behavioral health on college campuses. Such campaign shall be designed to—

“(1) improve the general understanding of mental health and mental health disorders;

“(2) encourage help-seeking behaviors relating to the promotion of mental health, prevention of mental health disorders, and treatment of such disorders;

“(3) make the connection between mental and behavioral health and academic success; and

“(4) assist the general public in identifying the early warning signs and reducing the stigma of mental illness.

“(c) COMPOSITION.—The working group under subsection (b) shall include—

“(1) mental health consumers and family members;

“(2) representatives of colleges and universities;

“(3) representatives of national mental and behavioral health and college associations;

“(4) representatives of mental health providers, including community mental health centers; and

“(5) representatives of private- and public-sector groups with experience in the development of effective public health education campaigns.

“(d) PLAN.—The working group under subsection (b) shall develop a plan that shall—

“(1) target promotional and educational efforts to the college age population and individuals who are employed in college and university settings, including the use of roundtables;

“(2) develop and propose the implementation of research-based public health messages and activities;

“(3) provide support for local efforts to reduce stigma by using the National Mental Health Information Center as a primary point of contact for information, publications, and service program referrals; and

“(4) develop and propose the implementation of a social marketing campaign that is targeted at the college population and individuals who are employed in college and university settings.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, such sums as may be necessary to carry out this section.”.

**SEC. 4. INTERAGENCY WORKING GROUP ON COLLEGE MENTAL HEALTH.**

(a) PURPOSE.—It is the purpose of this section, pursuant to Executive Order 13263 (and the recommendations issued under section 6(b) of such Order), to provide for the establishment of a College Campus Task Force under the Federal Executive Steering Committee on Mental Health, to discuss mental and behavioral health concerns on college and university campuses.

(b) ESTABLISHMENT.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) shall establish a College Campus Task Force (referred to in this section as the “Task Force”), under the Federal Executive Steering Committee on Mental Health, to discuss mental and behavioral health concerns on college and university campuses.

(c) MEMBERSHIP.—The Task Force shall be composed of a representative from each Federal agency (as appointed by the head of the agency) that has jurisdiction over, or is affected by, mental health and education policies and projects, including—

(1) the Department of Education;

(2) the Department of Health and Human Services;

(3) the Department of Veterans Affairs; and

(4) such other Federal agencies as the Administrator of the Substance Abuse and Mental Health Services Administration and the Secretary jointly determine to be appropriate.

(d) DUTIES.—The Task Force shall—

(1) serve as a centralized mechanism to coordinate a national effort—

(A) to discuss and evaluate evidence and knowledge on mental and behavioral health services available to and the prevalence of mental health illness among, the college age population of the United States;

(B) to determine the range of effective, feasible, and comprehensive actions to improve mental and behavioral health on college and university campuses;

(C) to examine and better address the needs of the college age population dealing with mental illness;

(D) to survey Federal agencies to determine which policies are effective in encouraging, and how best to facilitate outreach without duplicating, efforts relating to mental and behavioral health promotion;

(E) to establish specific goals within and across Federal agencies for mental health promotion, including determinations of accountability for reaching those goals;

(F) to develop a strategy for allocating responsibilities and ensuring participation in mental and behavioral health promotions, particularly in the case of competing agency priorities;

(G) to coordinate plans to communicate research results relating to mental and behavioral health amongst the college age population to enable reporting and outreach activities to produce more useful and timely information;

(H) to provide a description of evidence-based best practices, model programs, effective guidelines, and other strategies for promoting mental and behavioral health on college and university campuses;

(I) to make recommendations to improve Federal efforts relating to mental and behavioral health promotion on college campuses and to ensure Federal efforts are consistent with available standards and evidence and other programs in existence as of the date of enactment of this Act; and

(J) to monitor Federal progress in meeting specific mental and behavioral health promotion goals as they relate to college and university settings;

(2) consult with national organizations with expertise in mental and behavioral

health, especially those organizations working with the college age population; and

(3) consult with and seek input from mental health professionals working on college and university campuses as appropriate.

(e) MEETINGS.—

(1) IN GENERAL.—The Task Force shall meet at least 3 times each year.

(2) ANNUAL CONFERENCE.—The Secretary shall sponsor an annual conference on mental and behavioral health in college and university settings to enhance coordination, build partnerships, and share best practices in mental and behavioral health promotion, data collection, analysis, and services.

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

By Mr. DURBIN (for himself, Mr. BINGAMAN, and Mr. FEINGOLD):

S. 3312. A bill amend the Public Health Service Act to ensure that victims of public health emergencies have meaningful and immediate access to medically necessary health care services; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Today I am introducing the Public Health Emergency Response Act. This bill authorizes a temporary health benefit during a public emergency for people in that area who don't have health insurance. The program makes it more likely that people who need healthcare services will get them and ensures that the doctors and nurses who treat them will be compensated.

Since 2000, the Secretary of Health and Human Services has had the authority to declare public health emergencies so that government can provide resources quickly to communities in need. That authority has been exercised very rarely—for 9-11; Hurricanes Wilma, Katrina, and Rita; and the recent flooding in the Midwest. These public health emergencies—both man-made and natural disasters—ruined neighborhoods, divided families, and weakened many spirits. But for every tragic emergency witnessed, we saw acts of remarkable selflessness and kindness.

One of the greatest examples of this generosity is in the efforts of local health care providers to meet the increased need for services. Whether it was the hurricanes that hit the Gulf Coast, the debris in downtown New York, or the waters in the Midwest, the need for medical services was immediate and in some cases dramatic. The demand for mental health services also rose in response to the psychological stress and trauma caused by the destruction of homes, the loss of jobs, the separation of families, and the death and devastation surrounding those in the areas hit by these tragic events.

Despite the trauma of a disaster or the pain from an injury incurred during a disaster, people who don't seek care not only leave themselves vulnerable to worsening health conditions, but they exacerbate the situation on the ground. For those uninsured people who do access medical care, the pro-

viders—typically those in areas immediately surrounding the disaster area—are often left without any compensation.

During Hurricane Katrina, the Harris County hospital district in Houston assumed responsibility for the health care of 23,000 evacuees living in the Reliant Astrodome. In Baton Rouge, hospitals struggled to meet the health care needs of a population that doubled in size after absorbing half a million evacuees. Health facilities and other public infrastructure were stretched beyond their capacity as they faced the multiple challenges of addressing the public health needs in the counties or parishes directly affected; delivering needed health care to the displaced; and ensuring the continued delivery of health care services to residents of the other areas.

Victims of public health emergencies should know that the government will assist them in their time of need. This is why I am introducing the Public Health Emergency Response Act.

The Public Health Emergency Response Act would make it easier for uninsured victims to seek treatment and would provide coverage to the health care professionals who are treating them. The bill would establish a temporary emergency health benefit for people who are uninsured. The benefit could be triggered only when the Secretary of Health and Human Services declared a public health emergency and chose to activate the benefit. The benefit would last for up to 90 days, and the Secretary could extend it once for another 90 days. Rather than put additional stress on our public health programs like Medicare, Medicaid or SCHIP, the funding mechanism for the benefit is the Public Health Emergency Fund, a no-year fund established in 1983. Funds for emergency victims' health coverage would be determined by Congressional appropriations. The bill will help save lives and ensure a functioning health care system for whatever lies ahead.

Most recently, we saw the entire Midwest reeling from weeks of flooding and tornadoes—from Minnesota to Kansas and everywhere in between—Wisconsin, Iowa, Missouri, and, of course, Illinois. The damage has been heartbreaking. We know from the great flood that devastated the Midwest in 1993 and from Hurricanes Katrina and Rita that the losses from this chain of weather-related disasters will be more than our states and citizens alone can bare. We also know that, in times of crisis, Americans have always come together to help those in need.

The Public Health Emergency Response Act carries on this tradition. The bill allows Federal government to prepare for the next emergency. We do not know what the next public health emergency will look like. It may be a bioterrorist attack, a hurricane, or pandemic flu. We should act now to create the framework for emergency health coverage and reimbursement.

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

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

S. 3312

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Public Health Emergency Response Act of 2008".

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

(a) FINDINGS.—Congress finds the following:

(1) Since 2000, the Secretary of Health and Human Services has declared that a public health emergency existed nationwide in response to the attacks of September 11th and in response to Hurricanes Katrina and Rita.

(2) In the event of a public health emergency, compliance with recommendations to seek immediate care may be critical to containing the spread of an infectious disease outbreak or responding to a bioterror attack.

(3) Nearly sixteen percent of Americans lack health insurance coverage.

(4) Fears of out-of-pocket expenses may cause individuals to delay seeking medical attention during a public health emergency.

(5) A public health emergency may disrupt health care assistance programs for individuals with chronic conditions, exacerbating the costs and risks to their health.

(6) The uninsured could place great financial strain on healthcare providers during a public health emergency.

(7) The Department of Health and Human Services Pandemic Influenza Plan projects that a pandemic influenza outbreak could result in 45 million additional outpatient visits, with 865,000 to 9,900,000 individuals requiring hospitalization, depending upon the severity of the pandemic.

(8) Hospitals in the United States could lose as much as \$3.9 billion in uncompensated care and cash flow losses in the event of a severe pandemic.

(9) Under current statute, no dedicated mechanism exists to reimburse providers for uncompensated care during a public health emergency.

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

(1) to provide temporary emergency healthcare coverage for uninsured and certain otherwise qualified individuals in the event of a public health emergency declared by the Secretary of Health and Human Services;

(2) to ensure that healthcare providers remain fiscally solvent and are not overburdened by the cost of uncompensated care during a public health emergency;

(3) to eliminate a primary disincentive for uninsured and certain otherwise qualified individuals to promptly seek medical care during a public health emergency; and

(4) to minimize delays in the provision of emergency healthcare coverage by clarifying eligibility requirements and the scope of such coverage and identifying the funding mechanisms for emergency healthcare services.

**SEC. 3. EMERGENCY HEALTHCARE COVERAGE.**

(a) IN GENERAL.—Title III of the Public Health Service Act is amended by inserting after section 319K the following new section: "**SEC. 319K-1. EMERGENCY HEALTHCARE COVERAGE.**

"(a) ACTIVATION AND TERMINATION OF EMERGENCY HEALTHCARE COVERAGE.—

“(1) BASED ON PUBLIC HEALTH EMERGENCY.—“(A) IN GENERAL.—The Secretary may activate the coverage of emergency healthcare services under this section only if the Secretary determines that there is a public health emergency.

“(B) DETERMINATION OF PUBLIC HEALTH EMERGENCY.—For purposes of this section, there is a ‘public health emergency’ only if a public health emergency exists under section 319.

“(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Secretary shall consider a range of factors including the following:

“(A) The degree to which the emergency is likely to overwhelm healthcare providers in the region.

“(B) The opportunity to minimize morbidity and mortality through intervention under this section.

“(C) The estimated number of direct casualties of the emergency.

“(D) The potential number of casualties in the absence of intervention under this section (such as in the case of infectious disease).

“(E) The potential adverse financial impacts on local healthcare providers in the absence of activation of this section.

“(F) The need for healthcare services is of sufficient severity and magnitude to warrant major assistance under this section above and beyond the emergency services otherwise available from the Federal Government.

“(G) Such other factors as the Secretary may deem appropriate.

“(3) TERMINATION AND EXTENSION.—

“(A) IN GENERAL.—Coverage of emergency healthcare services under this section shall terminate, subject to subsection (c)(2), upon the earlier of the following:

“(i) The Secretary’s determination that a public health emergency no longer exists.

“(ii) Subject to subparagraph (B), 90 days after the initiation of coverage of emergency healthcare services.

“(B) EXTENSION AUTHORITY.—The Secretary may extend a public health emergency for a second 90-day period, but only if a report to Congress is made under paragraph (4) in conjunction with making such extension.

“(4) REPORT.—

“(A) IN GENERAL.—Prior to making an extension under paragraph (3)(B), the Secretary shall transmit a report to Congress that includes information on the nature of the public health emergency and the expected duration of the emergency. The Secretary shall include in such report recommendations, if deemed appropriate, regarding requesting Congress to provide a further extension of the public health emergency period beyond the second 90-day period.

“(B) REPORT CONTENTS.—A report under subparagraph (A) shall include a discussion of the healthcare needs of emergency victims and affected individuals including the likely need for follow-up care over a two-year period.

“(5) COORDINATION.—The Secretary shall ensure that the activation, implementation, and termination of emergency healthcare services under this section in response to a public health emergency is coordinated with all functions, personnel, and assets of the Federal, State, local, and tribal responses to the emergency.

“(6) MEDICAL MONITORING PROGRAM.—The Secretary shall establish a medical monitoring program for monitoring and reporting on healthcare needs of the affected population over time. At least annually during the 5-year period following the date of a public health emergency, the Secretary shall report to Congress on any continuing healthcare needs of the affected population

related to the public health emergency. Such reports shall include recommendations on how to ensure that emergency victims and affected individuals have access to needed healthcare services.

“(b) ELIGIBILITY FOR COVERAGE OF EMERGENCY HEALTHCARE SERVICES.—

“(1) LIMITED ELIGIBILITY.—

“(A) IN GENERAL.—Eligibility for coverage of emergency healthcare services under this section for a public health emergency is limited to individuals who—

“(i) are emergency victims who are uninsured or otherwise qualified; or

“(ii) are affected individuals who are uninsured.

“(B) DEFINITIONS.—For purposes of this section with respect to a public health emergency:

“(i) INSURED.—An individual is ‘insured’ if the individual has group or individual health insurance coverage or publicly financed health insurance (as defined by the Secretary).

“(ii) OTHERWISE QUALIFIED.—An individual is ‘otherwise qualified’ if the individual is insured but the Secretary determines that the individual’s healthcare insurance coverage is not at least actuarially-equivalent to benchmark coverage. In establishing such benchmark coverage, the Secretary shall consider the standard Blue Cross/Blue Shield preferred provider option service benefit plan described in and offered under section 8903(1) of title 5, United States Code.

“(iii) UNINSURED.—An individual is ‘uninsured’ if the individual is not insured.

“(iv) EMERGENCY VICTIM.—An individual is an ‘emergency victim’ with respect to a public health emergency if the individual needs healthcare services due to injuries or disease resulting from the public health emergency.

“(v) AFFECTED INDIVIDUAL.—An individual is an ‘affected individual’ with respect to a public health emergency if—

“(I) the individual resides in an assistance area designated for the emergency (or whose residence was displaced by the emergency) or, in the case of such an emergency constituting a pandemic flu or other infectious disease outbreak, who resides in the area affected by the outbreak (or whose residence was displaced by the emergency); and

“(II) the individual’s ability to access care or medicine is disrupted as a result of the emergency.

“(2) PROCESS.—The Secretary shall establish a streamlined process for determining eligibility for emergency healthcare services under this section. In establishing such process—

“(A) the Secretary shall recognize that in the context of a public health emergency, individuals may be unable to provide identification cards, healthcare insurance information, or other documentation; and

“(B) the primary method for determining eligibility for such services shall be an attestation provided to the healthcare provider by the recipient of the services that the recipient meets the eligibility criteria established under paragraph (1)(A), with a standard alternative for unattended minors and adults without the capacity to sign such an attestation form.

“(3) SERVICE DELIVERY.—Providers may commence provision of emergency healthcare services for an individual in the absence of any centralized enrollment process, if the provider has collected basic information, specified by the Secretary, including the individual’s name, address, social security number, and existing health insurance coverage (if any), that establishes a prima facie basis for eligibility, except that such information shall not be required in cases where the individual is unable to provide the

information due to disability or incapacitation.

“(c) EMERGENCY HEALTHCARE SERVICES.—

“(1) IN GENERAL.—For purposes of this section, the term ‘emergency healthcare services’—

“(A) means items and services for which payment may be made under parts A and B of the Medicare program;

“(B) includes prescription drugs (not covered under such part B) specified by the Secretary under subsection (g), based on the formularies of the two or more prescription drug plans under part D of the Medicare program with the largest enrollment;

“(C) may include drugs, devices, biologics, and other healthcare products, if such products are authorized for use by the Food and Drug Administration pursuant to an alternate authority, including the emergency use authority under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3); and

“(D) for an affected individual, is limited to those items and services described under subparagraphs (A), (B) or (C) that a third-party payor, such as a government program or charitable organization, reimbursed or otherwise provided to an affected individual during the three months prior to the declaration of the public health emergency.

“(2) NOT MEDICARE, MEDICAID, OR SCHIP BENEFITS.—The emergency healthcare services provided under this section are not benefits under Medicare, Medicaid or SCHIP. Nothing in this section shall be interpreted as altering or otherwise conflicting with titles XVIII, XIX, or XXI of the Social Security Act.

“(3) COMPLETION OF TREATMENT FOR EMERGENCY VICTIMS.—Notwithstanding termination of the coverage of emergency healthcare services pursuant to subsection (a)(4), the Secretary may identify a subgroup of emergency victims on a case-by-case basis or otherwise to continue receiving coverage of emergency healthcare services for up to an additional 60 days. Such emergency healthcare services provided after the termination date shall be limited to services and items that are medically necessary to treat an injury or disease resulting directly from the public health emergency involved.

“(d) COVERED PROVIDERS.—

“(1) IN GENERAL.—Subject to paragraph (2), healthcare services are not covered under this section unless they are furnished by a healthcare provider that—

“(A) has a valid provider number under the Medicare program, the Medicaid program, or SCHIP;

“(B) is in good standing with such program; and

“(C) is not excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act, 42 U.S.C. 1320a-7b(f)).

“(2) WAIVER AUTHORITY.—

“(A) IN GENERAL.—The Secretary may by regulation waive certain requirements for provider enrollment that otherwise apply under the Medicare or Medicaid program or under SCHIP to ensure an adequate supply of healthcare providers (such as nurses and other health care providers who do not typically participate in the Medicare or Medicaid program or SCHIP) and services in the case of a public health emergency. Such requirements may include the requirement that a licensed physician or other health care professional holds a license in the State in which the professional provides services or is otherwise authorized under State law to provide the services involved.

“(B) REPORT ON EMERGENCY SYSTEM FOR ADVANCE REGISTRATION OF VOLUNTEER HEALTH PROFESSIONALS (ESAR-VHP).—Not later than 180 days after the date of the enactment of

this section, the Secretary shall submit to Congress a report on the number of volunteers, by profession and credential level, enrolled in the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP) that will be available to each State in the event of a public health emergency. The Secretary shall determine if the number of such volunteers is adequate for interstate deployment in response to regional requests for volunteers and, if not, shall include in the report recommendations for actions to ensure an adequate surge capacity for public health emergencies in defined geographic areas.

“(3) MEDICARE AND MEDICAID PROGRAMS AND SCHIP DEFINED.—For purposes of this section:

“(A) The term ‘Medicare program’ means the program under parts A, B, and D of title XVIII of the Social Security.

“(B) The term ‘Medicaid program’ means the program of medical assistance under title XIX of such Act.

“(C) The term ‘SCHIP’ means the State children’s health insurance program under title XXI of such Act.

“(e) PAYMENTS AND CLAIMS ADMINISTRATION.—

“(1) PAYMENT AMOUNT.—The amount of payment under this section to a provider for emergency healthcare services shall be equal to 100 percent of the payment rate for the corresponding service under part A or B of the Medicare program, or, in the case of prescription drugs and other items and services not covered under either such part, such amount as the Secretary may specify by rule. Such a provider shall not be permitted to impose any cost-sharing or to balance bill for services furnished under this section.

“(2) USE OF MEDICARE CONTRACTORS.—The Secretary shall enter into arrangements with Medicare administrative contractors under which they process claims for emergency healthcare services under this section using the claim forms, codes, and nomenclature in effect under the Medicare program.

“(3) APPLICATION OF SECONDARY PAYER RULES.—In the case of payment under this section for emergency healthcare services for otherwise qualified individuals who have some health insurance coverage with respect to such services, the administrative contractors under paragraph (2) shall submit a claim to the entity offering such coverage to recoup all or some of such payment, reflecting whatever amount the entity would normally reimburse for each covered service. The provisions of section 1862(b) of the Social Security Act (42 U.S.C. 1395y(b)) shall apply to benefits provided under this section in the same manner as they apply to benefits provided under the Medicare program.

“(4) PAYMENTS FOR EMERGENCY HEALTHCARE SERVICES AND RELATED COSTS.—Payments to provide, and costs to administer, emergency healthcare services under this section shall be made from the Public Health Emergency Fund, as provided under subsection (f)(1).

“(5) ATTESTATION REQUIREMENT.—No payment shall be made under this section to a provider for emergency healthcare services unless the provider has executed an attestation that—

“(A) the provider has notified the administrative contractor of any third-party payment received or claims pending for such services;

“(B) the recipient of the services has executed an attestation or otherwise satisfies the eligibility criteria established under subsection (b); and

“(C) the services were medically necessary.

“(f) PUBLIC HEALTH EMERGENCY FUND; FRAUD AND ABUSE PROVISIONS.—

“(1) THE PUBLIC HEALTH EMERGENCY FUND.—There is authorized to be appropriated to the Public Health Emergency Fund (established under section 319(b)) such sums as may be

necessary under this section for payments to provide emergency healthcare services and costs to administer the services during a public health emergency.

“(2) NO USE OF MEDICARE FUNDS.—No funds under the Medicare program shall be available or used to make payments under this section.

“(3) FRAUD AND ABUSE PROVISIONS.—Providers and recipients of emergency healthcare services under this section shall be subject to the federal fraud and abuse protections that apply to Federal health care programs as defined in section 1128B(f) of the Social Security Act.

“(g) RULEMAKING.—The Secretary may issue regulations to carry out this section and shall use a negotiated rulemaking process to advise the Secretary on key issues regarding the implementation of this section.

“(h) PUBLIC HEALTH EMERGENCY PLANNING AND THE EDUCATION OF HEALTHCARE PROVIDERS AND THE GENERAL POPULATION.—

“(1) PLANNING FOR COVERAGE OF EMERGENCY HEALTHCARE SERVICES IN PUBLIC HEALTH EMERGENCIES.—The Secretary shall, within 90 days after the date of the enactment of this section, initiate planning to carry out this section, including planning relating to implementation of the subsection (e) in the event of activation of emergency healthcare coverage.

“(2) OUTREACH AND PUBLIC EDUCATION CAMPAIGN.—The Secretary shall conduct an outreach and public education campaign to inform healthcare providers and the general public about the availability of emergency healthcare coverage under this section during the period of the emergency. Such campaign shall include—

“(A) an explanation of the emergency healthcare coverage program under this section;

“(B) claim forms and instructions for healthcare providers to use when providing covered services during the emergency period; and

“(C) special outreach initiatives to vulnerable and hard-to-reach populations.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each fiscal year (beginning with fiscal year 2009) \$7,000,000 to carry out paragraphs (1) and (2) during the fiscal year.

“(i) APPLICATION OF POLICIES UNDER OTHER FEDERAL HEALTH CARE PROGRAMS.—As specified in subsections (c) through (e), the Secretary may adopt in whole or in part the coverage, reimbursement, provider enrollment, and other policies used under the Medicare program and other Federal health care programs in administering emergency healthcare services under this section to the extent consistent with this section.”

(b) APPLICATION OF PUBLIC HEALTH EMERGENCY FUND.—Section 319(b)(1) of such Act (42 U.S.C. 247d(b)(1)) is amended—

(1) by inserting “and section 319K-1” after “subsection (a)”; and

(2) by striking “such subsection” and inserting “subsection (a)”.

WASHINGTON, DC,

July 22, 2008.

HON. RICHARD DURBIN,  
U.S. Senate,

Washington, DC.

HON. LOIS CAPPS,  
House of Representatives,  
Washington, DC.

DEAR SENATOR DURBIN AND REPRESENTATIVE CAPPS: The undersigned organizations join in supporting your introduction of the Public Health Emergency Response Act (PHERA), legislation that would put a turnkey process into place which would ensure that victims of a public health emergency have immediate access to medically necessary healthcare services and help ensure that we have a functioning health care system.

A public health emergency, such as a natural disaster, biologic attack or infectious disease outbreak, could strike at any time. The September 11th attacks and Hurricanes Katrina and Rita have underscored the need for rapid access to healthcare services during and immediately following a public health emergency. Following Hurricane Katrina, Congress ultimately approved \$2.1 billion for grants to certain states to cover the Medicaid and SCHIP matching requirements for individuals enrolled in these programs, and the cost of uncompensated care for the uninsured. However, it took six months for Congress to pass the Deficit Reduction Act, which provided for these funds. This unnecessary delay could have been prevented. PHERA would put into place ahead of time a framework for providing reimbursement for uncompensated care in the event of a major public health emergency.

The temporary benefit established through this bill would help remove a disincentive for uninsured individuals to promptly seek medical care. Any delay in seeking care could result in lives lost, particularly during an infectious disease outbreak when immediate identification and isolation are very important, and delay in seeking care could render treatment ineffective. At a time when our health care system could be overwhelmed with patients, it is vital that reimbursement issues not dissuade providers from offering care. A study by the Center for Biosecurity estimated that U.S. hospitals could lose as much as \$3.9 billion in uncompensated care and cash flow losses in the event of a severe pandemic. By helping to reduce the burden of uncompensated care, PHERA would help ensure the solvency and continuity and our health care system during a catastrophic emergency.

Specifically, PHERA would provide a temporary emergency health benefit for uninsured individuals and individuals whose health insurance coverage is not actuarially equivalent to benchmark coverage, in the event that the Secretary of Health and Human Services (HHS) declares that a public health emergency exists and chooses to activate the benefit. It would clarify who is eligible for this benefit, including individuals displaced by a public health emergency, limit the amount of time for which the benefit would last, and stipulate what providers would be covered under this Act. It would not use Medicare, Medicaid or SCHIP funding. The funding mechanism would be the Public Health Emergency Fund, a no-year fund available to the Secretary. The bill authorizes funding for the administration of the fund, together with a public education campaign on the availability of the benefit, but further funding would not be necessary until Congress appropriated funds in the event of a declared public health emergency.

Past experiences have shown that Congress will step in to help defray the costs of uncompensated care resulting from a catastrophic emergency. Determining the scope of such coverage ahead of time will help ensure the solvency of our health care system and help eliminate a disincentive for individuals to promptly seek care. PHERA would help ensure that when tragedy strikes, time and lives are not lost as Congress debates a course of action. It would create the turnkey process ahead of time, thereby allowing for timely care to individuals affected by a crisis.

We appreciate your leadership in introducing this legislation and look forward to working with you on this and other public health initiatives in the future.

Sincerely,

American Red Cross.

Center for Biosecurity, University of Pittsburgh Medical Center.

Center for Infectious Disease Research and Policy.

Council of State and Territorial Epidemiologists.

Infectious Diseases Society of America.

National Association of Community Health Centers.

Society for Healthcare Epidemiology of America.

Trust for America's Health.

By Mr. REID:

S. 3313. A bill to establish a Federal Polygamy Task Force, to authorize assistance for victims of polygamy, and for other purposes; to the committee on the Judiciary.

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

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

S. 3313

*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 "Victims of Polygamy Assistance Act of 2008".

#### SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Despite the fact that polygamy has been illegal in the United States for over 100 years, the practice of polygamy involving underage marriages is growing. Sizable polygamist communities exist in Arizona, Utah, and Nevada, and are expanding into other States.

(2) Polygamist communities are typically controlled by organizations that engage in widespread and systematic violations of State laws and the laws of the United States in order to enrich their leaders and maintain control over their members.

(3) The crimes perpetrated by these organizations include child abuse, domestic violence, welfare fraud, tax evasion, public corruption, witness tampering, and transporting victims across State lines.

(4) Due to the systematic and sophisticated nature of these crimes, State and local law enforcement agencies would benefit from the assistance of the Federal Government as they investigate and prosecute these organizations and their leaders for violations of State law. In addition, violations of Federal law associated with polygamy should be investigated and prosecuted directly by Federal authorities.

(5) The work of State and Federal law enforcement agencies to combat crimes by polygamist organizations would benefit from enhanced collaboration and information-sharing among such agencies.

(6) The establishment of a task force within the Department of Justice to coordinate Federal efforts and collaborate with State agencies would aid in the investigation and prosecution of criminal activities of polygamist organizations in both Federal and State courts.

(7) Polygamist organizations isolate, control, manipulate, and threaten victims with retribution should they ever abandon the organization. Individuals who choose to testify against polygamist organizations in Federal or State court have unique needs, including social services and witness protection support, that warrant Federal assistance.

#### SEC. 3. ESTABLISHMENT OF A FEDERAL POLYGAMY TASK FORCE.

(a) ESTABLISHMENT.—There is established within the Department of Justice a Federal Polygamy Task Force, which shall consist of the Deputy Attorney General, the United States attorneys from affected Federal judi-

cial districts, representatives of the Federal Bureau of Investigation, the Internal Revenue Service, the Department of Labor, and the Department of Health and Human Services, and any officer of the Federal Government whom the Deputy Attorney General considers necessary to strengthen Federal law enforcement activities and provide State and local law enforcement officials the assistance they need to address the illegal activity of one or more polygamist organizations.

(b) PURPOSES.—The Federal Polygamy Task Force established under subsection (a) shall—

(1) formulate effective responses to the unique set of crimes committed by polygamist organizations;

(2) establish partnerships with State and local law enforcement agencies to share relevant information and strengthen State and Federal efforts to combat crimes perpetrated by polygamist organizations;

(3) assist States by providing strategies and support for the protection of witnesses;

(4) track the criminal behavior of polygamist organizations that cross State and international borders; and

(5) ensure that local officials charged with protecting the public are not corrupted because of financial, family, or membership ties to a polygamist organization.

#### SEC. 4. POLYGAMY VICTIM ASSISTANCE DISCRETIONARY GRANTS.

The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404E the following:

##### "SEC. 1404F. ASSISTANCE FOR VICTIMS OF POLYGAMY.

"(a) IN GENERAL.—The Director may make grants as provided in section 1404(c)(1)(A) to State, tribal, and local prosecutors' offices, law enforcement agencies, courts, jails, and correctional institutions, and to qualified public and private entities, to develop, establish, and maintain programs for the enforcement of rights and provision of social services (including witness protection, housing, education, vocational training, mental health services, child care, and medical treatment) for an individual who is exploited or otherwise victimized by practitioners of polygamy.

"(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to funds made available under section 1402(d), there are authorized to be appropriated to carry out this section—

"(1) \$2,000,000 for fiscal year 2009; and

"(2) \$2,500,000 for each of the fiscal years 2010, 2011, 2012, and 2013.

"(c) FALSE CLAIMS ACT.—Notwithstanding any other provision of law, amounts collected pursuant to sections 3729 through 3731 of title 31, United States Code (commonly known as the 'False Claims Act'), may be used for grants under this section, subject to appropriation."

#### SEC. 5. POLYGAMY INVESTIGATION AND PROSECUTION ASSISTANCE DISCRETIONARY GRANTS.

Section 506(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756(a)) is amended—

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

(2) in paragraph (2), by striking the period at the end and inserting "and"; and

(3) by adding at the end the following:

"(3) \$2,000,000, to be granted by the Attorney General to States and units of local government to investigate and prosecute polygamist organizations that violate Federal, State, or local laws."

By Mrs. BOXER (for herself, Mr. CARDIN, Mr. LEVIN, and Mr. WHITEHOUSE):

S. 3314. A bill to protect the oceans and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. CANTWELL. Mr. President, I rise today in support of Senator BOXER's efforts to begin a real dialog on the need for an effective national oceans policy.

The protection of our oceans is a major priority for me. And we have a responsibility to start talking about policy solutions that will work to protect one of our most precious resources our oceans.

In addition to cultural, recreational, and aesthetic values, our oceans provide great economic value and a way of life for millions of people.

In Washington State alone, nearly 80 percent of our gross domestic product, GDP, is produced in our coastal areas. Nationwide, the oceans and coastal areas generate more than \$800 billion of trade each year, tens of billions of dollars in recreational opportunities annually, and \$30 billion from commercial fisheries. The histories and the economies of coastal communities have, and always will, ebb and flow with the tide.

As such, the conservation of marine and coastal ecosystems, and the majestic life they contain, should be a top priority for our Nation.

By introducing the National Ocean Protection Act today, Senator BOXER is taking an important step towards furthering the discussion on the management and protection of our oceans, coastal areas, and Great Lakes ecosystems. I commend my colleague on her efforts.

As chair of the Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard, I am currently reviewing several ocean governance proposals, but I fully support bringing these important issues into the spotlight of consideration. It is the only way we will come closer to establishing a comprehensive solution that works.

This discussion is much needed and long overdue.

I look forward to continuing this dialog and encourage all of my colleagues to join in moving these matters forward and making a renewed commitment to the protection of our marine waters.

By Mr. GRASSLEY:

S. 3318. A bill to amend title XVIII of the Social Security Act to provide for recognition of equality of physician work in all geographic areas and revisions to the practice expense geographic adjustment under the Medicare physician fee schedule; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am pleased today to introduce the Medicare Physician Payment Equity Act of 2008.

I stood before this body last December as we agreed to a short-term Medicare extension bill so that we would have the opportunity to address other

pressing priorities in a bipartisan Medicare package this year. One of the most significant issues I had hoped to address was the need to provide more equitable payment for physicians in Iowa and other rural states.

While the Medicare bill that Congress just enacted improves the situation for physicians in the near-term by averting the SGR payment cuts scheduled to occur during the next 18 months, it does little to remedy the unjustifiable geographic disparities in physician payment that exist. It is unfortunate that reforms to the geographic physician payment adjusters were not included in H.R. 6331. I have long supported more equitable treatment of physicians in rural areas, and I have pressed for reforms to the work and practice expense geographic adjustments in the Medicare physician fee schedule. However, much-needed reforms such as the establishment of a practice expense floor are not in the Medicare bill that Congress enacted last week.

The legislation I am introducing today is designed to remedy this problem by providing more equitable treatment for physicians in rural areas. The bill reduces inequitable disparities in physician payment resulting from the Geographic Practice Cost Indices or adjusters, known as GPCIs, by establishing a 1.0 floor for physician practice expense adjustments as of 2009 and by providing a national 1.0 geographic index for physician work expense after the expiration of the existing 1.0 floor in 2010.

Although geographic adjustments are intended to reflect actual cost differences in a given area compared to a national average of 1.0, the existing, inaccurate formulas create significant disparities in physician reimbursement that penalize, rather than equalize, physician payment in Iowa and other rural states. These geographic disparities lead to rural states experiencing significant difficulties in recruiting and retaining physicians and other health care professionals because of their significantly lower reimbursement rates. This in turn leads to reduced beneficiary access to rural health care providers.

Here is a simple example that demonstrates the inequity of the current GPCI formulas. Iowa is widely recognized as providing some of the highest quality health care in the country, yet Iowa physicians receive some of the lowest Medicare reimbursement of any physicians in the country because of inequitable geographic adjustments. Medicare physician payment is equal in all 89 Medicare payment localities until the geographic adjusters, or GPCIs, are applied. After the GPCI adjustments, however, Medicare reimbursement for some physician services in Iowa is at least 30 percent lower than payment for the same service in other parts of the country, and it is fundamentally unfair. Congress needs to reduce these unwarranted payment

variations and realign Medicare incentives to reward physicians' quality instead of their geography.

Sadly, the inequitable geographic formulas which make these adjustments have merely exacerbated the problems of rural access to health care. Rural America today has far fewer physicians per capita than urban areas do. According to the National Rural Health Association, only about 10 percent of physicians practice in rural areas although nearly a quarter of the U.S. population lives there. Another grave concern is the lack of specialists in rural areas: only about 40 specialists exist per 100,000 in rural areas compared to more than three times as many—134 per 100,000—in urban areas. The evidence is clear that the existing geographic adjusters have been a dismal failure in promoting an adequate number of physicians in Iowa and other rural states. More severe physician shortages will occur in the future if we do not make essential changes to these formulas now.

The Medicare Physician Payment Equity Act revises the formulas used to determine geographic work and practice expense adjustments. The physician work formula currently used by the Centers for Medicare and Medicaid Services to estimate physician wages measures geographic differences in the earnings of six categories of professionals (lawyers, engineers, and others), rather than differences in physicians' earnings. In addition, the data that are used are based on outdated proxy data from the 2000 census. This bill recognizes that physician work for a service requires the same skill and training regardless of the geographic area, and should be similarly valued, and it establishes a national index of 1.0 for physician work beginning in 2010.

The practice expense formula used by CMS is inaccurate, outdated, and does not represent the actual office rent or employee wage costs for physicians in many areas. The office rent component uses Department of Housing and Urban Development residential apartment rental data from 2000 which does not accurately reflect physician office rent. The employee wage component comes from 2000 census data on clerical workers, nurses, and medical technicians which does not take into account any of the more highly compensated workers such as physician assistants, office administrators, and other specialists employed in physician practices today. The Medicare Physician Payment Equity Act provides for a more appropriate recognition of the geographic differences in employee wages and office rents by reducing the impact of this index to reflect more accurately the differences in physician practice costs, as of 2010. We must act now to help recruit and retain rural physicians to ensure that beneficiaries in Iowa and other rural areas will continue to have access to health care.

I urge my colleagues to support this legislation to address the growing

problem of health care shortages in rural America by providing more equitable payment for physicians.

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

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

S. 3318

*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 "Medicare Physician Payment Equity Act of 2008".

**SEC. 2. RECOGNITION OF EQUALITY OF PHYSICIAN WORK IN ALL GEOGRAPHIC AREAS UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.**

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i), by striking "subparagraphs (B)" through "the Secretary" and inserting "the succeeding provisions of this paragraph, the Secretary"; and

(2) by inserting after subparagraph (E) the following new subparagraph:

"(F) RECOGNITION OF EQUALITY OF PHYSICIAN WORK IN ALL GEOGRAPHIC AREAS.—In recognition of the fact that the physician work for a service is the same in all geographic areas, and should be similarly valued under this title, for services furnished on or after January 1, 2010, the geographic index for physician work under subparagraph (A)(iii) shall be 1.0 in all fee schedule areas."

**SEC. 3. REVISIONS TO THE PRACTICE EXPENSE GEOGRAPHIC ADJUSTMENT UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.**

(a) ESTABLISHMENT OF FLOOR.—Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)) is amended by adding at the end the following new subparagraph:

"(H) FLOOR AT 1.0 ON PRACTICE EXPENSE GEOGRAPHIC INDEX.—After calculating the practice expense geographic index in subparagraph (A)(i), for purposes of payment for services furnished in 2009, the Secretary shall increase the practice expense geographic index to 1.0 for any locality for which such practice expense geographic index is less than 1.0."

(b) MORE APPROPRIATE RECOGNITION OF PRACTICE EXPENSE DIFFERENCES IN EMPLOYEE WAGES AND OFFICE RENTS AMONG GEOGRAPHIC AREAS.—Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w-4(e)(1)), as amended by subsection (a), is amended by adding at the end the following new subparagraph:

"(I) MORE APPROPRIATE RECOGNITION OF DIFFERENCES IN EMPLOYEE WAGES AND OFFICE RENTS AMONG AREAS.—

"(i) IN GENERAL.—In recognition of the limitations on available data (as described in clause (ii)) for use as the employee wage and office rent proxies in the practice expense geographic index described in subparagraph (A)(i), and in order to more appropriately reflect differences among different fee schedule areas, for services furnished on or after January 1, 2010, such practice expense geographic index shall be an index which reflects ½ of the difference between the relative costs of employee wages and rents in each of the different fee schedule areas and the national average of such employee wages and rents.

"(ii) LIMITATIONS ON AVAILABLE DATA.—The limitations on available data described in this clause are the following:

"(I) The need to use proxy data to reflect differences in employee wages and rents among areas.

“(II) Wages for some categories of employees being determined in national markets.

“(III) Physicians having to compete for some employees in market areas that cross fee schedule areas.

“(IV) Physicians in rural areas frequently having to locate their offices close to urban areas and competing with urban rent markets.”

By Mr. DORGAN (for himself, Ms. MURKOWSKI, Mr. BIDEN, Mr. DOMENICI, Mr. BAUCUS, Mr. BINGAMAN, Mr. LIEBERMAN, Mr. KYL, Mr. JOHNSON, Mr. SMITH, Ms. CANTWELL, Mr. THUNE, and Mr. TESTER):

S. 3320. A bill to amend the Indian Law Enforcement Reform Act, the Indian Tribal Justice Act, the Indian Tribal Justice Technical and Legal Assistance Act of 2000, and the Omnibus Crime Control and Safe Streets Act of 1968 to improve the prosecution of, and response to, crimes in Indian country, and for other purposes; to the Committee on Indian Affairs.

Mr. DORGAN. Mr. President, as Chairman of the Committee on Indian Affairs, I have overseen five hearings this Congress that confirm a longstanding and life threatening public safety crisis on many of our Nation's American Indian reservations.

One of the primary causes for violent crime is the disjointed system of justice in Indian country that is broken at its core. The current system limits the authority of Tribes to fight crime, and requires tribal communities to rely completely on the United States to investigate and prosecute violent crimes occurring on reservations.

This is a system that the United States created. With this responsibility, comes a legal obligation to provide for the public safety on Indian lands. Unfortunately, we are not meeting our obligation.

Between 2004 and 2007, the United States has declined to pursue an average of 62 percent of reservation criminal cases referred for prosecution. This means that 75 percent of adult and child sex crimes and 50 percent of homicides on Indian lands went unpunished in those four years.

This is an inherent flaw in the system. The system vests the prosecution of reservation crimes in the federal courts which are often located hundreds of miles away from the crime scene, the evidence, and the witnesses needed to prosecute these difficult cases.

The results of this system include an epidemic of domestic and sexual violence against American Indian and Alaska Native women. The Department of Justice reports that 34 percent of Native women will be raped in their lifetimes. This past February, the Centers for Disease Control and Prevention reported that 39 percent of Native women will be subject to domestic violence. These rates are more than twice the national average.

This broken system of justice has also drawn the unwanted attention of

criminals to Indian lands. In recent years, reservations have been targeted as safe havens for criminal activity. One Federal prosecutor said that Indian lands are being used as pipelines by drug organizations to funnel their poison to tribal and nearby communities. These drugs eventually reach larger metropolitan areas.

To address this crisis, I am pleased to announce the introduction of the Tribal Law and Order Act of 2008 with the support of my colleagues Committee Vice Chairwoman MURKOWSKI, and Senators BIDEN, DOMENICI, BAUCUS, BINGAMAN, LIEBERMAN, KYL, JOHNSON, SMITH, CANTWELL, THUNE, and TESTER.

This bill seeks to take initial steps at mending this broken system by arming tribal justice officials with tools to protect their communities.

The bill would expand on a program to enable tribal police to enforce violations of Federal laws on Indian lands.

The bill would also provide police greater access to vital criminal history information.

Further, the bill would enable tribal courts to sentence offenders up to 3 years in prison for violations of tribal law, an increase from the current limit of 1 year.

Title I of the bill would provide for greater consultation and coordination between federal law enforcement officials, tribal leaders, and community members. Increased communication and coordination at all levels of government responsible for crime on Indian lands is vital to combating this public safety emergency.

To increase coordination of prosecutions, the bill would require U.S. Attorneys to file declination reports and maintain data when refusing to pursue a case. Maintaining consistent data on declinations will enable Congress to direct funding where the additional resources are needed.

This bill was developed over the past 18 months in consultation with tribal leaders, tribal, federal and state law enforcement officials, and many others.

I want to again thank my colleagues for their support of this legislation, and urge the Senate to act to meet our public safety obligations to all tribal communities.

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

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

S. 3320

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

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

(a) SHORT TITLE.—This Act may be cited as the “Tribal Law and Order Act of 2008”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings; purposes.

Sec. 3. Definitions.

**TITLE I—FEDERAL ACCOUNTABILITY AND COORDINATION**

Sec. 101. Office of Justice Services responsibilities.

Sec. 102. Declination reports.

Sec. 103. Prosecution of crimes in Indian country.

Sec. 104. Administration.

**TITLE II—STATE ACCOUNTABILITY AND COORDINATION**

Sec. 201. State criminal jurisdiction and resources.

Sec. 202. Incentives for State, tribal, and local law enforcement cooperation.

**TITLE III—EMPOWERING TRIBAL LAW ENFORCEMENT AGENCIES AND TRIBAL GOVERNMENTS**

Sec. 301. Tribal police officers.

Sec. 302. Drug enforcement in Indian country.

Sec. 303. Access to national criminal information databases.

Sec. 304. Tribal court sentencing authority.

Sec. 305. Indian law and order commission.

**TITLE IV—TRIBAL JUSTICE SYSTEMS**

Sec. 401. Indian alcohol and substance abuse.

Sec. 402. Indian tribal justice; technical and legal assistance.

Sec. 403. Tribal resources grant program.

Sec. 404. Tribal jails program.

Sec. 405. Tribal probation office liaison program.

Sec. 406. Tribal youth program.

**TITLE V—INDIAN COUNTRY CRIME DATA**

Sec. 501. Tracking of crimes committed in Indian country.

Sec. 502. Grants to improve tribal data collection systems.

Sec. 503. Criminal history record improvement program.

**TITLE VI—DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROSECUTION AND PREVENTION**

Sec. 601. Prisoner release and reentry.

Sec. 602. Domestic and sexual violent offense training.

Sec. 603. Testimony by Federal employees in cases of rape and sexual assault.

Sec. 604. Coordination of Federal agencies.

Sec. 605. Sexual assault protocol.

**SEC. 2. FINDINGS; PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) the United States has distinct legal, treaty, and trust obligations to provide for the public safety of tribal communities;

(2) several States have been delegated or have accepted responsibility to provide for the public safety of tribal communities within the borders of the States;

(3) Congress and the President have acknowledged that—

(A) tribal law enforcement officers are often the first responders to crimes on Indian reservations; and

(B) tribal justice systems are ultimately the most appropriate institutions for maintaining law and order in tribal communities;

(4) less than 3,000 tribal and Federal law enforcement officers patrol more than 56,000,000 acres of Indian country, which reflects less than ½ of the law enforcement presence in comparable rural communities nationwide;

(5) on many Indian reservations, law enforcement officers respond to distress or emergency calls without backup and travel to remote locations without adequate radio communication or access to national crime information database systems;

(6) the majority of tribal detention facilities were constructed decades before the date of enactment of this Act and must be or will soon need to be replaced, creating a multibillion-dollar backlog in facility needs;

(7) a number of Indian country offenders face no consequences for minor crimes, and many such offenders are released due to severe overcrowding in existing detention facilities;

(8) tribal courts—

(A) are the primary arbiters of criminal and civil justice for actions arising in Indian country; but

(B) have been historically underfunded;

(9) tribal courts have no criminal jurisdiction over non-Indian persons, and the sentencing authority of tribal courts is limited to sentences of not more than 1 year of imprisonment for Indian offenders, forcing tribal communities to rely solely on the Federal Government and certain State governments for the prosecution of—

(A) misdemeanors committed by non-Indian persons; and

(B) all felony crimes in Indian country;

(10) a significant percentage of cases referred to Federal agencies for prosecution of crimes allegedly occurring in tribal communities are declined to be prosecuted;

(11) the complicated jurisdictional scheme that exists in Indian country—

(A) has a significant negative impact on the ability to provide public safety to Indian communities; and

(B) has been increasingly exploited by criminals;

(12) the violent crime rate in Indian country is—

(A) nearly twice the national average; and

(B) more than 20 times the national average on some Indian reservations;

(13)(A) domestic and sexual violence against Indian and Alaska Native women has reached epidemic proportions;

(B) 34 percent of Indian and Alaska Native women will be raped in their lifetimes; and

(C) 39 percent of Indian and Alaska Native women will be subject to domestic violence;

(14) the lack of police presence and resources in Indian country has resulted in significant delays in responding to victims' calls for assistance, which adversely affects the collection of evidence needed to prosecute crimes, particularly crimes of domestic and sexual violence;

(15) alcohol and drug abuse plays a role in more than 80 percent of crimes committed in tribal communities;

(16) the rate of methamphetamine addiction in tribal communities is 3 times the national average;

(17) the Department of Justice has reported that drug organizations have increasingly targeted Indian country to produce and distribute methamphetamine, citing the limited law enforcement presence and jurisdictional confusion as reasons for the increased activity;

(18) tribal communities face significant increases in instances of domestic violence, burglary, assault, and child abuse as a direct result of increased methamphetamine use on Indian reservations;

(19)(A) criminal jurisdiction in Indian country is complex, and responsibility for Indian country law enforcement is shared among Federal, tribal, and State authorities; and

(B) that complexity requires a high degree of commitment and cooperation from Federal and State officials that can be difficult to establish;

(20) agreements for cooperation among certified tribal and State law enforcement officers have proven to improve law enforcement in tribal communities; and

(21) crime data is a fundamental tool of law enforcement, but for decades the Bureau of Indian Affairs and the Department of Justice have not been able to coordinate or consistently report crime and prosecution rates in tribal communities.

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

(1) to clarify the responsibilities of Federal, State, tribal, and local governments

with respect to crimes committed in tribal communities;

(2) to increase coordination and communication among Federal, State, tribal, and local law enforcement agencies;

(3) to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide for the safety of the public in tribal communities;

(4) to reduce the prevalence of violent crime in tribal communities and to combat violence against Indian and Alaska Native women;

(5) to address and prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country; and

(6) to increase and standardize the collection of criminal data and the sharing of criminal history information among Federal, State, and tribal officials responsible for responding to and investigating crimes in tribal communities.

### SEC. 3. DEFINITIONS.

(a) **IN GENERAL.**—In this Act:

(1) **INDIAN COUNTRY.**—The term “Indian country” has the meaning given the term in section 1151 of title 18, United States Code.

(2) **INDIAN TRIBE.**—The term “Indian tribe” has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

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

(4) **TRIBAL GOVERNMENT.**—The term “tribal government” means the governing body of an Indian tribe.

(b) **INDIAN LAW ENFORCEMENT REFORM ACT.**—Section 2 of the Indian Law Enforcement Reform Act (25 U.S.C. 2801) is amended by adding at the end the following:

“(10) **TRIBAL JUSTICE OFFICIAL.**—The term ‘tribal justice official’ means—

“(A) a tribal prosecutor;

“(B) a tribal law enforcement officer; or

“(C) any other person responsible for investigating or prosecuting an alleged criminal offense in tribal court.”.

### TITLE I—FEDERAL ACCOUNTABILITY AND COORDINATION

#### SEC. 101. OFFICE OF JUSTICE SERVICES RESPONSIBILITIES.

(a) **ADDITIONAL RESPONSIBILITIES OF DIVISION.**—Section 3 of the Indian Law Enforcement Reform Act (25 U.S.C. 2802) is amended—

(1) in subsection (c)—

(A) in paragraph (8), by striking “and” at the end;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(10) communicating with tribal leaders, tribal community advocates, tribal justice officials, and residents of Indian land on a regular basis regarding public safety and justice concerns facing tribal communities;

“(11) conducting meaningful and timely consultation with tribal leaders and tribal justice officials in the development of regulatory policies and other actions that affect public safety and justice in Indian country;

“(12) providing technical assistance and training to tribal law enforcement officials to gain access and input authority to utilize the National Criminal Information Center and other national crime information databases pursuant to section 534 of title 28, United States Code;

“(13) in coordination with the Attorney General pursuant to subsection (g) of section 302 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732), collecting, analyzing, and reporting data regarding Indian country crimes on an annual basis;

“(14) submitting to the Committee on Indian Affairs of the Senate and the Com-

mittee on Natural Resources of the House of Representatives, for each fiscal year, a detailed spending report regarding tribal public safety and justice programs that includes—

“(A) the number of employees and amounts spent by category, including a breakdown by position of direct Bureau and tribal government employees, for each of—

“(i) criminal investigators;

“(ii) uniform police;

“(iii) dispatchers;

“(iv) detention officers; and

“(v) executive personnel, including special agents in charge, and directors and deputies of various offices in the Office of Justice Services;

“(B) an itemized list of spending by the Secretary on law enforcement and corrections personnel, vehicles, related transportation costs, equipment, inmate transportation costs, inmate transfer costs, improvement and repair of facilities, personnel transfers, detainees and costs related to their details, emergency events, public safety and justice communications and technology costs, and other public safety and justice-related expenses;

“(C) a list of, and relevant details regarding, the unmet staffing needs of law enforcement and corrections personnel at tribal and Bureau of Indian Affairs police departments and corrections facilities, the backlog in corrections facilities, public safety and justice communications and technology needs, and other public safety and justice-related needs; and

“(D) the formula, priority list or other methodology used to determine the method of disbursement of funds for the public safety and justice programs of the Office of Justice Services;

“(15) submitting to Congress, for each fiscal year, a report summarizing the technical assistance, training, and other support provided to tribal law enforcement and corrections agencies that operate relevant programs pursuant to self-determination contracts or self-governance compacts with the Bureau of Indian Affairs; and

“(16) promulgating regulations to carry out this Act, and routinely reviewing and updating, as necessary, the regulations contained in subchapter B of title 25, Code of Federal Regulations (or successor regulations);”;

(2) by adding at the end the following:

“(d) **LONG-TERM PLAN FOR TRIBAL DETENTION PROGRAMS.**—Not later than 1 year after the date of enactment of this subsection, the Secretary, acting through the Bureau, in coordination with the Department of Justice and in consultation with tribal leaders, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including a description of—

“(1) proposed activities for the construction of detention facilities (including regional facilities) on Indian land;

“(2) proposed activities for the construction of additional Federal detention facilities on Indian land;

“(3) proposed activities for contracting with State and local detention centers, upon approval of affected tribal governments;

“(4) proposed activities for alternatives to incarceration, developed in cooperation with tribal court systems; and

“(5) other such alternatives to incarceration as the Secretary, in coordination with the Bureau and in consultation with tribal representatives, determines to be necessary.”.

(b) **LAW ENFORCEMENT AUTHORITY.**—Section 4 of the Indian Law Enforcement Reform Act (25 U.S.C. 2803) is amended—

(1) in paragraph (2)(A), by striking “), or” and inserting “or offenses committed on Federal property processed by the Central Violations Bureau); or”;

(2) in paragraph (3), by striking subparagraphs (A) through (C) and inserting the following:

“(A) the offense is committed in the presence of the employee; or

“(B) the offense is a Federal crime and the employee has reasonable grounds to believe that the person to be arrested has committed, or is committing, the crime;”.

#### SEC. 102. DECLINATION REPORTS.

Section 10 of the Indian Law Enforcement Reform Act (25 U.S.C. 2809) is amended by striking subsections (a) through (d) and inserting the following:

“(a) REPORTS.—

“(1) LAW ENFORCEMENT OFFICIALS.—Subject to subsection (d), if a law enforcement officer or employee of any Federal department or agency declines to initiate an investigation of an alleged violation of Federal law in Indian country, or terminates such an investigation without referral for prosecution, the officer or employee shall—

“(A) submit to the appropriate tribal justice officials a report describing each reason why a case was not opened or an investigation was declined or terminated; and

“(B) submit to the Office of Indian Country Crime relevant information regarding all declinations of alleged violations of Federal law in Indian country, including—

“(i) the type of crime alleged;

“(ii) the status of the accused as an Indian or non-Indian;

“(iii) the status of the victim as an Indian; and

“(iv) the reason for declining to initiate, open, or terminate the investigation.

“(2) UNITED STATES ATTORNEYS.—Subject to subsection (d), if a United States Attorney declines to prosecute, or acts to terminate prosecution of, an alleged violation of Federal law in Indian country referred for prosecution by a law enforcement officer or employee of a Federal department or agency or other law enforcement officer authorized to enforce Federal law, the United States Attorney shall—

“(A) coordinate and communicate with the appropriate tribal justice official, sufficiently in advance of the tribal statute of limitations, reasonable details regarding the case to permit the tribal prosecutor to pursue the case in tribal court; and

“(B) submit to the Office of Indian Country Crime and the appropriate tribal justice official relevant information regarding all declinations of alleged violations of Federal law in Indian country, including—

“(i) the type of crime alleged;

“(ii) the status of the accused as an Indian or non-Indian;

“(iii) the status of the victim as an Indian; and

“(iv) the reason for the determination to decline or terminate the prosecution.

“(b) MAINTENANCE OF RECORDS.—

“(1) IN GENERAL.—The Director of the Office of Indian Country Crime shall establish and maintain a compilation of information received under paragraph (1) or (2) of subsection (a) relating to declinations.

“(2) AVAILABILITY TO CONGRESS.—Each compilation under paragraph (1) shall be made available to Congress on an annual basis.

“(c) INCLUSION OF CASE FILES.—A report submitted to the appropriate tribal justice officials under paragraph (1) or (2) of subsection (a) may include the case file, including evidence collected and statements taken that could support an investigation or prosecution by the appropriate tribal justice officials.

“(d) EFFECT OF SECTION.—

“(1) IN GENERAL.—Nothing in this section requires any Federal agency or official to transfer or disclose any confidential or privileged communication, information, or source to an official of any Indian tribe.

“(2) FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 6 of the Federal Rules of Criminal Procedure shall apply to this section.

“(3) REGULATIONS.—Each Federal agency required to submit a report pursuant to this section shall adopt, by regulation, standards for the protection of confidential or privileged communications, information, and sources under paragraph (1).”.

#### SEC. 103. PROSECUTION OF CRIMES IN INDIAN COUNTRY.

(a) APPOINTMENT OF SPECIAL PROSECUTORS.—Section 543(a) of title 28, United States Code, is amended by inserting before the period at the end the following: “, including the appointment of qualified tribal prosecutors and other qualified attorneys to assist in prosecuting Federal offenses committed in Indian country”.

(b) TRIBAL LIAISONS.—The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) is amended by adding at the end the following:

#### “SEC. 11. ASSISTANT UNITED STATES ATTORNEY TRIBAL LIAISONS.

“(a) APPOINTMENT.—Each United States Attorney the district of which includes Indian country shall appoint not less than 1 assistant United States Attorney to serve as a tribal liaison for the district.

“(b) DUTIES.—A tribal liaison shall be responsible for the following activities in the district of the tribal liaison:

“(1) Coordinating the prosecution of Federal crimes that occur in Indian country.

“(2) Developing multidisciplinary teams to combat child abuse and domestic and sexual violence offenses against Indians.

“(3) Developing working relationships and maintaining communication with tribal leaders, tribal community advocates, and tribal justice officials to gather information from, and share appropriate information with, tribal justice officials.

“(4) Coordinating with tribal prosecutors in cases in which a tribal government has concurrent jurisdiction over an alleged crime, in advance of the expiration of any applicable statute of limitation.

“(5) Providing technical assistance and training regarding evidence gathering techniques to tribal justice officials and other individuals and entities that are instrumental to responding to Indian country crimes.

“(6) Conducting training sessions and seminars to certify special law enforcement commissions to tribal justice officials and other individuals and entities responsible for responding to Indian country crimes.

“(7) Coordinating with the Office of Indian Country Crime, as necessary.

“(8) Conducting such other activities to address and prevent violent crime in Indian country as the applicable United States Attorney determines to be appropriate.

“(c) SENSE OF CONGRESS REGARDING EVALUATIONS OF TRIBAL LIAISONS.—

“(1) FINDINGS.—Congress finds that—

“(A) many tribal communities rely solely on United States Attorneys offices to prosecute felony and misdemeanor crimes occurring on Indian land; and

“(B) tribal liaisons have dual obligations of—

“(i) coordinating prosecutions of Indian country crime; and

“(ii) developing relationships with tribal communities and serving as a link between tribal communities and the Federal justice process.

“(2) SENSE OF CONGRESS.—It is the sense of Congress that the Attorney General should—

“(A) take all appropriate actions to encourage the aggressive prosecution of all crimes committed in Indian country; and

“(B) when appropriate, take into consideration the dual responsibilities of tribal liaisons described in paragraph (1)(B) in evaluating the performance of the tribal liaisons.

“(d) ENHANCED PROSECUTION OF MINOR CRIMES.—Each United States Attorney serving a district that includes Indian country is authorized and encouraged—

“(1) to appoint Special Assistant United States Attorneys pursuant to section 543(a) of title 28, United States Code, to prosecute crimes in Indian country as necessary to improve the administration of justice, and particularly when—

“(A) the crime rate exceeds the national average crime rate; or

“(B) the rate at which criminal offenses are declined to be prosecuted exceeds the national average rate;

“(2) to coordinate with applicable United States magistrate and district courts—

“(A) to ensure the provision of docket time for prosecutions of Indian country crimes; and

“(B) to hold trials and other proceedings in Indian country, as appropriate;

“(3) to provide to appointed Special Assistant United States Attorneys appropriate training, supervision, and staff support; and

“(4) if an agreement is entered into with a Federal court pursuant to paragraph (2), to provide technical and other assistance to tribal governments and tribal court systems to ensure the success of the program under this subsection.”.

#### SEC. 104. ADMINISTRATION.

(a) OFFICE OF TRIBAL JUSTICE.—

(1) DEFINITIONS.—Section 4 of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3653) is amended—

(A) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(B) by inserting after paragraph (1) the following:

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Office of Tribal Justice.”.

(2) STATUS.—Title I of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 is amended—

(A) by redesignating section 106 (25 U.S.C. 3666) as section 107; and

(B) by inserting after section 105 (25 U.S.C. 3665) the following:

#### “SEC. 106. OFFICE OF TRIBAL JUSTICE.

“(a) IN GENERAL.—Not later than 90 days after the date of enactment of the Tribal Law and Order Act of 2008, the Attorney General shall modify the status of the Office of Tribal Justice as the Attorney General determines to be necessary to establish the Office of Tribal Justice as a permanent division of the Department.

“(b) PERSONNEL AND FUNDING.—The Attorney General shall provide to the Office of Tribal Justice such personnel and funds as are necessary to establish the Office of Tribal Justice as a division of the Department under subsection (a).

“(c) ADDITIONAL DUTIES.—In addition to the duties of the Office of Tribal Justice in effect on the day before the date of enactment of the Tribal Law and Order Act of 2008, the Office of Tribal Justice shall—

“(1) serve as the program and legal policy advisor to the Attorney General with respect to the treaty and trust relationship between the United States and Indian tribes;

“(2) serve as the point of contact for federally recognized tribal governments and tribal organizations with respect to questions and comments regarding policies and programs of the Department and issues relating to public safety and justice in Indian country; and

“(3) coordinate with other bureaus, agencies, offices, and divisions within the Department of Justice to ensure that each component has an accountable process to ensure meaningful and timely consultation with tribal leaders in the development of regulatory policies and other actions with tribal implications.”.

(b) OFFICE OF INDIAN COUNTRY CRIME.—The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) (as amended by section 103(b)) is amended by adding at the end the following:

**“SEC. 12. OFFICE OF INDIAN COUNTRY CRIME.**

“(a) ESTABLISHMENT.—There is established in the criminal division of the Department of Justice an office, to be known as the ‘Office of Indian Country Crime’.

“(b) DUTIES.—The Office of Indian Country Crime shall—

“(1) develop, enforce, and administer the application of Federal criminal laws applicable in Indian country;

“(2) coordinate with the United States Attorneys that have authority to prosecute crimes in Indian country;

“(3) coordinate prosecutions of crimes of national significance in Indian country, as determined by the Attorney General;

“(4) develop and implement criminal enforcement policies for United States Attorneys and investigators of Federal crimes regarding cases arising in Indian country; and

“(5) submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives annual reports describing the prosecution and declination rates of cases involving alleged crimes in Indian country referred to United States Attorneys.

“(c) DEPUTY ASSISTANT ATTORNEY GENERAL.—

“(1) APPOINTMENT.—The Attorney General shall appoint a Deputy Assistant Attorney General for Indian Country Crime.

“(2) DUTIES.—The Deputy Assistant Attorney General for Indian Country Crime shall—

“(A) serve as the head of the Office of Indian Country Crime;

“(B) serve as a point of contact to United States Attorneys serving districts including Indian country, tribal liaisons, tribal governments, and other Federal, State, and local law enforcement agencies regarding issues affecting the prosecution of crime in Indian country; and

“(C) carry out such other duties as the Attorney General may prescribe.”.

**TITLE II—STATE ACCOUNTABILITY AND COORDINATION**

**SEC. 201. STATE CRIMINAL JURISDICTION AND RESOURCES.**

(a) CONCURRENT AUTHORITY OF UNITED STATES.—Section 401(a) of Public Law 90-284 (25 U.S.C. 1321(a)) is amended—

(1) by striking the section designation and heading and all that follows through “The consent of the United States” and inserting the following:

**“SEC. 401. ASSUMPTION BY STATE OF CRIMINAL JURISDICTION.**

“(a) CONSENT OF UNITED STATES.—

“(1) IN GENERAL.—The consent of the United States”; and

(2) by adding at the end the following:

“(2) CONCURRENT JURISDICTION.—At the request of an Indian tribe, and after consultation with the Attorney General, the United States shall maintain concurrent jurisdiction to prosecute violations of sections 1152 and 1153 of title 18, United States Code, within the Indian country of the Indian tribe.”.

(b) APPLICABLE LAW.—Section 1162 of title 18, United States Code, is amended by striking subsection (c) and inserting the following:

“(c) APPLICABLE LAW.—At the request of an Indian tribe, and after consultation with the Attorney General—

“(1) sections 1152 and 1153 of this title shall remain in effect in the areas of the Indian country of the Indian tribe; and

“(2) jurisdiction over those areas shall be concurrent among the Federal Government and State and tribal governments.”.

**SEC. 202. INCENTIVES FOR STATE, TRIBAL, AND LOCAL LAW ENFORCEMENT COOPERATION.**

(a) ESTABLISHMENT OF COOPERATIVE ASSISTANCE PROGRAM.—The Attorney General may provide grants, technical assistance, and other assistance to State, tribal, and local governments that enter into cooperative agreements, including agreements relating to mutual aid, hot pursuit of suspects, and cross-deputization for the purposes of—

(1) improving law enforcement effectiveness; and

(2) reducing crime in Indian country and nearby communities.

(b) PROGRAM PLANS.—

(1) IN GENERAL.—To be eligible to receive assistance under this section, a group composed of not less than 1 of each of a tribal government and a State or local government shall jointly develop and submit to the Attorney General a plan for a program to achieve the purpose described in subsection (a).

(2) PLAN REQUIREMENTS.—A joint program plan under paragraph (1) shall include a description of—

(A) the proposed cooperative tribal and State or local law enforcement program for which funding is sought, including information on the population and each geographic area to be served by the program;

(B) the need of the proposed program for funding under this section, the amount of funding requested, and the proposed use of funds, subject to the requirements listed in subsection (c);

(C) the unit of government that will administer any assistance received under this section, and the method by which the assistance will be distributed;

(D) the types of law enforcement services to be performed on each applicable Indian reservation and the individuals and entities that will perform those services;

(E) the individual or group of individuals who will exercise daily supervision and control over law enforcement officers participating in the program;

(F) the method by which local and tribal government input with respect to the planning and implementation of the program will be ensured;

(G) the policies of the program regarding mutual aid, hot pursuit of suspects, deputization, training, and insurance of applicable law enforcement officers;

(H) the recordkeeping procedures and types of data to be collected pursuant to the program; and

(I) other information that the Attorney General determines to be relevant.

(c) PERMISSIBLE USES OF FUNDS.—An eligible entity that receives a grant under this section may use the grant, in accordance with the program plan described in subsection (b)—

(1) to hire and train new career tribal, State, or local law enforcement officers, or to make overtime payments for current law enforcement officers, that are or will be dedicated to—

(A) policing tribal land and nearby lands; and

(B) investigating alleged crimes on those lands;

(2) procure equipment, technology, or support systems to be used to investigate crimes

and share information between tribal, State, and local law enforcement agencies; or

(3) for any other uses that the Attorney General determines will meet the purposes described in subsection (a).

(d) FACTORS FOR CONSIDERATION.—In determining whether to approve a joint program plan submitted under subsection (b) and, on approval, the amount of assistance to provide to the program, the Attorney General shall take into consideration the following factors:

(1) The size and population of each Indian reservation and nearby community proposed to be served by the program.

(2) The complexity of the law enforcement problems proposed to be addressed by the program.

(3) The range of services proposed to be provided by the program.

(4) The proposed improvements the program will make regarding law enforcement cooperation beyond existing levels of cooperation.

(5) The crime rates of the tribal and nearby communities.

(6) The available resources of each entity applying for a grant under this section for dedication to public safety in the respective jurisdictions of the entities.

(e) ANNUAL REPORTS.—To be eligible to renew or extend a grant under this section, a group described in subsection (b)(1) shall submit to the Attorney General, together with the joint program plan under subsection (b), a report describing the law enforcement activities carried out pursuant to the program during the preceding fiscal year, including the success of the activities, including any increase in arrests or prosecutions.

(f) REPORTS BY ATTORNEY GENERAL.—Not later than January 15 of each applicable fiscal year, the Attorney General shall submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a report describing the law enforcement programs carried out using assistance provided under this section during the preceding fiscal year, including the success of the programs.

(g) TECHNICAL ASSISTANCE.—On receipt of a request from a group composed of not less than 1 tribal government and 1 State or local government, the Attorney General shall provide technical assistance to the group to develop successful cooperative relationships that effectively combat crime in Indian country and nearby communities.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2009 through 2015.

**TITLE III—EMPOWERING TRIBAL LAW ENFORCEMENT AGENCIES AND TRIBAL GOVERNMENTS**

**SEC. 301. TRIBAL POLICE OFFICERS.**

(a) FLEXIBILITY IN TRAINING LAW ENFORCEMENT OFFICERS SERVING INDIAN COUNTRY.—Section 3(e) of the Indian Law Enforcement Reform Act (25 U.S.C. 2802(e)) is amended—

(1) in paragraph (1)—

(A) by striking “(e)(1) The Secretary” and inserting the following:

“(e) STANDARDS OF EDUCATION AND EXPERIENCE AND CLASSIFICATION OF POSITIONS.—

“(1) STANDARDS OF EDUCATION AND EXPERIENCE.—

“(A) IN GENERAL.—The Secretary”; and

(B) by adding at the end the following:

“(B) TRAINING.—The training standards established under subparagraph (A) shall permit law enforcement personnel of the Division of Law Enforcement Services or an Indian tribe to obtain training at a State or tribal police academy, a local or tribal community college, or another training academy

that meets the National Peace Officer Standards of Training.”; and

(2) in paragraph (3), by striking “Agencies” and inserting “agencies”.

(b) SPECIAL LAW ENFORCEMENT COMMISSIONS.—Section 5 of the Indian Law Enforcement Reform Act (25 U.S.C. 2804) is amended by striking the section heading and all that follows through subsection (e) and inserting the following:

**“SEC. 5. SPECIAL LAW ENFORCEMENT COMMISSIONS.**

“(a) AGREEMENTS.—

“(1) ENCOURAGED IMPLEMENTATION OF AGREEMENTS.—The Secretary is authorized and encouraged to enter into agreements for the use (with or without reimbursement) of personnel and facilities of Federal, tribal, State, or other government agencies to assist in the enforcement or administration in Indian country of Federal law or the laws of an Indian tribe that authorizes the Secretary to enforce tribal law.

“(2) CERTAIN ACTIVITIES.—Pursuant to an agreement described in paragraph (1), the Secretary shall authorize the law enforcement officers of any applicable government agency to carry out any activity authorized under section 4.

“(3) REQUIREMENT.—An agreement under paragraph (1) shall be in accordance with any applicable agreement between the Secretary and the Attorney General.

“(b) PROGRAM ENHANCEMENT.—

“(1) TRAINING SESSIONS IN INDIAN COUNTRY.—

“(A) IN GENERAL.—The Secretary (or a designee) and the Attorney General (or a designee) shall develop a plan to enhance the certification and provision of special law enforcement commissions to tribal law enforcement officials, and, subject to subsection (d), State and local law enforcement officials, pursuant to this section.

“(B) INCLUSIONS.—The plan under subparagraph (A) shall include the hosting of regional training sessions in Indian country, not less frequently than biannually, to educate and certify candidates for the special commissions.

“(2) MEMORANDA OF AGREEMENT.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of the Tribal Law and Order Act of 2008, the Secretary, in consultation with Indian tribes and tribal law enforcement agencies, shall develop minimum requirements to be included in special law enforcement commission agreements pursuant to this section.

“(B) AGREEMENT.—Not later than 60 days after the date on which the Secretary determines that all applicable requirements under subparagraph (A) are met, the Secretary shall offer to enter into a special law enforcement commission agreement with the applicable Indian tribe.

“(c) LIMITATION ON USE OF CERTAIN PERSONNEL.—

“(1) CONSULTATION.—The Secretary shall consult with each affected Indian tribe before entering into any agreement under subsection (a) with a non-Federal agency that will provide personnel for use in any area under the jurisdiction of the Indian tribes.

“(2) PROHIBITION.—The Secretary shall not use the personnel of a non-Federal agency under this section in an area of Indian country if the Indian tribe with jurisdiction over that area has adopted a resolution objecting to the use of personnel of the non-Federal agency.

“(d) COORDINATION BY FEDERAL AGENCIES.—Notwithstanding section 1535 of title 31, United States Code, the head of a Federal agency with law enforcement personnel or facilities shall coordinate and, as needed, enter into agreements (with or without reim-

bursement) with the Secretary under subsection (a).

“(e) ENCOURAGEMENT OF OTHER FEDERAL AGENCY HEADS.—Congress encourages the head of each Federal agency with law enforcement personnel or facilities to enter into agreements (with or without reimbursement) with an Indian tribe relating to—

“(1) the law enforcement authority of the Indian tribe;

“(2) the administration of Federal or tribal criminal law; and

“(3) the conduct of investigations, the sharing of information and training techniques, and the provisions of other related technical assistance to prevent and prosecute violations of Federal or tribal criminal law in Indian country.”.

**SEC. 302. DRUG ENFORCEMENT IN INDIAN COUNTRY.**

(a) EDUCATION AND RESEARCH PROGRAMS.—Section 502 of the Controlled Substances Act (21 U.S.C. 872) is amended in subsections (a)(1) and (c), by inserting “tribal,” after “State,” each place it appears.

(b) PUBLIC-PRIVATE EDUCATION PROGRAM.—Section 503 of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 872a) is amended—

(1) in subsection (a), by inserting “tribal,” after “State,”; and

(2) in subsection (b)(2), by inserting “, tribal,” after “State”.

(c) COOPERATIVE ARRANGEMENTS.—Section 503 of the Controlled Substances Act (21 U.S.C. 873) is amended—

(1) in subsection (a)—

(A) by inserting “tribal,” after “State,” each place it appears; and

(B) in paragraphs (6) and (7), by inserting “, tribal,” after “State” each place it appears; and

(2) in subsection (d)(1), by inserting “, tribal,” after “State”.

(d) POWERS OF ENFORCEMENT PERSONNEL.—Section 508(a) of the Controlled Substances Act (21 U.S.C. 878(a)) is amended in the matter preceding paragraph (1) by inserting “, tribal,” after “State”.

**SEC. 303. ACCESS TO NATIONAL CRIMINAL INFORMATION DATABASES.**

(a) ACCESS TO NATIONAL CRIMINAL INFORMATION DATABASES.—Section 534 of title 28, United States Code, is amended—

(1) in subsection (a)(4), by inserting “Indian tribes,” after “the States,”; and

(2) by striking subsection (d) and inserting the following:

“(d) INDIAN LAW ENFORCEMENT AGENCIES.—The Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies—

“(1) to directly access and enter information into Federal criminal information databases; and

“(2) to directly obtain information from the databases.”; and

(3) in subsection (f)(2), in the matter preceding subparagraph (A), by inserting “, tribal,” after “Federal”.

(b) REQUIREMENT.—

(1) IN GENERAL.—The Attorney General shall ensure that tribal law enforcement officials that meet applicable Federal or State requirements have access to national crime information databases.

(2) SANCTIONS.—For purpose of sanctions for noncompliance with requirements of, or misuse of, national crime information databases and information obtained from those databases, a tribal law enforcement agency or official shall be treated as Federal law enforcement agency or official.

**SEC. 304. TRIBAL COURT SENTENCING AUTHORITY.**

Section 202 of Public Law 90-284 (25 U.S.C. 1302) is amended—

(1) in the matter preceding paragraph (1), by striking “No Indian tribe” and inserting the following:

“(a) IN GENERAL.—No Indian tribe”;

(2) in paragraph (7) of subsection (a) (as designated by paragraph (1)), by striking “and a fine” and inserting “or a fine”; and

(3) by adding at the end the following:

“(b) TRIBAL COURTS AND PRISONERS.—

“(1) IN GENERAL.—Notwithstanding paragraph (7) of subsection (a) and in addition to the limitations described in the other paragraphs of that subsection, no Indian tribe, in exercising any power of self-government involving a criminal trial that subjects a defendant to more than 1 year imprisonment for any single offense, may—

“(A) deny any person in such a criminal proceeding the assistance of defense counsel;

“(B) require excessive bail, impose an excessive fine, inflict a cruel or unusual punishment, or impose for conviction of a single offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

“(C) deny any person in such a criminal proceeding the due process of law.

“(2) AUTHORITY.—An Indian tribe exercising authority pursuant to this subsection shall require that each judge presiding over an applicable criminal case is licensed to practice law in any jurisdiction in the United States.

“(3) SENTENCES.—A tribal court acting pursuant to paragraph (1) may require a convicted offender—

“(A) to serve the sentence—

“(i) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines developed by the Bureau of Indian Affairs, in consultation with Indian tribes;

“(ii) in the nearest appropriate Federal facility, at the expense of the United States pursuant to a memorandum of agreement with Bureau of Prisons in accordance with paragraph (4);

“(iii) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

“(iv) subject to paragraph (1), in an alternative rehabilitation center of an Indian tribe; or

“(B) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

“(4) MEMORANDA OF AGREEMENT.—A memorandum of agreement between an Indian tribe and the Bureau of Prisons under paragraph (2)(A)(ii)—

“(A) shall acknowledge that the United States will incur all costs involved, including the costs of transfer, housing, medical care, rehabilitation, and reentry of transferred prisoners;

“(B) shall limit the transfer of prisoners to prisoners convicted in tribal court of violent crimes, crimes involving sexual abuse, and serious drug offenses, as determined by the Bureau of Prisons, in consultation with tribal governments, by regulation;

“(C) shall not affect the jurisdiction, power of self-government, or any other authority of an Indian tribe over the territory or members of the Indian tribe;

“(D) shall contain such other requirements as the Bureau of Prisons, in consultation with the Bureau of Indian Affairs and tribal governments, may determine, by regulation; and

“(E) shall be executed and carried out not later than 180 days after the date on which the applicable Indian tribe first contacts the Bureau of Prisons to accept a transfer of a tribal court offender pursuant to this subsection.

“(c) EFFECT OF SECTION.—Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.”.

**SEC. 305. INDIAN LAW AND ORDER COMMISSION.**

(a) ESTABLISHMENT.—There is established a commission to be known as the Indian Law and Order Commission (referred to in this section as the “Commission”).

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 9 members, of whom—

(A) 3 shall be appointed by the President, in consultation with—

(i) the Attorney General; and

(ii) the Secretary of the Interior;

(B) 2 shall be appointed by the Majority Leader of the Senate, in consultation with the Chairperson of the Committee on Indian Affairs of the Senate;

(C) 1 shall be appointed by the Minority Leader of the Senate, in consultation with the Vice Chairperson of the Committee on Indian Affairs of the Senate;

(D) 2 shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairperson of the Committee on Natural Resources of the House of Representatives; and

(E) 1 shall be appointed by the Minority Leader of the House of Representatives, in consultation with the Ranking Member of the Committee on Natural Resources of the House of Representatives.

(2) REQUIREMENTS FOR ELIGIBILITY.—Each member of the Commission shall have significant experience and expertise in—

(A) the Indian country criminal justice system; and

(B) matters to be studied by the Commission.

(3) CONSULTATION REQUIRED.—The President, the Speaker and Minority Leader of the House of Representatives, and the Majority Leader and Minority Leader of the Senate shall consult before the appointment of members of the Commission under paragraph (1) to achieve, to the maximum extent practicable, fair and equitable representation of various points of view with respect to the matters to be studied by the Commission.

(4) TERM.—Each member shall be appointed for the life of the Commission.

(5) TIME FOR INITIAL APPOINTMENTS.—The appointment of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(6) VACANCIES.—A vacancy in the Commission shall be filled—

(A) in the same manner in which the original appointment was made; and

(B) not later than 60 days after the date on which the vacancy occurred.

(c) OPERATION.—

(1) CHAIRPERSON.—Not later than 15 days after the date on which all members of the Commission have been appointed, the Commission shall select 1 member to serve as Chairperson of the Commission.

(2) MEETINGS.—

(A) IN GENERAL.—The Commission shall meet at the call of the Chairperson.

(B) INITIAL MEETING.—The initial meeting shall take place not later than 30 days after the date described in paragraph (1).

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

(4) RULES.—The Commission may establish, by majority vote, any rules for the conduct of Commission business, in accordance with this Act and other applicable law.

(d) COMPREHENSIVE STUDY OF CRIMINAL JUSTICE SYSTEM RELATING TO INDIAN COUN-

TRY.—The Commission shall conduct a comprehensive study of law enforcement and criminal justice in tribal communities, including—

(1) jurisdiction over crimes committed in Indian country and the impact of that jurisdiction on—

(A) the investigation and prosecution of Indian country crimes; and

(B) residents of Indian land;

(2) the tribal jail and Federal prisons systems and the effect of those systems with respect to—

(A) reducing Indian country crime; and

(B) rehabilitation of offenders;

(3) the impact of the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.) on—

(A) the authority of Indian tribes; and

(B) the rights of defendants subject to tribal government authority; and

(4) a study of such other subjects as the Commission determines relevant to achieve the purposes of the Tribal Law and Order Act of 2008.

(e) RECOMMENDATIONS.—Taking into consideration the results of the study under paragraph (1), the Commission shall develop recommendations on necessary modifications and improvements to justice systems at the tribal, Federal, and State levels, including consideration of—

(1) simplifying jurisdiction in Indian country;

(2) enhancing the penal authority of tribal courts and exploring alternatives to incarceration;

(3) the establishment of satellite United States magistrate or district courts in Indian country;

(4) changes to the tribal jails and Federal prison systems; and

(5) other issues that, as determined by the Commission, would reduce violent crime in Indian country.

(f) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the President and Congress a report that contains—

(1) a detailed statement of the findings and conclusions of the Commission; and

(2) the recommendations of the Commission for such legislative and administrative actions as the Commission considers to be appropriate.

(g) POWERS.—

(1) HEARINGS.—

(A) IN GENERAL.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers to be advisable to carry out the duties of the Commission under this section.

(B) PUBLIC REQUIREMENT.—The hearings of the Commission under this paragraph shall be open to the public.

(2) WITNESS EXPENSES.—

(A) IN GENERAL.—A witness requested to appear before the Commission shall be paid the same fees as are paid to witnesses under section 1821 of title 28, United States Code.

(B) PER DIEM AND MILEAGE.—The per diem and mileage allowance for a witness shall be paid from funds made available to the Commission.

(3) INFORMATION FROM FEDERAL, TRIBAL, AND STATE AGENCIES.—

(A) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers to be necessary to carry out this section.

(B) TRIBAL AND STATE AGENCIES.—The Commission may request the head of any tribal or State agency to provide to the Commission such information as the Commission considers to be necessary to carry out this section.

(4) POSTAL SERVICES.—The Commission may use the United States mails in the same

manner and under the same conditions as other agencies of the Federal Government.

(5) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(h) COMMISSION PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—A member of the Commission 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 Commission.

(2) DETAIL OF FEDERAL EMPLOYEES.—On the affirmative vote of  $\frac{2}{3}$  of the members of the Commission and the approval of the appropriate Federal agency head, an employee of the Federal Government may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status, benefits, or privileges.

(3) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—On request of the Commission, the Attorney General and Secretary shall provide to the Commission reasonable and appropriate office space, supplies, and administrative assistance.

(i) CONTRACTS FOR RESEARCH.—

(1) RESEARCHERS AND EXPERTS.—

(A) IN GENERAL.—On an affirmative vote of  $\frac{2}{3}$  of the members of the Commission, the Commission may select nongovernmental researchers and experts to assist the Commission in carrying out the duties of the Commission under this section.

(B) NATIONAL INSTITUTE OF JUSTICE.—The National Institute of Justice may enter into a contract with the researchers and experts selected by the Commission under subparagraph (A) to provide funding in exchange for the services of the researchers and experts.

(2) OTHER ORGANIZATIONS.—Nothing in this subsection limits the ability of the Commission to enter into contracts with any other entity or organization to carry out research necessary to carry out the duties of the Commission under this section.

(j) TRIBAL ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Commission shall establish a committee, to be known as the “Tribal Advisory Committee”.

(2) MEMBERSHIP.—

(A) COMPOSITION.—The Tribal Advisory Committee shall consist of 2 representatives of Indian tribes from each region of the Bureau of Indian Affairs.

(B) QUALIFICATIONS.—Each member of the Tribal Advisory Committee shall have experience relating to—

(i) justice systems;

(ii) crime prevention; or

(iii) victim services.

(3) DUTIES.—The Tribal Advisory Committee shall—

(A) serve as an advisory body to the Commission; and

(B) provide to the Commission advice and recommendations, submit materials, documents, testimony, and such other information as the Commission determines to be necessary to carry out the duties of the Commission under this section.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section, to remain available until expended.

(l) TERMINATION OF COMMISSION.—The Commission shall terminate 90 days after the date on which the Commission submits the report of the Commission under subsection (c)(3).

(m) NONAPPLICABILITY OF FACAA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

## TITLE IV—TRIBAL JUSTICE SYSTEMS

## SEC. 401. INDIAN ALCOHOL AND SUBSTANCE ABUSE.

## (a) CORRECTION OF REFERENCES.—

(1) INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.—Section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411) is amended—

(A) in subsection (a)—

(i) in the matter preceding paragraph (1)—

(I) by striking “the date of enactment of this subtitle” and inserting “the date of enactment of the Tribal Law and Order Act of 2008”; and

(II) by inserting “, the Attorney General,” after “Secretary of the Interior”;

(ii) in paragraph (2)(A), by inserting “, Bureau of Justice Assistance, Substance Abuse and Mental Health Services Administration,” after “Bureau of Indian Affairs,”;

(iii) in paragraph (4), by inserting “, Department of Justice, Substance Abuse and Mental Health Services Administration,” after “Bureau of Indian Affairs”;

(iv) in paragraph (5), by inserting “, Department of Justice, Substance Abuse and Mental Health Services Administration,” after “Bureau of Indian Affairs”;

(v) in paragraph (7), by inserting “, the Attorney General,” after “Secretary of the Interior”;

(B) in subsection (c), by inserting “, the Attorney General,” after “Secretary of the Interior”; and

(C) in subsection (d), by striking “the date of enactment of this subtitle” and inserting “the date of enactment of the Tribal Law and Order Act of 2008”.

(2) TRIBAL ACTION PLANS.—Section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2412) is amended—

(A) in subsection (b), in the first sentence, by inserting “, the Bureau of Justice Assistance, the Substance Abuse and Mental Health Services Administration,” before “and the Indian Health Service service unit”;

(B) in subsection (c)(1)(A)(i), by inserting “, the Bureau of Justice Assistance, the Substance Abuse and Mental Health Services Administration,” before “and the Indian Health Service service unit”;

(C) in subsection (d)(2), by striking “fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” and inserting “the period of fiscal years 2009 through 2013”;

(D) in subsection (e), in the first sentence, by inserting “, the Attorney General,” after “the Secretary of the Interior”; and

(E) in subsection (f)(3), by striking “fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” and inserting “the period of fiscal years 2009 through 2013”.

(3) DEPARTMENTAL RESPONSIBILITY.—Section 4207 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2413) is amended—

(A) in subsection (a), by inserting “, the Attorney General” after “Bureau of Indian Affairs”;

(B) in subsection (b)—

(i) by striking paragraph (1) and inserting the following:

“(1) ESTABLISHMENT.—

“(A) IN GENERAL.—To improve coordination among the Federal agencies and departments carrying out this subtitle, there is established within the Substance Abuse and Mental Health Services Administration an office, to be known as the ‘Office of Indian Alcohol and Substance Abuse’ (referred to in this section as the ‘Office’).

“(B) DIRECTOR.—The director of the Office shall be appointed by the Director of the

Substance Abuse and Mental Health Services Administration—

“(i) on a permanent basis; and

“(ii) at a grade of not less than GS-15 of the General Schedule.”;

(ii) in paragraph (2)—

(I) by striking “(2) In addition” and inserting the following:

“(2) RESPONSIBILITIES OF OFFICE.—In addition”;

(II) by striking subparagraph (A) and inserting the following:

“(A) coordinating with other agencies to monitor the performance and compliance of the relevant Federal programs in achieving the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205;”;

(III) in subparagraph (B)—

(aa) by striking “within the Bureau of Indian Affairs”; and

(bb) by striking the period at the end and inserting “; and”; and

(IV) by adding at the end the following:

“(C) not later than 1 year after the date of enactment of the Tribal Law and Order Act of 2008, developing, in coordination and consultation with tribal governments, a framework for interagency and tribal coordination that—

“(i) establish the goals and other desired outcomes of this Act;

“(ii) prioritizes outcomes that are aligned with the purposes of affected agencies;

“(iii) provides guidelines for resource and information sharing;

“(iv) provides technical assistance to the affected agencies to establish effective and permanent interagency communication and coordination; and

“(v) determines whether collaboration is feasible, cost-effective, and within agency capability.”;

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

“(3) APPOINTMENT OF EMPLOYEES.—The Director of the Substance Abuse and Mental Health Services Administration shall appoint such employees to work in the Office, and shall provide such funding, services, and equipment, as may be necessary to enable the Office to carry out the responsibilities under this subsection.”; and

(C) in subsection (c)—

(i) by striking “of Alcohol and Substance Abuse” each place it appears;

(ii) in paragraph (1), in the second sentence, by striking “The Assistant Secretary of the Interior for Indian Affairs” and inserting “The Director of the Substance Abuse and Mental Health Services Administration”; and

(iii) in paragraph (3)—

(I) in the matter preceding subparagraph (A), by striking “Youth” and inserting “youth”; and

(II) by striking “programs of the Bureau of Indian Affairs” and inserting “the applicable Federal programs”.

(4) REVIEW OF PROGRAMS.—Section 4208a(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2414a(a)) is amended in the matter preceding paragraph (1) by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(5) FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.—Section 4209 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2415) is amended—

(A) in subsection (a), by inserting “, the Attorney General,” after “the Secretary of the Interior”;

(B) in subsection (b)—

(i) in the first sentence, by inserting “, the Attorney General,” after “the Secretary of the Interior”;

(ii) in the second sentence, by inserting “, nor the Attorney General,” after “the Secretary of the Interior”; and

(iii) in the third sentence, by inserting “, the Department of Justice,” after “the Department of the Interior”; and

(C) in subsection (c)(1), by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(6) NEWSLETTER.—Section 4210 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2416) is amended—

(A) in subsection (a), in the first sentence, by inserting “, the Attorney General,” after “the Secretary of the Interior”; and

(B) in subsection (b), by striking “fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” and inserting “the period of fiscal years 2009 through 2013”.

(7) REVIEW.—Section 4211(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2431(a)) is amended in the matter preceding paragraph (1) by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(b) INDIAN EDUCATION PROGRAMS.—Section 4212 of the Indian Alcohol and Substance Abuse Prevention Act of 1986 (25 U.S.C. 2432) is amended by striking subsection (a) and inserting the following:

“(a) PILOT PROGRAMS.—

“(1) IN GENERAL.—The Assistant Secretary for Indian Affairs shall develop and implement pilot programs in selected schools funded by the Bureau of Indian Affairs (subject to the approval of the local school board or contract school board) to determine the effectiveness of summer youth programs in advancing the purposes and goals of this Act.

“(2) COSTS.—The Assistant Secretary shall defray all costs associated with the actual operation and support of the pilot program in a school from funds appropriated to carry out this subsection.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the pilot programs under this subsection such sums as are necessary for each of fiscal years 2009 through 2013.”.

(c) EMERGENCY SHELTERS.—Section 4213(e) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433(e)) is amended—

(1) in paragraph (1), by striking “as may be necessary” and all that follows through the end of the paragraph and inserting “as are necessary for each of fiscal years 2009 through 2013.”;

(2) in paragraph (2), by striking “\$7,000,000” and all that follows through the end of the paragraph and inserting “\$10,000,000 for each of fiscal years 2009 through 2013.”; and

(3) by indenting paragraphs (4) and (5) appropriately.

(d) REVIEW OF PROGRAMS.—Section 4215(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2415(a)) is amended by inserting “, the Attorney General,” after “the Secretary of the Interior”.

(e) ILLEGAL NARCOTICS TRAFFICKING; SOURCE ERADICATION.—Section 4216 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2442) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking the comma at the end and inserting a semicolon;

(ii) in subparagraph (B), by striking “, and” at the end and inserting a semicolon;

(iii) in subparagraph (C), by striking the period at the end and inserting “; and”; and

(iv) by adding at the end the following:

“(D) the Blackfeet Nation of Montana for the investigation and control of illegal narcotics traffic on the Blackfeet Indian Reservation along the border with Canada.”;

(B) in paragraph (2), by striking “United States Custom Service” and inserting “United States Customs and Border Protection”; and

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

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2009 through 2013.”; and

(2) in subsection (b)(2), by striking “as may be necessary” and all that follows through the end of the paragraph and inserting “as are necessary for each of fiscal years 2009 through 2013.”.

(f) LAW ENFORCEMENT AND JUDICIAL TRAINING.—Section 4218 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2451) is amended—

(1) by striking subsection (a) and inserting the following:

“(a) TRAINING PROGRAMS.—

“(1) IN GENERAL.—The Secretary of the Interior, in coordination with the Attorney General, the Administrator of the Drug Enforcement Administration, and the Director of the Federal Bureau of Investigation, shall ensure, through the establishment of a new training program or by supplementing existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel have access to training regarding—

“(A) the investigation and prosecution of offenses relating to illegal narcotics; and

“(B) alcohol and substance abuse prevention and treatment.

“(2) YOUTH-RELATED TRAINING.—Any training provided to Bureau of Indian Affairs or tribal law enforcement or judicial personnel under paragraph (1) shall include training in issues relating to youth alcohol and substance abuse prevention and treatment.”; and

(2) in subsection (b), by striking “as may be necessary” and all that follows through the end of the subsection and inserting “as are necessary for each of fiscal years 2009 through 2013.”.

(g) JUVENILE DETENTION CENTERS.—Section 4220(b) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2453(b)) is amended—

(1) by striking “such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000” each place it appears and inserting “such sums as are necessary for each of fiscal years 2009 through 2013”; and

(2) by indenting paragraph (2) appropriately.

**SEC. 402. INDIAN TRIBAL JUSTICE; TECHNICAL AND LEGAL ASSISTANCE.**

(a) INDIAN TRIBAL JUSTICE.—Section 201 of the Indian Tribal Justice Act (25 U.S.C. 3621) is amended—

(1) in subsection (a)—

(A) by striking “the provisions of sections 101 and 102 of this Act” and inserting “sections 101 and 102”; and

(B) by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2009 through 2013”;

(2) in subsection (b)—

(A) by striking “the provisions of section 103 of this Act” and inserting “section 103”; and

(B) by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2009 through 2013”;

(3) in subsection (c), by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2009 through 2013”;

(4) in subsection (d), by striking “the fiscal years 2000 through 2007” and inserting “fiscal years 2009 through 2013”.

(b) TECHNICAL AND LEGAL ASSISTANCE.—The Indian Tribal Justice Technical and Legal Assistance Act of 2000 is amended—

(1) in section 106 (25 U.S.C. 3666), by striking “2000 through 2004” and inserting “2009 through 2013”; and

(2) in section 201(d) (25 U.S.C. 3681(d)), by striking “2000 through 2004” and inserting “2009 through 2013”.

**SEC. 403. TRIBAL RESOURCES GRANT PROGRAM.**

Section 1701 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended—

(1) in subsection (b)—

(A) in each of paragraphs (1) through (4) and (6) through (17), by inserting “to” after the paragraph designation;

(B) in paragraph (1), by striking “State and” and inserting “State, tribal, or”;

(C) in paragraphs (9) and (10), by inserting “, tribal,” after “State” each place it appears;

(D) in paragraph (15)—

(i) by striking “a State in” and inserting “a State or Indian tribe in”;

(ii) by striking “the State which” and inserting “the State or tribal community that”;

(iii) by striking “a State or” and inserting “a State, tribal, or”;

(E) in paragraph (16), by striking “and” at the end

(F) in paragraph (17), by striking the period at the end and inserting “; and”;

(G) by redesignating paragraphs (6) through (17) as paragraphs (5) through (16), respectively; and

(H) by adding at the end the following:

“(17) to permit tribal governments receiving direct law enforcement services from the Bureau of Indian Affairs to access the program under this section on behalf of the Bureau for use in accordance with paragraphs (1) through (16).”.

(2) in subsection (g)—

(A) by striking “The portion” and inserting the following:

“(1) IN GENERAL.—The portion”;

(B) in the second sentence, by striking “In relation” and inserting the following:

“(2) CERTAIN GRANTS.—In relation”; and

(C) by adding at the end the following:

“(3) WAIVER.—In acknowledgment of the Federal nexus and distinct Federal responsibility to address and prevent crime in Indian country, for purposes of providing grants to Indian tribes under this subsection, the Attorney General shall waive the matching funds requirement of this subsection if the Attorney General determines that there is a demonstrated financial hardship.

“(4) USE OF CERTAIN FUNDS.—In addition to providing a waiver under paragraph (3), the Attorney General shall allow the use of funds appropriated for any agency of an Indian tribal government or the Bureau of Indian Affairs to carry out law enforcement activities on Indian land to provide the non-Federal share of the cost of a program or project under this section.”;

(3) in subsection (i), by striking “The authority” and inserting “Except as provided in subsection (j), the authority”;

(4) by adding at the end the following:

“(j) EXTENSION OF PROGRAM FOR INDIAN TRIBES.—

“(1) IN GENERAL.—Notwithstanding subsection (i) and section 1703, and in acknowledgment of the Federal nexus and distinct Federal responsibility to address and prevent crime in Indian country, the Attorney General may provide grants under this section to Indian tribal governments, for fiscal year 2009 and any fiscal year thereafter, for such

period as the Attorney General determines to be appropriate to assist the Indian tribal governments in carrying out the purposes described in subsection (b).

“(2) PRIORITY OF FUNDING.—In providing grants to Indian tribal governments under this subsection, the Attorney General shall take into consideration reservation crime rates and tribal law enforcement staffing needs of each Indian tribal government.

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2009 through 2013.

“(k) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Attorney General shall submit to Congress a report describing the extent and effectiveness of the Community Oriented Policing (COPS) initiative as applied in Indian country, including particular references to—

“(1) the problem of intermittent funding;

“(2) the integration of COPS personnel with existing law enforcement authorities; and

“(3) an explanation of how the practice of community policing and the broken windows theory can most effectively be applied in remote tribal locations.”.

**SEC. 404. TRIBAL JAILS PROGRAM.**

(a) IN GENERAL.—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by striking subsection (a) and inserting the following:

“(a) RESERVATION OF FUNDS.—Notwithstanding any other provision of this part, of amounts made available to the Attorney General to carry out programs relating to offender incarceration, the Attorney General shall reserve \$35,000,000 for each of fiscal years 2009 through 2013 to carry out this section.”.

(b) REGIONAL DETENTION CENTERS.—

(1) IN GENERAL.—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by striking subsection (b) and inserting the following:

“(b) GRANTS TO INDIAN TRIBES.—

“(1) IN GENERAL.—From the amounts reserved under subsection (a), the Attorney General shall provide grants—

“(A) to Indian tribes for purposes of—

“(i) construction and maintenance of jails on Indian land for the incarceration of offenders subject to tribal jurisdiction;

“(ii) entering into contracts with private entities to increase the efficiency of the construction of tribal jails; and

“(iii) developing and implementing alternatives to incarceration in tribal jails; and

“(B) to consortia of Indian tribes for purposes of constructing and operating regional detention centers on Indian land for long-term incarceration of offenders subject to tribal jurisdiction, as the applicable consortium determines to be appropriate.

“(2) PRIORITY OF FUNDING.—in providing grants under this subsection, the Attorney General shall take into consideration applicable—

“(A) reservation crime rates;

“(B) annual tribal court convictions; and

“(C) bed space needs.”.

(2) CONFORMING AMENDMENT.—Section 20109(c) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709(c)) is amended by inserting “or consortium of Indian tribes, as applicable,” after “Indian tribe”.

(3) LONG-TERM PLAN.—Section 20109 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13709) is amended by adding at the end the following:

“(d) LONG-TERM PLAN.—Not later than 1 year after the date of enactment of this subsection, the Attorney General, in coordination with the Bureau of Indian Affairs and in consultation with tribal leaders, tribal law enforcement officers, and tribal corrections officials, shall submit to Congress a long-term plan to address incarceration in Indian country, including a description of—

“(1) proposed activities for construction of detention facilities (including regional facilities) on Indian land;

“(2) proposed activities for construction of additional Federal detention facilities on Indian land;

“(3) proposed activities for contracting with State and local detention centers, with tribal government approval;

“(4) proposed alternatives to incarceration, developed in cooperation with tribal court systems; and

“(5) such other alternatives as the Attorney General, in coordination with the Bureau of Indian Affairs and in consultation with Indian tribes, determines to be necessary.”

**SEC. 405. TRIBAL PROBATION OFFICE LIAISON PROGRAM.**

Title II of the Indian Tribal Justice Technical and Legal Assistance Act of 2000 (25 U.S.C. 3681 et seq.) is amended by adding at the end the following:

**“SEC. 203. ASSISTANT PAROLE AND PROBATION OFFICERS.**

“To the maximum extent practicable, the Director of the Administrative Office of the United States Courts shall appoint individuals residing in Indian country to serve as assistant parole or probation officers for purposes of monitoring and providing service to Federal prisoners residing in Indian country.”

**SEC. 406. TRIBAL YOUTH PROGRAM.**

(a) INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS.—

(1) IN GENERAL.—Section 504 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5783) is amended—

(A) in subsection (a), by inserting “, or to Indian tribes under subsection (d)” after “subsection (b)”; and

(B) by adding at the end the following:

“(d) GRANTS FOR TRIBAL DELINQUENCY PREVENTION PROGRAMS.—

“(1) IN GENERAL.—The Administrator shall make grants under this section, on a competitive basis, to eligible Indian tribes or consortia of Indian tribes, as described in paragraph (2)—

“(A) to support and enhance tribal juvenile justice systems; and

“(B) to encourage accountability of Indian tribal governments with respect to juvenile delinquency responses and prevention.

“(2) ELIGIBLE INDIAN TRIBES.—To be eligible to receive a grant under this subsection, an Indian tribe or consortium of Indian tribes shall submit to the Administrator an application in such form and containing such information as the Administrator may require.

“(3) PRIORITY OF FUNDING.—In providing grants under this subsection, the Administrator shall take into consideration, with respect to the reservation communities to be served—

“(A) juvenile crime rates;

“(B) dropout rates; and

“(C) percentages of at-risk youth.”

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 505 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5784) is amended by striking “fiscal years 2004, 2005, 2006, 2007, and 2008” and inserting “each of fiscal years 2009 through 2013”.

(b) COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 206(a)(2) of the Juvenile Justice and De-

linquency Prevention Act of 1974 (42 U.S.C. 5616(a)(2)) is amended—

(1) in subparagraph (A), by striking “Nine” and inserting “Ten”; and

(2) in subparagraph (B), by adding at the end the following:

“(iv) One member shall be appointed by the Chairman of the Committee on Indian Affairs of the Senate, in consultation with the Vice Chairman of that Committee.”

**TITLE V—INDIAN COUNTRY CRIME DATA**  
**SEC. 501. TRACKING OF CRIMES COMMITTED IN INDIAN COUNTRY.**

(a) GANG VIOLENCE.—Section 1107 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (28 U.S.C. 534 note; Public Law 109-162) is amended—

(1) in subsection (a)—

(A) by redesignating paragraphs (8) through (12) as paragraphs (9) through (13), respectively;

(B) by inserting after paragraph (7) the following:

“(8) the Office of Justice Services of the Bureau of Indian Affairs;”; and

(C) in paragraph (9) (as redesignated by subparagraph (A)), by striking “State” and inserting “tribal, State,”; and

(D) in paragraphs (10) through (12) (as redesignated by subparagraph (A)), by inserting “tribal,” before “State,” each place it appears; and

(2) in subsection (b), by inserting “tribal,” before “State,” each place it appears.

(b) BUREAU OF JUSTICE STATISTICS.—Section 302 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732) is amended—

(1) in subsection (c)—

(A) in paragraph (1), by inserting “, Indian tribes,” after “contracts with”; and

(B) in each of paragraphs (3) through (6), by inserting “tribal,” after “State,” each place it appears;

(C) in paragraph (7), by inserting “and in Indian country” after “States”; and

(D) in paragraph (9), by striking “Federal and State Governments” and inserting “Federal Government and State and tribal governments”; and

(E) in each of paragraphs (10) and (11), by inserting “, tribal,” after “State” each place it appears;

(F) in paragraph (13), by inserting “, Indian tribes,” after “States”; and

(G) in paragraph (17)—

(i) by striking “State and local” and inserting “State, tribal, and local”; and

(ii) by striking “State, and local” and inserting “State, tribal, and local”; and

(H) in paragraph (18), by striking “State and local” and inserting “State, tribal, and local”; and

(I) in paragraph (19), by inserting “and tribal” after “State” each place it appears;

(J) in paragraph (20), by inserting “, tribal,” after “State”; and

(K) in paragraph (22), by inserting “, tribal,” after “Federal”; and

(2) in subsection (d)—

(A) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively, and indenting the subparagraphs appropriately;

(B) by striking “To insure” and inserting the following:

“(1) IN GENERAL.—To ensure”; and

(C) by adding at the end the following:

“(2) CONSULTATION WITH INDIAN TRIBES.—The Director, acting jointly with the Assistant Secretary for Indian Affairs (acting through the Director of the Office of Law Enforcement Services) and the Director of the Federal Bureau of Investigation, shall work with Indian tribes and tribal law enforcement agencies to establish and implement

such tribal data collection systems as the Director determines to be necessary to achieve the purposes of this section.”;

(3) in subsection (e), by striking “subsection (d)(3)” and inserting “subsection (d)(1)(C)”; and

(4) in subsection (f)—

(A) in the subsection heading, by inserting “, Tribal,” after “State”; and

(B) by inserting “, tribal,” after “State”; and

(5) by adding at the end the following:

“(g) REPORT TO CONGRESS ON CRIMES IN INDIAN COUNTRY.—Not later than 1 year after the date of enactment of this subsection, and annually thereafter, the Director shall submit to Congress a report describing the data collected and analyzed under this section relating to crimes in Indian country.”

**SEC. 502. GRANTS TO IMPROVE TRIBAL DATA COLLECTION SYSTEMS.**

Section 3 of the Indian Law Enforcement Reform Act (25 U.S.C. 2802) is amended by adding at the end the following:

“(f) GRANTS TO IMPROVE TRIBAL DATA COLLECTION SYSTEMS.—

“(1) GRANT PROGRAM.—The Secretary, acting through the Director of the Office of Justice Services of the Bureau and in coordination with the Attorney General, shall establish a program under which the Secretary shall provide grants to Indian tribes for activities to ensure uniformity in the collection and analysis of data relating to crime in Indian country.

“(2) REGULATIONS.—The Secretary, acting through the Director of the Office of Justice Services of the Bureau, in consultation with tribal governments and tribal justice officials, shall promulgate such regulations as are necessary to carry out the grant program under this subsection.”

**SEC. 503. CRIMINAL HISTORY RECORD IMPROVEMENT PROGRAM.**

Section 1301(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796h(a)) is amended by inserting “, tribal,” after “State”.

**TITLE VI—DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROSECUTION AND PREVENTION**

**SEC. 601. PRISONER RELEASE AND REENTRY.**

Section 4042 of title 18, United States Code, is amended—

(1) in subsection (a)(4), by inserting “, tribal,” after “State”; and

(2) in subsection (b)(1), in the first sentence, by striking “officer of the State and of the local jurisdiction” and inserting “officers of each State, tribal, and local jurisdiction”; and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “officer of the State and of the local jurisdiction” and inserting “officers of each State, tribal, and local jurisdiction”; and

(ii) in subparagraph (B), by inserting “, tribal,” after “State” each place it appears; and

(B) in paragraph (2)—

(i) by striking “(2) Notice” and inserting the following:

“(2) REQUIREMENTS.—

“(A) IN GENERAL.—A notice”; and

(ii) in the second sentence, by striking “For a person who is released” and inserting the following:

“(B) RELEASED PERSONS.—For a person who is released”; and

(iii) in the third sentence, by striking “For a person who is sentenced” and inserting the following:

“(C) PERSONS ON PROBATION.—For a person who is sentenced”; and

(iv) in the fourth sentence, by striking “Notice concerning” and inserting the following:

“(D) RELEASED PERSONS REQUIRED TO REGISTER.—

“(i) IN GENERAL.—A notice concerning”; and

(v) in subparagraph (D) (as designated by clause (iv)), by adding at the end the following:

“(ii) PERSONS RESIDING IN INDIAN COUNTRY.—For a person described in paragraph (3) the expected place of residence of whom is potentially located in Indian country, the Director of the Bureau of Prisons or the Director of the Administrative Office of the United States Courts, as appropriate, shall—

“(I) make all reasonable and necessary efforts to determine whether the residence of the person is located in Indian country; and

“(II) ensure that the person is registered with the law enforcement office of each appropriate jurisdiction before release from Federal custody.”.

**SEC. 602. DOMESTIC AND SEXUAL VIOLENT OFFENSE TRAINING.**

Section 3(c)(9) of the Indian Law Enforcement Reform Act (25 U.S.C. 2802(c)(9)) (as amended by section 101(a)(2)) is amended by inserting before the semicolon at the end the following: “, including training to properly interview victims of domestic and sexual violence and to collect, preserve, and present evidence to Federal and tribal prosecutors to increase the conviction rate for domestic and sexual violence offenses for purposes of addressing and preventing domestic and sexual violent offenses”.

**SEC. 603. TESTIMONY BY FEDERAL EMPLOYEES IN CASES OF RAPE AND SEXUAL ASSAULT.**

The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) is amended by adding at the end the following:

**“SEC. 11. TESTIMONY BY FEDERAL EMPLOYEES IN CASES OF RAPE AND SEXUAL ASSAULT.**

“(a) APPROVAL OF EMPLOYEE TESTIMONY.—The Director of the Office of Justice Services or the Director of the Indian Health Service, as appropriate (referred to in this section as the ‘Director concerned’), shall approve or disapprove, in writing, any request or subpoena for a law enforcement officer, sexual assault nurse examiner, or other employee under the supervision of the Director concerned to provide testimony in a deposition, trial, or other similar proceeding regarding information obtained in carrying out the official duties of the employee.

“(b) REQUIREMENT.—The Director concerned shall approve a request or subpoena under subsection (a) if the request or subpoena does not violate the policy of the Department of the Interior to maintain strict impartiality with respect to private causes of action.

“(c) TREATMENT.—If the Director concerned fails to approve or disapprove a request or subpoena by the date that is 30 days after the date of receipt of the request or subpoena, the request or subpoena shall be considered to be approved for purposes of this section.”.

**SEC. 604. COORDINATION OF FEDERAL AGENCIES.**

The Indian Law Enforcement Reform Act (25 U.S.C. 2801 et seq.) (as amended by section 603) is amended by adding at the end the following:

**“SEC. 12. COORDINATION OF FEDERAL AGENCIES.**

“(a) IN GENERAL.—The Secretary, in coordination with the Attorney General, Federal and tribal law enforcement agencies, the Indian Health Service, and domestic violence or sexual assault victim organizations, shall develop appropriate victim services and victim advocate training programs—

“(1) to improve domestic violence or sexual abuse responses;

“(2) to improve forensic examinations and collection;

“(3) to identify problems or obstacles in the prosecution of domestic violence or sexual abuse; and

“(4) to meet other needs or carry out other activities required to prevent, treat, and improve prosecutions of domestic violence and sexual abuse.

“(b) REPORT.—Not later than 2 years after the date of enactment of this section, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes, with respect to the matters described in subsection (a), the improvements made and needed, problems or obstacles identified, and costs necessary to address the problems or obstacles, and any other recommendations that the Secretary determines to be appropriate.”.

**SEC. 605. SEXUAL ASSAULT PROTOCOL.**

Title VIII of the Indian Health Care Improvement Act is amended by inserting after section 802 (25 U.S.C. 1672) the following:

**“SEC. 803. POLICIES AND PROTOCOL.**

“The Director of Service, in coordination with the Director of the Office on Violence Against Women of the Department of Justice, in consultation with Indian Tribes and Tribal Organizations, and in conference with Urban Indian Organizations, shall develop standardized sexual assault policies and protocol for the facilities of the Service, based on similar protocol that has been established by the Department of Justice.”.

By Mr. GRASSLEY (for himself, Mr. HARKIN, Mr. ROBERTS, Mr. DURBIN, Mr. COLEMAN, Mr. BOND, Mr. BROWBACK, Mr. BAYH, Mrs. MCCASKILL, Ms. KLOBUCHAR, Mr. OBAMA, and Mr. LUGAR):

S. 3322. A bill to provide tax relief for the victims of severe storms, tornados, and flooding in the Midwest, and for other purposes; to the Committee on Finance.

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

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

S. 3322

*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 “Midwestern Disaster Tax Relief Act of 2008”.

**SEC. 2. TEMPORARY TAX RELIEF FOR AREAS DAMAGED BY 2008 MIDWESTERN SEVERE STORMS, TORNADOS, AND FLOODING.**

(a) IN GENERAL.—Subject to the modifications described in this section, the following provisions of or relating to the Internal Revenue Code of 1986 shall apply to any Midwestern disaster area in addition to the areas to which such provisions otherwise apply:

(1) GO ZONE BENEFITS.—

(A) Section 1400N (relating to tax benefits) other than subsections (b), (i), (j), (m), and (o) thereof.

(B) Section 1400O (relating to education tax benefits).

(C) Section 1400P (relating to housing tax benefits).

(D) Section 1400Q (relating to special rules for use of retirement funds).

(E) Section 1400R(a) (relating to employee retention credit for employers).

(F) Section 1400S (relating to additional tax relief) other than subsection (d) thereof.

(G) Section 1400T (relating to special rules for mortgage revenue bonds).

(2) OTHER BENEFITS INCLUDED IN KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—Sections 302, 303, 304, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(b) USE OF AMENDED INCOME TAX RETURNS TO TAKE INTO ACCOUNT RECEIPT OF CERTAIN CASUALTY LOSS GRANTS BY DISALLOWING PREVIOUSLY TAKEN CASUALTY LOSS DEDUCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of the Internal Revenue Code of 1986, if a taxpayer claims a deduction for any taxable year with respect to a casualty loss to a principal residence (within the meaning of section 121 of such Code) resulting from the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A) and in a subsequent taxable year receives a grant under any Federal or State program as reimbursement for such loss, such taxpayer may elect to file an amended income tax return for the taxable year in which such deduction was allowed (and for any taxable year to which such deduction is carried) and reduce (but not below zero) the amount of such deduction by the amount of such reimbursement.

(2) TIME OF FILING AMENDED RETURN.—Paragraph (1) shall apply with respect to any grant only if any amended income tax returns with respect to such grant are filed not later than the later of—

(A) the due date for filing the tax return for the taxable year in which the taxpayer receives such grant, or

(B) the date which is 1 year after the date of the enactment of this Act.

(3) WAIVER OF PENALTIES AND INTEREST.—Any underpayment of tax resulting from the reduction under paragraph (1) of the amount otherwise allowable as a deduction shall not be subject to any penalty or interest under such Code if such tax is paid not later than 1 year after the filing of the amended return to which such reduction relates.

(c) MIDWESTERN DISASTER AREA.—

(1) IN GENERAL.—For purposes of this section and for applying the substitutions described in subsections (e) and (f), the term “Midwestern disaster area” means an area—

(A) with respect to which a major disaster has been declared by the President on or after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of severe storms, tornados, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin, and

(B) determined by the President to warrant individual or individual and public assistance from the Federal Government under such Act with respect to damages attributable to such severe storms, tornados, or flooding.

(2) CERTAIN BENEFITS AVAILABLE TO AREAS ELIGIBLE ONLY FOR PUBLIC ASSISTANCE.—For purposes of applying this section to benefits under the following provisions, paragraph (1) shall be applied without regard to subparagraph (B):

(A) Sections 1400Q, 1400S(b), and 1400S(d) of the Internal Revenue Code of 1986.

(B) Sections 302, 401, and 405 of the Katrina Emergency Tax Relief Act of 2005.

(d) REFERENCES.—

(1) AREA.—Any reference in such provisions to the Hurricane Katrina disaster area or the Gulf Opportunity Zone shall be treated as a reference to any Midwestern disaster area

and any reference to the Hurricane Katrina disaster area or the Gulf Opportunity Zone within a State shall be treated as a reference to all Midwestern disaster areas within the State.

(2) ITEMS ATTRIBUTABLE TO DISASTER.—Any reference in such provisions to any loss, damage, or other item attributable to Hurricane Katrina shall be treated as a reference to any loss, damage, or other item attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A).

(3) APPLICABLE DISASTER DATE.—For purposes of applying the substitutions described in subsections (e) and (f), the term “applicable disaster date” means, with respect to any Midwestern disaster area, the date on which the severe storms, tornados, or flooding giving rise to the Presidential declaration described in subsection (c)(1)(A) occurred.

(e) MODIFICATIONS TO 1986 CODE.—The following provisions of the Internal Revenue Code of 1986 shall be applied with the following modifications:

(1) TAX-EXEMPT BOND FINANCING.—Section 1400N(a)—

(A) by substituting “qualified Midwestern disaster area bond” for “qualified Gulf Opportunity Zone Bond” each place it appears, except that in determining whether a bond is a qualified Midwestern disaster area bond—

(i) paragraph (2)(A)(i) shall be applied by only treating costs as qualified project costs if—

(I) in the case of a project involving a private business use (as defined in section 141(b)(6)), either the person using the property suffered a loss in a trade or business attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A) or is a person designated for purposes of this section by the Governor of the State in which the project is located as a person carrying on a trade or business replacing a trade or business with respect to which another person suffered such a loss, and

(II) in the case of a project relating to public utility property, the project involves repair or reconstruction of public utility property damaged by such severe storms, tornados, or flooding, and

(ii) paragraph (2)(A)(ii) shall be applied by treating an issue as a qualified mortgage issue only if 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of the issue are to be used to provide financing for mortgagors who suffered damages to their principal residences attributable to such severe storms, tornados, or flooding.

(B) by substituting “any State in which a Midwestern disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in paragraph (2)(B),

(C) by substituting “designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)” for “designated for purposes of this section” in paragraph (2)(C),

(D) by substituting “January 1, 2013” for “January 1, 2011” in paragraph (2)(D),

(E) in paragraph (3)(A)—

(i) by substituting “\$1,000” for “\$2,500”, and

(ii) by substituting “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005”,

(F) by substituting “qualified Midwestern disaster area repair or construction” for “qualified GO Zone repair or construction” each place it appears, and

(G) by substituting “after the date of the enactment of the Housing and Economic Recovery Act of 2008 and before January 1, 2013” for “after the date of the enactment of

this paragraph and before January 1, 2011” in paragraph (7)(C).

(2) LOW-INCOME HOUSING CREDIT.—Section 1400N(c)—

(A) only with respect to calendar years 2009, 2010, and 2011,

(B) by substituting “Disaster Recovery Assistance housing amount” for “Gulf Opportunity housing amount”,

(C) in paragraph (1)(B)—

(i) by substituting “\$4.00” for “\$18.00”, and

(ii) by substituting “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005”, and

(D) determined without regard to paragraphs (2), (3), (4), (5), and (6) thereof.

(3) SPECIAL ALLOWANCE FOR CERTAIN PROPERTY ACQUIRED ON OR AFTER THE APPLICABLE DISASTER DATE.—Section 1400N(d)—

(A) by substituting “qualified Disaster Recovery Assistance property” for “qualified Gulf Opportunity Zone property” each place it appears, except that a taxpayer shall be allowed additional bonus depreciation and expensing under such subsection or section 1400N(e) with respect to such property only if—

(i) the taxpayer suffered an economic loss attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A), and

(ii) such property—

(I) rehabilitates property damaged, or replaces property destroyed or condemned, as a result of such severe storms, tornados, or flooding, except that, for purposes of this clause, property shall be treated as replacing property destroyed or condemned if, as part of an integrated plan, such property replaces property which is included in a continuous area which includes real property destroyed or condemned, and

(II) is similar in nature to, and located in the same county as, the property being rehabilitated or replaced,

(B) by substituting “the applicable disaster date” for “August 28, 2005” each place it appears,

(C) by substituting “December 31, 2011” for “December 31, 2007” in paragraph (2)(A)(v),

(D) by substituting “December 31, 2012” for “December 31, 2008” in paragraph (2)(A)(v),

(E) by substituting “the day before the applicable disaster date” for “August 27, 2005” in paragraph (3)(A),

(F) determined without regard to paragraph (6) thereof, and

(G) by not including as qualified Disaster Recovery Assistance property any property to which section 168(k) applies.

(4) INCREASE IN EXPENSING UNDER SECTION 179.—Section 1400N(e), by substituting “qualified section 179 Disaster Recovery Assistance property” for “qualified section 179 Gulf Opportunity Zone property” each place it appears.

(5) EXPENSING FOR CERTAIN DEMOLITION AND CLEAN-UP COSTS.—Section 1400N(f)—

(A) by substituting “qualified Disaster Recovery Assistance clean-up cost” for “qualified Gulf Opportunity Zone clean-up cost” each place it appears,

(B) by substituting “beginning on the applicable disaster date and ending on December 31, 2010” for “beginning on August 28, 2005, and ending on December 31, 2007” in paragraph (2), and

(C) by treating costs as qualified Disaster Recovery Assistance clean-up costs only if the removal of debris or demolition of any structure was necessary due to damage attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A).

(6) EXTENSION OF EXPENSING FOR ENVIRONMENTAL REMEDIATION COSTS.—Section 1400N(g)—

(A) by substituting “the applicable disaster date” for “August 28, 2005” each place it appears,

(B) by substituting “January 1, 2011” for “January 1, 2008” in paragraph (1),

(C) by substituting “December 31, 2010” for “December 31, 2007” in paragraph (1), and

(D) by treating a site as a qualified contaminated site only if the release (or threat of release) or disposal of a hazardous substance at the site was attributable to the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A).

(7) INCREASE IN REHABILITATION CREDIT.—Section 1400N(h)—

(A) by substituting “the applicable disaster date” for “August 28, 2005”,

(B) by substituting “January 1, 2011” for “January 1, 2008” in paragraph (1), and

(C) by only applying such subsection to qualified rehabilitation expenditures with respect to any building or structure which was damaged or destroyed as a result of the severe storms, tornados, or flooding giving rise to any Presidential declaration described in subsection (c)(1)(A).

(8) TREATMENT OF NET OPERATING LOSSES ATTRIBUTABLE TO DISASTER LOSSES.—Section 1400N(k)—

(A) by substituting “qualified Disaster Recovery Assistance loss” for “qualified Gulf Opportunity Zone loss” each place it appears,

(B) by substituting “after the day before the applicable disaster date, and before January 1, 2011” for “after August 27, 2005, and before January 1, 2008” each place it appears,

(C) by substituting “the applicable disaster date” for “August 28, 2005” in paragraph (2)(B)(ii)(I),

(D) by substituting “qualified Disaster Recovery Assistance property” for “qualified Gulf Opportunity Zone property” in paragraph (2)(B)(iv), and

(E) by substituting “qualified Disaster Recovery Assistance casualty loss” for “qualified Gulf Opportunity Zone casualty loss” each place it appears.

(9) CREDIT TO HOLDERS OF TAX CREDIT BONDS.—Section 1400N(l)—

(A) by substituting “Midwestern tax credit bond” for “Gulf tax credit bond” each place it appears,

(B) by substituting “any State in which a Midwestern disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in paragraph (4)(A)(i),

(C) by substituting “after December 31, 2008 and before January 1, 2010” for “after December 31, 2005, and before January 1, 2007”,

(D) by substituting “shall not exceed \$100,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 2,000,000, \$50,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 1,000,000 but less than 2,000,000, and zero for any other State. The population of a State within any area shall be determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State.” for “shall not exceed” and all that follows in paragraph (4)(C), and

(E) by substituting “the earliest applicable disaster date for Midwestern disaster areas within the State” for “August 28, 2005” in paragraph (5)(A).

(10) EDUCATION TAX BENEFITS.—Section 1400O, by substituting “2008 or 2009” for “2005 or 2006”.

(11) HOUSING TAX BENEFITS.—Section 1400P, by substituting “the applicable disaster date” for “August 28, 2005” in subsection (c)(1).

(12) SPECIAL RULES FOR USE OF RETIREMENT FUNDS.—Section 1400Q—

(A) by substituting “qualified Disaster Recovery Assistance distribution” for “qualified hurricane distribution” each place it appears.

(B) by substituting “on or after the applicable disaster date and before January 1, 2010” for “on or after August 25, 2005, and before January 1, 2007” in subsection (a)(4)(A)(i).

(C) by substituting “the applicable disaster date” for “August 28, 2005” in subsections (a)(4)(A)(i) and (c)(3)(B).

(D) by disregarding clauses (ii) and (iii) of subsection (a)(4)(A) thereof.

(E) by substituting “qualified storm damage distribution” for “qualified Katrina distribution” each place it appears.

(F) by substituting “after the date which is 6 months before the applicable disaster date and before the date which is the day after the applicable disaster date” for “after February 28, 2005, and before August 29, 2005” in subsection (b)(2)(B)(ii).

(G) by substituting “the Midwest disaster area, but not so purchased or constructed on account of severe storms, tornados, or flooding giving rise to the designation of the area as a disaster area” for “the Hurricane Katrina disaster area, but not so purchased or constructed on account of Hurricane Katrina” in subsection (b)(2)(B)(iii).

(H) by substituting “beginning on the applicable disaster date and ending on the date which is 5 months after the date of the enactment of the Housing and Economic Recovery Act of 2008” for “beginning on August 25, 2005, and ending on February 28, 2006” in subsection (b)(3)(A).

(I) by substituting “qualified storm damage individual” for “qualified Hurricane Katrina individual” each place it appears.

(J) by substituting “December 31, 2009” for “December 31, 2006” in subsection (c)(2)(A).

(K) by substituting “beginning on the date of the enactment of the Housing and Economic Recovery Act of 2008 and ending on December 31, 2009” for “beginning on September 24, 2005, and ending on December 31, 2006” in subsection (c)(4)(A)(i).

(L) by substituting “the applicable disaster date” for “August 25, 2005” in subsection (c)(4)(A)(ii), and

(M) by substituting “January 1, 2010” for “January 1, 2007” in subsection (d)(2)(A)(ii).

(13) EMPLOYEE RETENTION CREDIT FOR EMPLOYERS AFFECTED BY SEVERE STORMS, TORNADOS, AND FLOODING.—Section 1400R(a)—

(A) by substituting “the applicable disaster date” for “August 28, 2005” each place it appears.

(B) by substituting “January 1, 2009” for “January 1, 2006” both places it appears, and

(C) only with respect to eligible employers who employed an average of not more than 200 employees on business days during the taxable year before the applicable disaster date.

(14) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Section 1400S(a), by substituting the following paragraph for paragraph (4) thereof:

“(4) QUALIFIED CONTRIBUTIONS.—

“(A) IN GENERAL.—For purposes of this subsection, the term “qualified contribution” means any charitable contribution (as defined in section 170(c)) if—

“(i) such contribution—

“(I) is paid during the period beginning on the earliest applicable disaster date for all States and ending on December 31, 2008, in cash to an organization described in section 170(b)(1)(A), and

“(II) is made for relief efforts in 1 or more Midwestern disaster areas,

“(ii) the taxpayer obtains from such organization contemporaneous written acknowledgment (within the meaning of section 170(f)(8)) that such contribution was used (or is to be used) for relief efforts in 1 or more Midwestern disaster areas, and

“(iii) the taxpayer has elected the application of this subsection with respect to such contribution.

“(B) EXCEPTION.—Such term shall not include a contribution by a donor if the contribution is—

“(i) to an organization described in section 509(a)(3), or

“(ii) for establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)).

“(C) APPLICATION OF ELECTION TO PARTNERSHIPS AND S CORPORATIONS.—In the case of a partnership or S corporation, the election under subparagraph (A)(iii) shall be made separately by each partner or shareholder.”.

(15) SUSPENSION OF CERTAIN LIMITATIONS ON PERSONAL CASUALTY LOSSES.—Section 1400S(b)(1), by substituting “the applicable disaster date” for “August 25, 2005”.

(16) SPECIAL RULE FOR DETERMINING EARNED INCOME.—Section 1400S(d)—

(A) by treating an individual as a qualified individual if such individual’s principal place of abode on the applicable disaster date was located in a Midwestern disaster area,

(B) by treating the applicable disaster date with respect to any such individual as the applicable date for purposes of such subsection, and

(C) by treating an area as described in paragraph (2)(B)(ii) thereof if the area is a Midwestern disaster area only by reason of subsection (b)(2) of this section (relating to areas eligible only for public assistance)

(17) ADJUSTMENTS REGARDING TAXPAYER AND DEPENDENCY STATUS.—Section 1400S(e), by substituting “2008 or 2009” for “2005 or 2006”.

(f) MODIFICATIONS TO KATRINA EMERGENCY TAX RELIEF ACT OF 2005.—The following provisions of the Katrina Emergency Tax Relief Act of 2005 shall be applied with the following modifications:

(1) ADDITIONAL EXEMPTION FOR HOUSING DISPLACED INDIVIDUAL.—Section 302—

(A) by substituting “2008 or 2009” for “2005 or 2006” in subsection (a) thereof,

(B) by substituting “Midwestern displaced individual” for “Hurricane Katrina displaced individual” each place it appears, and

(C) by treating an area as a core disaster area for purposes of applying subsection (c) thereof if the area is a Midwestern disaster area without regard to subsection (b)(2) of this section (relating to areas eligible only for public assistance).

(2) INCREASE IN STANDARD MILEAGE RATE.—Section 303, by substituting “beginning on the applicable disaster date and ending on December 31, 2008” for “beginning on August 25, 2005, and ending on December 31, 2006”.

(3) MILEAGE REIMBURSEMENTS FOR CHARITABLE VOLUNTEERS.—Section 304—

(A) by substituting “beginning on the applicable disaster date and ending on December 31, 2008” for “beginning on August 25, 2005, and ending on December 31, 2006” in subsection (a), and

(B) by substituting “the applicable disaster date” for “August 25, 2005” in subsection (a).

(4) EXCLUSION OF CERTAIN CANCELLATION OF INDEBTEDNESS INCOME.—Section 401—

(A) by treating an individual whose principal place of abode on the applicable disaster date was in a Midwestern disaster area (determined without regard to subsection (b)(2) of this section) as an individual described in subsection (b)(1) thereof, and by treating an individual whose principal place

of abode on the applicable disaster date was in a Midwestern disaster area solely by reason of subsection (b)(2) of this section as an individual described in subsection (b)(2) thereof,

(B) by substituting “the applicable disaster date” for “August 28, 2005” both places it appears, and

(C) by substituting “January 1, 2010” for “January 1, 2007” in subsection (e).

(5) EXTENSION OF REPLACEMENT PERIOD FOR NONRECOGNITION OF GAIN.—Section 405, by substituting “on or after the applicable disaster date” for “on or after August 25, 2005”.

**SEC. 3. ENHANCED CHARITABLE DEDUCTIONS FOR CONTRIBUTIONS OF FOOD INVENTORY.**

(a) INCREASED AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—Clause (iv) of section 170(e)(3)(C) (relating to termination) of the Internal Revenue Code of 1986 is amended by striking “December 31, 2007” and inserting “December 31, 2009”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to contributions made after December 31, 2007.

(b) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—Section 170(b) of such Code is amended by adding at the end the following new paragraph:

“(3) TEMPORARY SUSPENSION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—In the case of a qualified farmer or rancher (as defined in paragraph (1)(E)(v)), any charitable contribution of food—

“(A) to which subsection (e)(3)(C) applies (without regard to clause (ii) thereof), and

“(B) which is made during the period beginning on the date of the enactment of this paragraph and before January 1, 2009, shall be treated for purposes of paragraph (1)(E) or (2)(B), whichever is applicable, as if it were a qualified conservation contribution which is made by a qualified farmer or rancher and which otherwise meets the requirements of such paragraph.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

**SEC. 4. EXTENSION OF ENHANCED CHARITABLE DEDUCTION FOR CONTRIBUTIONS OF BOOK INVENTORY.**

(a) EXTENSION.—Clause (iv) of section 170(e)(3)(D) of the Internal Revenue Code of 1986 (relating to termination) of the Internal Revenue Code of 1986 is amended by striking “December 31, 2007” and inserting “December 31, 2009”.

(b) CLERICAL AMENDMENT.—Clause (iii) of section 170(e)(3)(D) of such Code (relating to certification by donee) is amended by inserting “of books” after “to any contribution”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2007.

**SEC. 5. REPORTING REQUIREMENTS RELATING TO DISASTER RELIEF CONTRIBUTIONS.**

(a) IN GENERAL.—Section 6033(b) of the Internal Revenue Code of 1986 (relating to returns of certain organizations described in section 501(c)(3)) is amended by striking “and” at the end of paragraph (13), by redesignating paragraph (14) as paragraph (15), and by adding after paragraph (13) the following new paragraph:

“(14) such information as the Secretary may require with respect to disaster relief activities, including the amount and use of qualified contributions to which section 1400S(a) applies, and”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to any extension) occurs after December 31, 2008.

By Mr. LEVIN (for himself, Mr. VOINOVICH, Mr. BAYH, Mr. BROWN, Mr. CASEY, Mrs. CLINTON, Mr. COLEMAN, Mr. DURBIN, Mr. FEINGOLD, Ms. KLOBUCHAR, Mr. KOHL, Mr. LUGAR, Mr. OBAMA, Ms. STABENOW, and Mr. SCHUMER):

S.J. Res. 45. A joint resolution expressing the consent and approval of Congress to an inter-state compact regarding water resources in the Great Lakes—St. Lawrence River Basin; to the Committee on the Judiciary.

Mr. LEVIN. Mr. President, in 1831, the great chronicler of early America, Alexis de Tocqueville, explored the Great Lakes. As he passed through Lake Huron, he observed of the empty, undeveloped expanse: "This lake without sails, this shore which does not yet show any trace of the passage of man, this eternal forest which borders it; all that, I assure you, is not grand in poetry only; it's the most extraordinary spectacle that I have seen in my life."

Nearly 2 centuries later, the Great Lakes remain one of the most extraordinary spectacles in the world. The sheer size of the Great Lakes is impressed upon anyone who has stood on their shores, or who has seen the outline of the Michigan mitten, which the Great Lakes make one of the most distinctive shapes and recognizable shapes on maps or satellite photographs of the earth. Beyond their awe-inspiring appearance and enormity, the Great Lakes help fuel an economic engine that stretches from Minnesota to New York, producing some of our nations most celebrated and relied-upon goods and agricultural products.

This morning, my colleagues and I are introducing a joint resolution to ratify an historic agreement to manage Great Lakes water, the Great Lakes Water Resources Compact. While the existing Water Resources Development Act law provides sufficient protection and authority to prevent diversions, the Great Lakes Compact will provide an effective means for Great Lakes states jointly to safeguard water for future generations. The compact will ban new diversions from the Basin with certain limited exceptions, and those exceptions would be regulated. Further, the compact keeps the authority to govern our water in the hands of the Great Lake States.

The compact states that "the protection of the integrity of the Great Lakes Ecosystem shall be the overarching principle for reviewing proposals." For the first time, water conservation goals will be developed to deal with any water diversion proposals.

Beyond that, the compact would specifically address withdrawals and diversions of both ground and surface water. This would represent an improvement over existing law because there are differing opinions on whether the current law addresses ground water diversions.

Additionally, because the compact would provide a scientific method for

determining whether to allow a proposal to divert water from the Great Lakes, it makes our efforts to protect the lakes more clearly compliant with international trade agreements.

This agreement has been in the making for close to decade, following the mistaken issuance of a permit for bulk water diversion by the Province of Ontario. In the 2000 WRDA, Congress directed the governors to negotiate a water management policy, and in 2005, the eight Great Lakes Governors and two Canadian Premiers came to an agreement.

I have heard that some people believe that there is a water bottle "loophole." The compact prohibits water in a container larger than 5.7 gallons to be diverted outside the Great Lakes basin. Though the compact would not prohibit water withdrawals in containers less than 5.7 gallons, individual states would retain their authority to regulate bottled water in any size container.

I believe that the Great Lakes Compact is beneficial and will provide greater protections for the Great Lakes than the status quo. However, as is explicitly stated in this joint resolution, the Great Lakes Water Compact does not imply that it is necessary for Congress to pass the compact in order for the Lakes to be protected from diversions. WRDA gives each Great Lakes governor veto power over certain types of diversions by any Great Lakes state. While this authority is clear, additional safeguards and standards will be helpful in the years ahead.

Tocqueville further observed during his journey in Lake Huron, "Nature has done everything here. A fertile soil, and outlets like to which there are no others in the world." Nature has, indeed, given us so much in the Great Lakes. We need to take this important step to pass the Great Lakes Water Compact so as to make sure that we conserve this precious resource as best we can, ensuring sensible use now so that future generations can benefit from the Great Lakes as we do. I support passage, and I urge my colleagues to support it as well.

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

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

#### S.J. RES. 45

Whereas the interstate compact regarding water resources in the Great Lakes—St. Lawrence River Basin reads as follows:

#### "AGREEMENT

**"Section 1.** The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows:

#### "GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

##### "ARTICLE 1

#### "SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

**"Section 1.1. Short Title.** This act shall be known and may be cited as the "Great Lakes—St. Lawrence River Basin Water Resources Compact."

**"Section 1.2. Definitions.** For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

**"Adaptive Management** means a Water resources management system that provides a systematic process for evaluation, monitoring and learning from the outcomes of operational programs and adjustment of policies, plans and programs based on experience and the evolution of scientific knowledge concerning Water resources and Water Dependent Natural Resources.

**"Agreement** means the Great Lakes—St. Lawrence River Basin Sustainable Water Resources Agreement.

**"Applicant** means a Person who is required to submit a Proposal that is subject to management and regulation under this Compact. **Application** has a corresponding meaning.

**"Basin or Great Lakes—St. Lawrence River Basin** means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois-Rivières, Québec within the jurisdiction of the Parties.

**"Basin Ecosystem or Great Lakes—St. Lawrence River Basin Ecosystem** means the interacting components of air, land, Water and living organisms, including humankind, within the Basin.

**"Community within a Straddling County** means any incorporated city, town or the equivalent thereof, that is located outside the Basin but wholly within a County that lies partly within the Basin and that is not a Straddling Community.

**"Compact** means this Compact.

**"Consumptive Use** means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

**"Council** means the Great Lakes—St. Lawrence River Basin Water Resources Council, created by this Compact.

**"Council Review** means the collective review by the Council members as described in Article 4 of this Compact.

**"County** means the largest territorial division for local government in a State. The County boundaries shall be defined as those boundaries that exist as of December 13, 2005.

**"Cumulative Impacts** mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

**"Decision-Making Standard** means the decision-making standard established by Section 4.11 for Proposals subject to management and regulation in Section 4.10.

**"Diversion** means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker

ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. **Divert** has a corresponding meaning.

**“Environmentally Sound and Economically Feasible Water Conservation Measures** mean those measures, methods, technologies or practices for efficient water use and for reduction of water loss and waste or for reducing a Withdrawal, Consumptive Use or Diversion that i) are environmentally sound, ii) reflect best practices applicable to the water use sector, iii) are technically feasible and available, iv) are economically feasible and cost effective based on an analysis that considers direct and avoided economic and environmental costs and v) consider the particular facilities and processes involved, taking into account the environmental impact, age of equipment and facilities involved, the processes employed, energy impacts and other appropriate factors.

**“Exception** means a transfer of Water that is excepted under Section 4.9 from the prohibition against Diversions in Section 4.8.

**“Exception Standard** means the standard for Exceptions established in Section 4.9.4.

**“Intra-Basin Transfer** means the transfer of Water from the watershed of one of the Great Lakes into the watershed of another Great Lake.

**“Measures** means any legislation, law, regulation, directive, requirement, guideline, program, policy, administrative practice or other procedure.

**“New or Increased Diversion** means a new Diversion, an increase in an existing Diversion, or the alteration of an existing Withdrawal so that it becomes a Diversion.

**“New or Increased Withdrawal or Consumptive Use** means a new Withdrawal or Consumptive Use or an increase in an existing Withdrawal or Consumptive Use.

**“Originating Party** means the Party within whose jurisdiction an Application or registration is made or required.

**“Party** means a State party to this Compact.

**“Person** means a human being or a legal person, including a government or a non-governmental organization, including any scientific, professional, business, non-profit, or public interest organization or association that is neither affiliated with, nor under the direction of a government.

**“Product** means something produced in the Basin by human or mechanical effort or through agricultural processes and used in manufacturing, commercial or other processes or intended for intermediate or end use consumers. (i) Water used as part of the packaging of a Product shall be considered to be part of the Product. (ii) Other than Water used as part of the packaging of a Product, Water that is used primarily to transport materials in or out of the Basin is not a Product or part of a Product, (iii) Except as provided in (i) above, Water which is transferred as part of a public or private supply is not a Product or part of a Product, (iv) Water in its natural state such as in lakes, rivers, reservoirs, aquifers, or water basins is not a Product.

**“Proposal** means a Withdrawal, Diversion or Consumptive Use of Water that is subject to this Compact.

**“Province** means Ontario or Québec.

**“Public Water Supply Purposes** means water distributed to the public through a physically connected system of treatment, storage and distribution facilities serving a group of largely residential customers that may also serve industrial, commercial, and other institutional operators. Water Withdrawn directly from the Basin and not through such a system shall not be consid-

ered to be used for Public Water Supply Purposes.

**“Regional Body** means the members of the Council and the Premiers of Ontario and Québec or their designee as established by the Agreement.

**“Regional Review** means the collective review by the Regional Body as described in Article 4 of this Compact.

**“Source Watershed** means the watershed from which a Withdrawal originates. If Water is Withdrawn directly from a Great Lake or from the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively. If Water is Withdrawn from the watershed of a stream that is a direct tributary to a Great Lake or a direct tributary to the St. Lawrence River, then the Source Watershed shall be considered to be the watershed of that Great Lake or the watershed of the St. Lawrence River, respectively, with a preference to the direct tributary stream watershed from which it was Withdrawn.

**“Standard of Review and Decision** means the Exception Standard, Decision-Making Standard and reviews as outlined in Article 4 of this Compact.

**“State** means one of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio or Wisconsin or the Commonwealth of Pennsylvania.

**“Straddling Community** means any incorporated city, town or the equivalent thereof, wholly within any County that lies partly or completely within the Basin, whose corporate boundary existing as of the effective date of this Compact, is partly within the Basin or partly within two Great Lakes watersheds.

**“Technical Review** means a detailed review conducted to determine whether or not a Proposal that requires Regional Review under this Compact meets the Standard of Review and Decision following procedures and guidelines as set out in this Compact.

**“Water** means ground or surface water contained within the Basin.

**“Water Dependent Natural Resources** means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

**“Waters of the Basin or Basin Water** means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

**“Withdrawal** means the taking of water from surface water or groundwater. **Withdrawal** has a corresponding meaning.

#### **“Section 1.3. Findings and Purposes.**

“The legislative bodies of the respective Parties hereby find and declare:

“1. Findings:

“a. The Waters of the Basin are precious public natural resources shared and held in trust by the States;

“b. The Waters of the Basin are interconnected and part of a single hydrologic system;

“c. The Waters of the Basin can concurrently serve multiple uses. Such multiple uses include municipal, public, industrial, commercial, agriculture, mining, navigation, energy development and production, recreation, the subsistence, economic and cultural activities of native peoples, Water quality maintenance, and the maintenance of fish and wildlife habitat and a balanced ecosystem. And, other purposes are encouraged, recognizing that such uses are interdependent and must be balanced;

“d. Future Diversions and Consumptive Uses of Basin Water resources have the potential to significantly impact the environment, economy and welfare of the Great Lakes—St. Lawrence River region;

“e. Continued sustainable, accessible and adequate Water supplies for the people and economy of the Basin are of vital importance; and,

“f. The Parties have a shared duty to protect, conserve, restore, improve and manage the renewable but finite Waters of the Basin for the use, benefit and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving, restoring, improving and managing the Basin Waters is through the joint pursuit of unified and cooperative principles, policies and programs mutually-agreed upon, enacted and adhered to by all Parties.

“2. Purposes:

“a. To act together to protect, conserve, restore, improve and effectively manage the Waters and Water Dependent Natural Resources of the Basin under appropriate arrangements for intergovernmental cooperation and consultation because current lack of full scientific certainty should not be used as a reason for postponing measures to protect the Basin Ecosystem;

“b. To remove causes of present and future controversies;

“c. To provide for cooperative planning and action by the Parties with respect to such Water resources;

“d. To facilitate consistent approaches to Water management across the Basin while retaining State management authority over Water management decisions within the Basin;

“e. To facilitate the exchange of data, strengthen the scientific information base upon which decisions are made and engage in consultation on the potential effects of proposed Withdrawals and losses on the Waters and Water Dependent Natural Resources of the Basin;

“f. To prevent significant adverse impacts of Withdrawals and losses on the Basin’s ecosystems and watersheds;

“g. To promote interstate and State-Provincial comity; and,

“h. To promote an Adaptive Management approach to the conservation and management of Basin Water resources, which recognizes, considers and provides adjustments for the uncertainties in, and evolution of, scientific knowledge concerning the Basin’s Waters and Water Dependent Natural Resources.

#### **“Section 1.4. Science.**

“1. The Parties commit to provide leadership for the development of a collaborative strategy with other regional partners to strengthen the scientific basis for sound Water management decision making under this Compact.

“2. The strategy shall guide the collection and application of scientific information to support:

“a. An improved understanding of the individual and Cumulative Impacts of Withdrawals from various locations and Water sources on the Basin Ecosystem and to develop a mechanism by which impacts of Withdrawals may be assessed;

“b. The periodic assessment of Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses on a Great Lake and St. Lawrence River watershed basis;

“c. Improved scientific understanding of the Waters of the Basin;

“d. Improved understanding of the role of groundwater in Basin Water resources management; and,

“e. The development, transfer and application of science and research related to Water conservation and Water use efficiency.

### **“ARTICLE 2**

#### **“ORGANIZATION**

##### **“Section 2.1. Council Created.**

"The Great Lakes—St. Lawrence River Basin Water Resources Council is hereby created as a body politic and corporate, with succession for the duration of this Compact, as an agency and instrumentality of the governments of the respective Parties.

**"Section 2.2. Council Membership.**

"The Council shall consist of the Governors of the Parties, ex officio.

**"Section 2.3. Alternates.**

"Each member of the Council shall appoint at least one alternate who may act in his or her place and stead, with authority to attend all meetings of the Council and with power to vote in the absence of the member. Unless otherwise provided by law of the Party for which he or she is appointed, each alternate shall serve during the term of the member appointing him or her, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

**"Section 2.4. Voting.**

"1. Each member is entitled to one vote on all matters that may come before the Council.

"2. Unless otherwise stated, the rule of decision shall be by a simple majority.

"3. The Council shall annually adopt a budget for each fiscal year and the amount required to balance the budget shall be apportioned equitably among the Parties by unanimous vote of the Council. The appropriation of such amounts shall be subject to such review and approval as may be required by the budgetary processes of the respective Parties.

"4. The participation of Council members from a majority of the Parties shall constitute a quorum for the transaction of business at any meeting of the Council.

**"Section 2.5. Organization and Procedure.**

"The Council shall provide for its own organization and procedure, and may adopt rules and regulations governing its meetings and transactions, as well as the procedures and timeline for submission, review and consideration of Proposals that come before the Council for its review and action. The Council shall organize, annually, by the election of a Chair and Vice Chair from among its members. Each member may appoint an advisor, who may attend all meetings of the Council and its committees, but shall not have voting power. The Council may employ or appoint professional and administrative personnel, including an Executive Director, as it may deem advisable, to carry out the purposes of this Compact.

**"Section 2.6. Use of Existing Offices and Agencies.**

"It is the policy of the Parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent consistent with this Compact. Further, the Council shall promote and aid the coordination of the activities and programs of the Parties concerned with Water resources management in the Basin. To this end, but without limitation, the Council may:

"1. Advise, consult, contract, assist or otherwise cooperate with any and all such agencies;

"2. Employ any other agency or instrumentality of any of the Parties for any purpose; and,

"3. Develop and adopt plans consistent with the Water resources plans of the Parties.

**"Section 2.7. Jurisdiction.**

"The Council shall have, exercise and discharge its functions, powers and duties within the limits of the Basin. Outside the Basin, it may act in its discretion, but only to the extent such action may be necessary or convenient to effectuate or implement its pow-

ers or responsibilities within the Basin and subject to the consent of the jurisdiction wherein it proposes to act.

**"Section 2.8. Status, Immunities and Privileges.**

"1. The Council, its members and personnel in their official capacity and when engaged directly in the affairs of the Council, its property and its assets, wherever located and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by the Parties, except to the extent that the Council may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract.

"2. The property and assets of the Council, wherever located and by whomsoever held, shall be considered public property and shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.

"3. The Council, its property and its assets, income and the operations it carries out pursuant to this Compact shall be immune from all taxation by or under the authority of any of the Parties or any political subdivision thereof; provided, however, that in lieu of property taxes the Council may make reasonable payments to local taxing districts in annual amounts which shall approximate the taxes lawfully assessed upon similar property.

**"Section 2.9. Advisory Committees.**

"The Council may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, State, tribal, county and local governments, water resources agencies, water-using industries and sectors, water-interest groups and academic experts in related fields.

**"ARTICLE 3**

**"GENERAL POWERS AND DUTIES**

**"Section 3.1. General.**

"The Waters and Water Dependent Natural Resources of the Basin are subject to the sovereign right and responsibilities of the Parties, and it is the purpose of this Compact to provide for joint exercise of such powers of sovereignty by the Council in the common interests of the people of the region, in the manner and to the extent provided in this Compact. The Council and the Parties shall use the Standard of Review and Decision and procedures contained in or adopted pursuant to this Compact as the means to exercise their authority under this Compact. The Council may revise the Standard of Review and Decision, after consultation with the Provinces and upon unanimous vote of all Council members, by regulation duly adopted in accordance with Section 3.3 of this Compact and in accordance with each Party's respective statutory authorities and applicable procedures.

The Council shall identify priorities and develop plans and policies relating to Basin Water resources. It shall adopt and promote uniform and coordinated policies for Water resources conservation and management in the Basin.

**"Section 3.2. Council Powers.**

"The Council may: plan; conduct research and collect, compile, analyze, interpret, report and disseminate data on Water resources and uses; forecast Water levels; conduct investigations; institute court actions; design, acquire, construct, reconstruct, own, operate, maintain, control, sell and convey real and personal property and any interest therein as it may deem necessary, useful or convenient to carry out the purposes of this Compact; make contracts; receive and accept such payments, appropriations, grants, gifts,

loans, advances and other funds, properties and services as may be transferred or made available to it by any Party or by any other public or private agency, corporation or individual; and, exercise such other and different powers as may be delegated to it by this Compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

**"Section 3.3. Rules and Regulations.**

"1. The Council may promulgate and enforce such rules and regulations as may be necessary for the implementation and enforcement of this Compact. The Council may adopt by regulation, after public notice and public hearing, reasonable Application fees with respect to those Proposals for Exceptions that are subject to Council review under Section 4.9. Any rule or regulation of the Council, other than one which deals solely with the internal management of the Council or its property, shall be adopted only after public notice and hearing.

"2. Each Party, in accordance with its respective statutory authorities and applicable procedures, may adopt and enforce rules and regulations to implement and enforce this Compact and the programs adopted by such Party to carry out the management programs contemplated by this Compact.

**"Section 3.4. Program Review and Findings.**

"1. Each Party shall submit a report to the Council and the Regional Body detailing its Water management and conservation and efficiency programs that implement this Compact. The report shall set out the manner in which Water Withdrawals are managed by sector, Water source, quantity or any other means, and how the provisions of the Standard of Review and Decision and conservation and efficiency programs are implemented. The first report shall be provided by each Party one year from the effective date of this Compact and thereafter every 5 years.

"2. The Council, in cooperation with the Provinces, shall review its Water management and conservation and efficiency programs and those of the Parties that are established in this Compact and make findings on whether the Water management program provisions in this Compact are being met, and if not, recommend options to assist the Parties in meeting the provisions of this Compact. Such review shall take place:

"a. 30 days after the first report is submitted by all Parties; and,

"b. Every five years after the effective date of this Compact; and,

"c. At any other time at the request of one of the Parties.

"3. As one of its duties and responsibilities, the Council may recommend a range of approaches to the Parties with respect to the development, enhancement and application of Water management and conservation and efficiency programs to implement the Standard of Review and Decision reflecting improved scientific understanding of the Waters of the Basin, including groundwater, and the impacts of Withdrawals on the Basin Ecosystem.

**"ARTICLE 4**

**"WATER MANAGEMENT AND REGULATION**

**"Section 4.1. Water Resources Inventory, Registration and Reporting.**

"1. Within five years of the effective date of this Compact, each Party shall develop and maintain a Water resources inventory for the collection, interpretation, storage, retrieval exchange, and dissemination of information concerning the Water resources of the Party, including, but not limited to, information on the location, type, quantity, and use of those resources and the location, type, and quantity of Withdrawals, Diversions and Consumptive Uses. To the extent

feasible, the Water resources inventory shall be developed in cooperation with local, State, federal, tribal and other private agencies and entities, as well as the Council. Each Party's agencies shall cooperate with that Party in the development and maintenance of the inventory.

"2. The Council shall assist each Party to develop a common base of data regarding the management of the Water Resources of the Basin and to establish systematic arrangements for the exchange of those data with other States and Provinces.

"3. To develop and maintain a compatible base of Water use information, within five years of the effective date of this Compact any Person who Withdraws Water in an amount of 100,000 gallons per day or greater average in any 30-day period (including Consumptive Uses) from all sources, or Diverts Water of any amount, shall register the Withdrawal or Diversion by a date set by the Council unless the Person has previously registered in accordance with an existing State program. The Person shall register the Withdrawal or Diversion with the Originating Party using a form prescribed by the Originating Party that shall include, at a minimum and without limitation: the name and address of the registrant and date of registration; the locations and sources of the Withdrawal or Diversion; the capacity of the Withdrawal or Diversion per day and the amount Withdrawn or Diverted from each source; the uses made of the Water; places of use and places of discharge; and, such other information as the Originating Party may require. All registrations shall include an estimate of the volume of the Withdrawal or Diversion in terms of gallons per day average in any 30-day period.

"4. All registrants shall annually report the monthly volumes of the Withdrawal, Consumptive Use and Diversion in gallons to the Originating Party and any other information requested by the Originating Party.

"5. Each Party shall annually report the information gathered pursuant to this Section to a Great Lakes—St. Lawrence River Water use data base repository and aggregated information shall be made publicly available, consistent with the confidentiality requirements in Section 8.3.

"6. Information gathered by the Parties pursuant to this Section shall be used to improve the sources and applications of scientific information regarding the Waters of the Basin and the impacts of the Withdrawals and Diversions from various locations and Water sources on the Basin Ecosystem, and to better understand the role of groundwater in the Basin. The Council and the Parties shall coordinate the collection and application of scientific information to further develop a mechanism by which individual and Cumulative Impacts of Withdrawals, Consumptive Uses and Diversions shall be assessed.

**"Section 4.2. Water Conservation and Efficiency Programs.**

"1. The Council commits to identify, in cooperation with the Provinces, Basin-wide Water conservation and efficiency objectives to assist the Parties in developing their Water conservation and efficiency program. These objectives are based on the goals of:

"a. Ensuring improvement of the Waters and Water Dependent Natural Resources;

"b. Protecting and restoring the hydrologic and ecosystem integrity of the Basin;

"c. Retaining the quantity of surface water and groundwater in the Basin;

"d. Ensuring sustainable use of Waters of the Basin; and,

"e. Promoting the efficiency of use and reducing losses and waste of Water.

"2. Within two years of the effective date of this Compact, each Party shall develop its

own Water conservation and efficiency goals and objectives consistent with the Basin-wide goals and objectives, and shall develop and implement a Water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the Party's goals and objectives. Each Party shall annually assess its programs in meeting the Party's goals and objectives, report to the Council and the Regional Body and make this annual assessment available to the public.

"3. Beginning five years after the effective date of this Compact, and every five years thereafter, the Council, in cooperation with the Provinces, shall review and modify as appropriate the Basin-wide objectives, and the Parties shall have regard for any such modifications in implementing their programs. This assessment will be based on examining new technologies, new patterns of Water use, new resource demands and threats, and Cumulative Impact assessment under Section 4.15.

"4. Within two years of the effective date of this Compact, the Parties commit to promote Environmentally Sound and Economically Feasible Water Conservation Measures such as:

"a. Measures that promote efficient use of Water;

"b. Identification and sharing of best management practices and state of the art conservation and efficiency technologies;

"c. Application of sound planning principles;

"d. Demand-side and supply-side Measures or incentives; and,

"e. Development, transfer and application of science and research.

"5. Each Party shall implement in accordance with paragraph 2 above a voluntary or mandatory Water conservation program for all, including existing, Basin Water users. Conservation programs need to adjust to new demands and the potential impacts of cumulative effects and climate.

**"Section 4.3. Party Powers and Duties.**

"1. Each Party, within its jurisdiction, shall manage and regulate New or Increased Withdrawals, Consumptive Uses and Diversions, including Exceptions, in accordance with this Compact.

"2. Each Party shall require an Applicant to submit an Application in such manner and with such accompanying information as the Party shall prescribe.

"3. No Party may approve a Proposal if the Party determines that the Proposal is inconsistent with this Compact or the Standard of Review and Decision or any implementing rules or regulations promulgated thereunder. The Party may approve, approve with modifications or disapprove any Proposal depending on the Proposal's consistency with this Compact and the Standard of Review and Decision.

"4. Each Party shall monitor the implementation of any approved Proposal to ensure consistency with the approval and may take all necessary enforcement actions.

"5. No Party shall approve a Proposal subject to Council or Regional Review, or both, pursuant to this Compact unless it shall have been first submitted to and reviewed by either the Council or Regional Body, or both, and approved by the Council, as applicable. Sufficient opportunity shall be provided for comment on the Proposal's consistency with this Compact and the Standard of Review and Decision. All such comments shall become part of the Party's formal record of decision, and the Party shall take into consideration any such comments received.

**"Section 4.4. Requirement for Originating Party Approval.**

"No Proposal subject to management and regulation under this Compact shall here-

after be undertaken by any Person unless it shall have been approved by the Originating Party.

**"Section 4.5. Regional Review.**

"1. General.

"a. It is the intention of the Parties to participate in Regional Review of Proposals with the Provinces, as described in this Compact and the Agreement.

"b. Unless the Applicant or the Originating Party otherwise requests, it shall be the goal of the Regional Body to conclude its review no later than 90 days after notice under Section 4.5.2 of such Proposal is received from the Originating Party.

"c. Proposals for Exceptions subject to Regional Review shall be submitted by the Originating Party to the Regional Body for Regional Review, and where applicable, to the Council for concurrent review.

"d. The Parties agree that the protection of the integrity of the Great Lakes - St. Lawrence River Basin Ecosystem shall be the overarching principle for reviewing Proposals subject to Regional Review, recognizing uncertainties with respect to demands that may be placed on Basin Water, including groundwater, levels and flows of the Great Lakes and the St. Lawrence River, future changes in environmental conditions, the reliability of existing data and the extent to which Diversions may harm the integrity of the Basin Ecosystem.

"e. The Originating Party shall have lead responsibility for coordinating information for resolution of issues related to evaluation of a Proposal, and shall consult with the Applicant throughout the Regional Review Process.

"f. A majority of the members of the Regional Body may request Regional Review of a regionally significant or potentially precedent setting Proposal. Such Regional Review must be conducted, to the extent possible, within the time frames set forth in this Section. Any such Regional Review shall be undertaken only after consulting the Applicant.

"2. Notice from Originating Party to the Regional Body.

"a. The Originating Party shall determine if a Proposal is subject to Regional Review. If so, the Originating Party shall provide timely notice to the Regional Body and the public.

"b. Such notice shall not be given unless and until all information, documents and the Originating Party's Technical Review needed to evaluate whether the Proposal meets the Standard of Review and Decision have been provided.

"c. An Originating Party may:

"i. Provide notice to the Regional Body of an Application, even if notification is not required; or,

"ii. Request Regional Review of an application, even if Regional Review is not required. Any such Regional Review shall be undertaken only after consulting the Applicant.

"d. An Originating Party may provide preliminary notice of a potential Proposal.

"3. Public Participation.

"a. To ensure adequate public participation, the Regional Body shall adopt procedures for the review of Proposals that are subject to Regional Review in accordance with this Article.

"b. The Regional Body shall provide notice to the public of a Proposal undergoing Regional Review. Such notice shall indicate that the public has an opportunity to comment in writing to the Regional Body on whether the Proposal meets the Standard of Review and Decision.

"c. The Regional Body shall hold a public meeting in the State or Province of the Originating Party in order to receive public comment on the issue of whether the Proposal

under consideration meets the Standard of Review and Decision.

“d. The Regional Body shall consider the comments received before issuing a Declaration of Finding.

“e. The Regional Body shall forward the comments it receives to the Originating Party.

“4. Technical Review.

“a. The Originating Party shall provide the Regional Body with its Technical Review of the Proposal under consideration.

“b. The Originating Party’s Technical Review shall thoroughly analyze the Proposal and provide an evaluation of the Proposal sufficient for a determination of whether the Proposal meets the Standard of Review and Decision.

“c. Any member of the Regional Body may conduct their own Technical Review of any Proposal subject to Regional Review.

“d. At the request of the majority of its members, the Regional Body shall make such arrangements as it considers appropriate for an independent Technical Review of a Proposal.

“e. All Parties shall exercise their best efforts to ensure that a Technical Review undertaken under Sections 4.5.4.c and 4.5.4.d does not unnecessarily delay the decision by the Originating Party on the Application. Unless the Applicant or the Originating Party otherwise requests, all Technical Reviews shall be completed no later than 60 days after the date the notice of the Proposal was given to the Regional Body.

“5. Declaration of Finding.

“a. The Regional Body shall meet to consider a Proposal. The Applicant shall be provided with an opportunity to present the Proposal to the Regional Body at such time.

“b. The Regional Body, having considered the notice, the Originating Party’s Technical Review, any other independent Technical Review that is made, any comments or objections including the analysis of comments made by the public, First Nations and federally recognized Tribes, and any other information that is provided under this Compact shall issue a Declaration of Finding that the Proposal under consideration:

“i. Meets the Standard of Review and Decision;

“ii. Does not meet the Standard of Review and Decision; or,

“iii. Would meet the Standard of Review and Decision if certain conditions were met.

“c. An Originating Party may decline to participate in a Declaration of Finding made by the Regional Body.

“d. The Parties recognize and affirm that it is preferable for all members of the Regional Body to agree whether the Proposal meets the Standard of Review and Decision.

“e. If the members of the Regional Body who participate in the Declaration of Finding all agree, they shall issue a written Declaration of Finding with consensus.

“f. In the event that the members cannot agree, the Regional Body shall make every reasonable effort to achieve consensus within 25 days.

“g. Should consensus not be achieved, the Regional Body may issue a Declaration of Finding that presents different points of view and indicates each Party’s conclusions.

“h. The Regional Body shall release the Declarations of Finding to the public.

“i. The Originating Party and the Council shall consider the Declaration of Finding before making a decision on the Proposal.

**“Section 4.6. Proposals Subject to Prior Notice.**

“1. Beginning no later than five years of the effective date of this Compact, the Originating Party shall provide all Parties and the Provinces with detailed and timely notice and an opportunity to comment within

90 days on any Proposal for a New or Increased Consumptive Use of 5 million gallons per day or greater average in any 90-day period. Comments shall address whether or not the Proposal is consistent with the Standard of Review and Decision. The Originating Party shall provide a response to any such comment received from another Party.

“2. A Party may provide notice, an opportunity to comment and a response to comments even if this is not required under paragraph 1 of this Section. Any provision of such notice and opportunity to comment shall be undertaken only after consulting the Applicant.

**“Section 4.7. Council Actions.**

“1. Proposals for Exceptions subject to Council Review shall be submitted by the Originating Party to the Council for Council Review, and where applicable, to the Regional Body for concurrent review.

“2. The Council shall review and take action on Proposals in accordance with this Compact and the Standard of Review and Decision. The Council shall not take action on a Proposal subject to Regional Review pursuant to this Compact unless the Proposal shall have been first submitted to and reviewed by the Regional Body. The Council shall consider any findings resulting from such review.

**“Section 4.8. Prohibition of New or Increased Diversions.**

“All New or Increased Diversions are prohibited, except as provided for in this Article.

**“Section 4.9. Exceptions to the Prohibition of Diversions.**

“1. Straddling Communities. A Proposal to transfer Water to an area within a Straddling Community but outside the Basin or outside the source Great Lake Watershed shall be excepted from the prohibition against Diversions and be managed and regulated by the Originating Party provided that, regardless of the volume of Water transferred, all the Water so transferred shall be used solely for Public Water Supply Purposes within the Straddling Community, and:

“a. All Water Withdrawn from the Basin shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:

“i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

“ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

“iii. Maximizes the portion of water returned to the Source Watershed as Basin Water and minimizes the surface water or groundwater from outside the Basin;

“b. If the Proposal results from a New or Increased Withdrawal of 100,000 gallons per day or greater average over any 90-day period, the Proposal shall also meet the Exception Standard; and,

“c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period, the Proposal shall also undergo Regional Review.

“2. Intra-Basin Transfer. A Proposal for an Intra-Basin Transfer that would be considered a Diversion under this Compact, and not already excepted pursuant to paragraph 1 of this Section, shall be excepted from the prohibition against Diversions, provided that:

“a. If the Proposal results from a New or Increased Withdrawal less than 100,000 gallons per day average over any 90-day period, the Proposal shall be subject to management

and regulation at the discretion of the Originating Party.

“b. If the Proposal results from a New or Increased Withdrawal 100,000 gallons per day or greater average over any 90-day period and if the Consumptive Use resulting from the Withdrawal is less than 5 million gallons per day average over any 90-day period:

“i. The Proposal shall meet the Exception Standard and be subject to management and regulation by the Originating Party, except that the Water may be returned to another Great Lake watershed rather than the Source Watershed;

“ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies; and,

“iii. The Originating Party shall provide notice to the other Parties prior to making any decision with respect to the Proposal.

“c. If the Proposal results in a New or Increased Consumptive Use of 5 million gallons per day or greater average over any 90-day period:

“i. The Proposal shall be subject to management and regulation by the Originating Party and shall meet the Exception Standard, ensuring that Water Withdrawn shall be returned to the Source Watershed;

“ii. The Applicant shall demonstrate that there is no feasible, cost effective, and environmentally sound water supply alternative within the Great Lake watershed to which the Water will be transferred, including conservation of existing water supplies;

“iii. The Proposal undergoes Regional Review; and,

“iv. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

“3. Straddling Counties. A Proposal to transfer Water to a Community within a Straddling County that would be considered a Diversion under this Compact shall be excepted from the prohibition against Diversions, provided that it satisfies all of the following conditions:

“a. The Water shall be used solely for the Public Water Supply Purposes of the Community within a Straddling County that is without adequate supplies of potable water;

“b. The Proposal meets the Exception Standard, maximizing the portion of water returned to the Source Watershed as Basin Water and minimizing the surface water or groundwater from outside the Basin;

“c. The Proposal shall be subject to management and regulation by the Originating Party, regardless of its size;

“d. There is no reasonable water supply alternative within the basin in which the community is located, including conservation of existing water supplies;

“e. Caution shall be used in determining whether or not the Proposal meets the conditions for this Exception. This Exception should not be authorized unless it can be shown that it will not endanger the integrity of the Basin Ecosystem;

“f. The Proposal undergoes Regional Review; and,

“g. The Proposal is approved by the Council. Council approval shall be given unless one or more Council Members vote to disapprove.

A Proposal must satisfy all of the conditions listed above. Further, substantive consideration will also be given to whether or not the Proposal can provide sufficient scientifically based evidence that the existing water supply is derived from groundwater that is hydrologically interconnected to Waters of the Basin.

"4. Exception Standard. Proposals subject to management and regulation in this Section shall be declared to meet this Exception Standard and may be approved as appropriate only when the following criteria are met:

"a. The need for all or part of the proposed Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;

"b. The Exception will be limited to quantities that are considered reasonable for the purposes for which it is proposed;

"c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from the outside the Basin may be used to satisfy any portion of this criterion except if it:

"i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;

"ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;

"d. The Exception will be implemented so as to ensure that it will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;

"e. The Exception will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

"f. The Exception will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909; and,

"g. All other applicable criteria in Section 4.9 have also been met.

**"Section 4.10. Management and Regulation of New or Increased Withdrawals and Consumptive Uses.**

"1. Within five years of the effective date of this Compact, each Party shall create a program for the management and regulation of New or Increased Withdrawals and Consumptive Uses by adopting and implementing Measures consistent with the Decision-Making Standard. Each Party, through a considered process, shall set and may modify threshold levels for the regulation of New or Increased Withdrawals in order to assure an effective and efficient Water management program that will ensure that uses overall are reasonable, that Withdrawals overall will not result in significant impacts to the Waters and Water Dependent Natural Resources of the Basin, determined on the basis of significant impacts to the physical, chemical, and biological integrity of Source Watersheds, and that all other objectives of the Compact are achieved. Each Party may determine the scope and thresholds of its program, including which New or Increased Withdrawals and Consumptive Uses will be subject to the program.

"2. Any Party that fails to set threshold levels that comply with Section 4.10.1 any time before 10 years after the effective date of this Compact shall apply a threshold level for management and regulation of all New or Increased Withdrawals of 100,000 gallons per day or greater average in any 90-day period.

"3. The Parties intend programs for New or Increased Withdrawals and Consumptive Uses to evolve as may be necessary to protect Basin Waters. Pursuant to Section 3.4, the Council, in cooperation with the Prov-

inces, shall periodically assess the Water management programs of the Parties. Such assessments may produce recommendations for the strengthening of the programs, including without limitation, establishing lower thresholds for management and regulation in accordance with the Decision-Making Standard.

**"Section 4.11. Decision-Making Standard.**

"Proposals subject to management and regulation in Section 4.10 shall be declared to meet this Decision-Making Standard and may be approved as appropriate only when the following criteria are met:

"1. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use;

"2. The Withdrawal or Consumptive Use will be implemented so as to ensure that the Proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources and the applicable Source Watershed;

"3. The Withdrawal or Consumptive Use will be implemented so as to incorporate Environmentally Sound and Economically Feasible Water Conservation Measures;

"4. The Withdrawal or Consumptive Use will be implemented so as to ensure that it is in compliance with all applicable municipal, State and federal laws as well as regional interstate and international agreements, including the Boundary Waters Treaty of 1909;

"5. The proposed use is reasonable, based upon a consideration of the following factors:

"a. Whether the proposed Withdrawal or Consumptive Use is planned in a fashion that provides for efficient use of the water, and will avoid or minimize the waste of Water;

"b. If the Proposal is for an increased Withdrawal or Consumptive use, whether efficient use is made of existing water supplies;

"c. The balance between economic development, social development and environmental protection of the proposed Withdrawal and use and other existing or planned withdrawals and water uses sharing the water source;

"d. The supply potential of the water source, considering quantity, quality, and reliability and safe yield of hydrologically interconnected water sources;

"e. The probable degree and duration of any adverse impacts caused or expected to be caused by the proposed Withdrawal and use under foreseeable conditions, to other lawful consumptive or non-consumptive uses of water or to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin, and the proposed plans and arrangements for avoidance or mitigation of such impacts; and,

"f. If a Proposal includes restoration of hydrologic conditions and functions of the Source Watershed, the Party may consider that.

**"Section 4.12. Applicability.**

"1. Minimum Standard. This Standard of Review and Decision shall be used as a minimum standard. Parties may impose a more restrictive decision-making standard for Withdrawals under their authority. It is also acknowledged that although a Proposal meets the Standard of Review and Decision it may not be approved under the laws of the Originating Party that has implemented more restrictive Measures.

"2. Baseline.

"a. To establish a baseline for determining a New or Increased Diversion, Consumptive Use or Withdrawal, each Party shall develop either or both of the following lists for their jurisdiction:

"i. A list of existing Withdrawal approvals as of the effective date of the Compact;

"ii. A list of the capacity of existing systems as of the effective date of this Compact. The capacity of the existing systems should be presented in terms of Withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.

"b. For all purposes of this Compact, volumes of Diversions, Consumptive Uses, or Withdrawals of Water set forth in the list(s) prepared by each Party in accordance with this Section, shall constitute the baseline volume.

"c. The list(s) shall be furnished to the Regional Body and the Council within one year of the effective date of this Compact.

"3. Timing of Additional Applications. Applications for New or Increased Withdrawals, Consumptive Uses or Exceptions shall be considered cumulatively within ten years of any application.

"4. Change of Ownership. Unless a new owner proposes a project that shall result in a Proposal for a New or Increased Diversion or Consumptive Use subject to Regional Review or Council approval, the change of ownership in and of itself shall not require Regional Review or Council approval.

"5. Groundwater. The Basin surface water divide shall be used for the purpose of managing and regulating New or Increased Diversions, Consumptive Uses or Withdrawals of surface water and groundwater.

"6. Withdrawal Systems. The total volume of surface water and groundwater resources that supply a common distribution system shall determine the volume of a Withdrawal, Consumptive Use or Diversion.

"7. Connecting Channels. The watershed of each Great Lake shall include its upstream and downstream connecting channels.

"8. Transmission in Water Lines. Transmission of Water within a line that extends outside the Basin as it conveys Water from one point to another within the Basin shall not be considered a Diversion if none of the Water is used outside the Basin.

"9. Hydrologic Units. The Lake Michigan and Lake Huron watersheds shall be considered to be a single hydrologic unit and watershed.

"10. Bulk Water Transfer. A Proposal to Withdraw Water and to remove it from the Basin in any container greater than 5.7 gallons shall be treated under this Compact in the same manner as a Proposal for a Diversion. Each Party shall have the discretion, within its jurisdiction, to determine the treatment of Proposals to Withdraw Water and to remove it from the Basin in any container of 5.7 gallons or less.

**"Section 4.13. Exemptions.**

"Withdrawals from the Basin for the following purposes are exempt from the requirements of Article 4.

"1. To supply vehicles, including vessels and aircraft, whether for the needs of the persons or animals being transported or for ballast or other needs related to the operation of the vehicles.

"2. To use in a non-commercial project on a short-term basis for firefighting, humanitarian, or emergency response purposes.

**"Section 4.14. U.S. Supreme Court Decree: Wisconsin et al. v. Illinois et al.**

"1. Notwithstanding any terms of this Compact to the contrary, with the exception of Paragraph 5 of this Section, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois shall be governed by the terms of the United States Supreme Court decree in

Wisconsin et al. v. Illinois et al. and shall not be subject to the terms of this Compact nor any rules or regulations promulgated pursuant to this Compact. This means that, with the exception of Paragraph 5 of this Section, for purposes of this Compact, current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water within the State of Illinois shall be allowed unless prohibited by the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al.

"2. The Parties acknowledge that the United States Supreme Court decree in Wisconsin et al. v. Illinois et al. shall continue in full force and effect, that this Compact shall not modify any terms thereof, and that this Compact shall grant the parties no additional rights, obligations, remedies or defenses thereto. The Parties specifically acknowledge that this Compact shall not prohibit or limit the State of Illinois in any manner from seeking additional Basin Water as allowed under the terms of the United States Supreme Court decree in Wisconsin et al. v. Illinois et al., any other party from objecting to any request by the State of Illinois for additional Basin Water under the terms of said decree, or any party from seeking any other type of modification to said decree. If an application is made by any party to the Supreme Court of the United States to modify said decree, the Parties to this Compact who are also parties to the decree shall seek formal input from the Canadian Provinces of Ontario and Québec, with respect to the proposed modification, use best efforts to facilitate the appropriate participation of said Provinces in the proceedings to modify the decree, and shall not unreasonably impede or restrict such participation.

"3. With the exception of Paragraph 5 of this Section, because current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Water by the State of Illinois are not subject to the terms of this Compact, the State of Illinois is prohibited from using any term of this Compact, including Section 4.9, to seek New or Increased Withdrawals, Consumptive Uses or Diversions of Basin Water.

"4. With the exception of Paragraph 5 of this Section, because Sections 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12 (Paragraphs 1, 2, 3, 4, 6 and 10 only), and 4.13 of this Compact all relate to current, New or Increased Withdrawals, Consumptive Uses and Diversions of Basin Waters, said provisions do not apply to the State of Illinois. All other provisions of this Compact not listed in the preceding sentence shall apply to the State of Illinois, including the Water Conservation Programs provision of Section 4.2.

"5. In the event of a Proposal for a Diversion of Basin Water for use outside the territorial boundaries of the Parties to this Compact, decisions by the State of Illinois regarding such a Proposal would be subject to all terms of this Compact, except Paragraphs 1, 3 and 4 of this Section.

"6. For purposes of the State of Illinois' participation in this Compact, the entirety of this Section 4.14 is necessary for the continued implementation of this Compact and, if severed, this Compact shall no longer be binding on or enforceable by or against the State of Illinois.

**"Section 4.15. Assessment of Cumulative Impacts.**

"1. The Parties in cooperation with the Provinces shall collectively conduct within the Basin, on a Lake watershed and St. Lawrence River Basin basis, a periodic assessment of the Cumulative Impacts of Withdrawals, Diversions and Consumptive Uses from the Waters of the Basin, every 5 years or each time the incremental Basin Water

losses reach 50 million gallons per day average in any 90-day period in excess of the quantity at the time of the most recent assessment, whichever comes first, or at the request of one or more of the Parties. The assessment shall form the basis for a review of the Standard of Review and Decision, Council and Party regulations and their application. This assessment shall:

"a. Utilize the most current and appropriate guidelines for such a review, which may include but not be limited to Council on Environmental Quality and Environment Canada guidelines;

"b. Give substantive consideration to climate change or other significant threats to Basin Waters and take into account the current state of scientific knowledge, or uncertainty, and appropriate Measures to exercise caution in cases of uncertainty if serious damage may result;

"c. Consider adaptive management principles and approaches, recognizing, considering and providing adjustments for the uncertainties in, and evolution of science concerning the Basin's water resources, watersheds and ecosystems, including potential changes to Basin-wide processes, such as lake level cycles and climate.

"2. The Parties have the responsibility of conducting this Cumulative Impact assessment. Applicants are not required to participate in this assessment.

"3. Unless required by other statutes, Applicants are not required to conduct a separate cumulative impact assessment in connection with an Application but shall submit information about the potential impacts of a Proposal to the quantity or quality of the Waters and Water Dependent Natural Resources of the applicable Source Watershed. An Applicant may, however, provide an analysis of how their Proposal meets the no significant adverse Cumulative Impact provision of the Standard of Review and Decision.

**"ARTICLE 5**

**"TRIBAL CONSULTATION**

**"Section 5.1. Consultation with Tribes.**

"1. In addition to all other opportunities to comment pursuant to Section 6.2, appropriate consultations shall occur with federally recognized Tribes in the Originating Party for all Proposals subject to Council or Regional Review pursuant to this Compact. Such consultations shall be organized in the manner suitable to the individual Proposal and the laws and policies of the Originating Party.

"2. All federally recognized Tribes within the Basin shall receive reasonable notice indicating that they have an opportunity to comment in writing to the Council or the Regional Body, or both, and other relevant organizations on whether the Proposal meets the requirements of the Standard of Review and Decision when a Proposal is subject to Regional Review or Council approval. Any notice from the Council shall inform the Tribes of any meeting or hearing that is to be held under Section 6.2 and invite them to attend. The Parties and the Council shall consider the comments received under this Section before approving, approving with modifications or disapproving any Proposal subject to Council or Regional Review.

"3. In addition to the specific consultation mechanisms described above, the Council shall seek to establish mutually-agreed upon mechanisms or processes to facilitate dialogue with, and input from federally recognized Tribes on matters to be dealt with by the Council; and, the Council shall seek to establish mechanisms and processes with federally recognized Tribes designed to facilitate on-going scientific and technical interaction and data exchange regarding

matters falling within the scope of this Compact. This may include participation of tribal representatives on advisory committees established under this Compact or such other processes that are mutually-agreed upon with federally recognized Tribes individually or through duly-authorized intertribal agencies or bodies.

**"ARTICLE 6**

**"PUBLIC PARTICIPATION**

**"Section 6.1. Meetings, Public Hearings and Records.**

"1. The Parties recognize the importance and necessity of public participation in promoting management of the Water Resources of the Basin. Consequently, all meetings of the Council shall be open to the public, except with respect to issues of personnel.

"2. The minutes of the Council shall be a public record open to inspection at its offices during regular business hours.

**"Section 6.2. Public Participation.**

"It is the intent of the Council to conduct public participation processes concurrently and jointly with processes undertaken by the Parties and through Regional Review. To ensure adequate public participation, each Party or the Council shall ensure procedures for the review of Proposals subject to the Standard of Review and Decision consistent with the following requirements:

"1. Provide public notification of receipt of all Applications and a reasonable opportunity for the public to submit comments before Applications are acted upon.

"2. Assure public accessibility to all documents relevant to an Application, including public comment received.

"3. Provide guidance on standards for determining whether to conduct a public meeting or hearing for an Application, time and place of such a meeting(s) or hearing(s), and procedures for conducting of the same.

"4. Provide the record of decision for public inspection including comments, objections, responses and approvals, approvals with conditions and disapprovals.

**"ARTICLE 7**

**"DISPUTE RESOLUTION AND ENFORCEMENT**

**"Section 7.1. Good Faith Implementation.**

"Each of the Parties pledges to support implementation of all provisions of this Compact, and covenants that its officers and agencies shall not hinder, impair, or prevent any other Party carrying out any provision of this Compact.

**"Section 7.2. Alternative Dispute Resolution.**

"1. Desiring that this Compact be carried out in full, the Parties agree that disputes between the Parties regarding interpretation, application and implementation of this Compact shall be settled by alternative dispute resolution.

"2. The Council, in consultation with the Provinces, shall provide by rule procedures for the resolution of disputes pursuant to this section.

**"Section 7.3. Enforcement.**

"1. Any Person aggrieved by any action taken by the Council pursuant to the authorities contained in this Compact shall be entitled to a hearing before the Council. Any Person aggrieved by a Party action shall be entitled to a hearing pursuant to the relevant Party's administrative procedures and laws. After exhaustion of such administrative remedies, (i) any aggrieved Person shall have the right to judicial review of a Council action in the United States District Courts for the District of Columbia or the District Court in which the Council maintains offices, provided such action is commenced within 90 days; and, (ii) any aggrieved Person shall have the right to judicial review of a Party's action in the relevant Party's court

of competent jurisdiction, provided that an action or proceeding for such review is commenced within the time frames provided for by the Party's law. For the purposes of this paragraph, a State or Province is deemed to be an aggrieved Person with respect to any Party action pursuant to this Compact.

"2. a. Any Party or the Council may initiate actions to compel compliance with the provisions of this Compact, and the rules and regulations promulgated hereunder by the Council. Jurisdiction over such actions is granted to the court of the relevant Party, as well as the United States District Courts for the District of Columbia and the District Court in which the Council maintains offices. The remedies available to any such court shall include, but not be limited to, equitable relief and civil penalties.

"b. Each Party may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by this Compact in accordance with the provisions of the laws adopted in each Party's jurisdiction.

"3. Any aggrieved Person, Party or the Council may commence a civil action in the relevant Party's courts and administrative systems to compel any Person to comply with this Compact should any such Person, without approval having been given, undertake a New or Increased Withdrawal, Consumptive Use or Diversion that is prohibited or subject to approval pursuant to this Compact.

"a. No action under this subsection may be commenced if:

"i. The Originating Party or Council approval for the New or Increased Withdrawal, Consumptive Use or Diversion has been granted; or,

"ii. The Originating Party or Council has found that the New or Increased Withdrawal, Consumptive Use or Diversion is not subject to approval pursuant to this Compact.

"b. No action under this subsection may be commenced unless:

"i. A Person commencing such action has first given 60 days prior notice to the Originating Party, the Council and Person alleged to be in noncompliance; and,

"ii. Neither the Originating Party nor the Council has commenced and is diligently prosecuting appropriate enforcement actions to compel compliance with this Compact. The available remedies shall include equitable relief, and the prevailing or substantially prevailing party may recover the costs of litigation, including reasonable attorney and expert witness fees, whenever the court determines that such an award is appropriate.

"4. Each of the Parties may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of this Compact.

#### "ARTICLE 8

##### "ADDITIONAL PROVISIONS

###### "Section 8.1. Effect on Existing Rights.

"1. Nothing in this Compact shall be construed to affect, limit, diminish or impair any rights validly established and existing as of the effective date of this Compact under State or federal law governing the Withdrawal of Waters of the Basin.

"2. Nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective Parties relating to common law Water rights.

"3. Nothing in this Compact is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the

federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.

"4. An approval by a Party or the Council under this Compact does not give any property rights, nor any exclusive privileges, nor shall it be construed to grant or confer any right, title, easement, or interest in, to or over any land belonging to or held in trust by a Party; neither does it authorize any injury to private property or invasion of private rights, nor infringement of federal, State or local laws or regulations; nor does it obviate the necessity of obtaining federal assent when necessary.

###### "Section 8.2. Relationship to Agreements Concluded by the United States of America.

"1. Nothing in this Compact is intended to provide nor shall be construed to provide, directly or indirectly, to any Person any right, claim or remedy under any treaty or international agreement nor is it intended to derogate any right, claim, or remedy that already exists under any treaty or international agreement.

"2. Nothing in this Compact is intended to infringe nor shall be construed to infringe upon the treaty power of the United States of America, nor shall any term hereof be construed to alter or amend any treaty or term thereof that has been or may hereafter be executed by the United States of America.

"3. Nothing in this Compact is intended to affect nor shall be construed to affect the application of the Boundary Waters Treaty of 1909 whose requirements continue to apply in addition to the requirements of this Compact.

###### "Section 8.3. Confidentiality.

"1. Nothing in this Compact requires a Party to breach confidentiality obligations or requirements prohibiting disclosure, or to compromise security of commercially sensitive or proprietary information.

"2. A Party may take measures, including but not limited to deletion and redaction, deemed necessary to protect any confidential, proprietary or commercially sensitive information when distributing information to other Parties. The Party shall summarize or paraphrase any such information in a manner sufficient for the Council to exercise its authorities contained in this Compact.

###### "Section 8.4. Additional Laws.

"Nothing in this Compact shall be construed to repeal, modify or qualify the authority of any Party to enact any legislation or enforce any additional conditions and restrictions regarding the management and regulation of Waters within its jurisdiction.

###### "Section 8.5. Amendments and Supplements.

"The provisions of this Compact shall remain in full force and effect until amended by action of the governing bodies of the Parties and consented to and approved by any other necessary authority in the same manner as this Compact is required to be ratified to become effective.

###### "Section 8.6. Severability.

"Should a court of competent jurisdiction hold any part of this Compact to be void or unenforceable, it shall be considered severable from those portions of the Compact capable of continued implementation in the absence of the voided provisions. All other provisions capable of continued implementation shall continue in full force and effect.

###### "Section 8.7. Duration of Compact and Termination.

"Once effective, the Compact shall continue in force and remain binding upon each and every Party unless terminated. This Compact may be terminated at any time by a majority vote of the Parties. In the event of such termination, all rights established under it shall continue unimpaired.

#### "ARTICLE 9

##### "EFFECTUATION

###### "Section 9.1. Repealer.

"All acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed.

###### "Section 9.2. Effectuation by Chief Executive.

"The Governor is authorized to take such action as may be necessary and proper in his or her discretion to effectuate the Compact and the initial organization and operation thereunder.

###### "Section 9.3. Entire Agreement.

"The Parties consider this Compact to be complete and an integral whole. Each provision of this Compact is considered material to the entire Compact, and failure to implement or adhere to any provision may be considered a material breach. Unless otherwise noted in this Compact, any change or amendment made to the Compact by any Party in its implementing legislation or by the U.S. Congress when giving its consent to this Compact is not considered effective unless concurred in by all Parties.

###### "Section 9.4. Effective Date and Execution.

"This Compact shall become binding and effective when ratified through concurring legislation by the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania and consented to by the Congress of the United States. This Compact shall be signed and sealed in nine identical original copies by the respective chief executives of the signatory Parties. One such copy shall be filed with the Secretary of State of each of the signatory Parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the Council upon its organization. The signatures shall be affixed and attested under the following form:

"In Witness Whereof, and in evidence of the adoption and enactment into law of this Compact by the legislatures of the signatory parties and consent by the Congress of the United States, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Compact in nine duplicate original copies, attested by the respective Secretaries of State, and have caused the seals of the respective states to be hereunto affixed this \_\_\_\_\_ day of (month), (year).": Now, therefore, be it

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—*

(1) Congress consents to and approves the interstate compact regarding water resources in the Great Lakes—St. Lawrence River Basin described in the preamble; and

(2) until a Great Lakes Water Compact is ratified and enforceable, laws in effect as of the date of enactment of this resolution provide protection sufficient to prevent Great Lakes water diversions.

#### SUBMITTED RESOLUTIONS

SENATE RESOLUTION 620—DESIGNATING THE WEEK OF SEPTEMBER 14-20, 2008, AS NATIONAL POLYCYSTIC KIDNEY DISEASE AWARENESS WEEK, TO RAISE PUBLIC AWARENESS AND UNDERSTANDING OF POLYCYSTIC KIDNEY DISEASE, AND TO FOSTER UNDERSTANDING OF THE IMPACT POLYCYSTIC KIDNEY DISEASE HAS ON PATIENTS AND FUTURE GENERATIONS OF THEIR FAMILIES

Mr. KOHL (for himself and Mr. HATCH) submitted the following resolution; which was referred to the Committee on the Judiciary: