of amendment No. 433 intended to be proposed to S. 782, a bill to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

AMENDMENT NO. 460

At the request of Mr. DEMINT, the names of the Senator from Louisiana (Mr. VITTER) and the Senator from Pennsylvania (Mr. TOOMEY) were added as cosponsors of amendment No. 460 intended to be proposed to S. 782, a bill to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

AMENDMENT NO. 467

At the request of Ms. AYOTTE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of amendment No. 467 intended to be proposed to S. 782, a bill to amend the Public Works and Economic Development Act of 1965 to reauthorize that Act, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, and Mr. LEAHY):

S. 1199. A bill to amend title 18, United States Code, to limit the misuse of Social Security numbers, to establish criminal penalties for such misuse, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce, together with Senator SNOWE, legislation today to protect one of Americans' most valuable but vulnerable assets: Social Security numbers.

The Protecting the Privacy of Social Security Numbers Act would protect personal privacy and reduce identity theft by eliminating the unnecessary use and display of Social Security numbers.

Since the 106th Congress, I have worked to safeguard Social Security numbers. I believe that the widespread display and use of these numbers poses a significant, and entirely preventable, threat to Americans' personal privacy.

In 1935, Congress authorized the Social Security Administration to issue Social Security numbers as part of the Social Security program. Since that time, Social Security numbers have become the best known and easiest way to identify individuals in the United States.

Use of these numbers has expanded well beyond their original purpose. Social Security numbers are now used for everything from credit checks to rental agreements to employment verifications, among other purposes. They can be found in privately held databases and on public records, including marriage licenses, professional certifications, and countless other public documents, many of which are available on the Internet.

Once accessed, the numbers act like keys, allowing thieves to open credit card and bank accounts and even begin applying for government benefits.

According to the Federal Trade Commission, between 8 and 10 million Americans have their identities stolen by such thieves each year, at a combined cost of billions of dollars.

What's worse, victims often do not realize that a theft has occurred until much later, when they learn that their credit has been destroyed by unpaid debt on fraudulently opened accounts.

One thief stole a retired Army Captain's military identification card and used his Social Security number, listed on the card, to go on a 6-month, $260,000 shopping spree. By the time the Army Captain realized what had happened, the thief had opened more than 60 fraudulent accounts.

A single mother of two went to file her taxes and learned that a fraudulent return had already been filed in her name by someone else, a thief who wanted her refund check.

A former pro-football player received a phone call notifying him that a $1 million home mortgage loan had been approved in his name even though he had never applied for such a loan.

Identity theft is serious. Once an individual's identity is stolen, people are often subjected to countless hours and costs attempting to regain their good name and credit. In 2004, victims spent an average of 300 hours recovering from the crime. The crime disrupts lives and can destroy finances.

It also hurts American businesses. A 2006 online survey by the Business Software Alliance and Harris Interactive found that nearly 30 percent of adults decided to shop online less or not at all during the holiday season because of fears about identity theft.

When people's identities are stolen, they often do not know how the thieves obtained their personal information. Social security numbers and other key identifying data are displayed and used in such a widespread manner that individuals could not successfully restrict access themselves.

Limitations on the display of Social Security numbers are critically needed.

In the last Congress, Senator Judd Gregg of New Hampshire and I worked together to pass a bill to prevent Federal, State, and local entities from printing social security numbers on government checks and to prohibit government entities from employing prisoners in jobs like data entry that gave them access to people's social security numbers.

But comprehensive legislation is still needed.

The U.S. Government Accountability Office conducted studies of this problem in 2002 and 2007. Both times—in studies entitled Social Security Numbers Are Widely Used by Government and Could Be Better Protected and Social Security numbers: Use Is Widespread and Could Be Improved, the GAO concluded that current protections are insufficient and that serious vulnerabilities remain.

The Protecting the Privacy of Social Security Numbers Act would require government agencies and businesses to do more to protect Americans' Social Security numbers. The bill would stop the sale or display of a person's Social Security number without his or her express consent; prevent Federal, State, and local governments from displaying Social Security numbers on public records posted on the Internet; limit the circumstances in which businesses could ask a customer for his or her Social Security number; commission a study by the Attorney General regarding the current uses of Social Security numbers and the impact on privacy and data security; and institute criminal and civil penalties for misuse of Social Security numbers.

I believe this legislation could play a critical role in halting the growing epidemic of identity theft that has been plaguing America and its citizens.

As President George W. Bush's Identity Theft Task Force reported to us now three years ago, ''[i]dentity theft depends on access to . . . data. Reducing the opportunities for thieves to get the data is critical to fighting the crime.''

Every agency to study this problem has agreed that the problem will continue to grow over time and that action is needed.

I urge my colleagues to support the Protecting the Privacy of Social Security Numbers Act.

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. 1199

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 ''Protecting the Privacy of Social Security Numbers Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Prohibition of the display, sale, or purchase of Social Security numbers.
Sec. 4. Application of Prohibition of the display, sale, or purchase of Social Security numbers to public records.
Sec. 5. Rulemaking authority of the Attorney General.
Sec. 6. Limits on personal disclosure of a Social Security number for consumer transactions.
Sec. 7. Extension of civil monetary penalties for misuse of a Social Security number.
Sec. 8. Criminal penalties for the misuse of a Social Security number.
Sec. 9. Civil actions and civil penalties.
Sec. 10. Federal injunctive authority.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The inappropriate display, sale, or purchase of Social Security numbers has contributed to a growing range of illegal activities, including fraud, identity theft, and, in some cases, stalking and other violent crimes.

(2) While financial institutions, health care providers, and other entities have often used Social Security numbers to confirm the identity of an individual, the general display to the public, sale, or purchase of these numbers has been used to commit crimes, and also can result in serious invasions of individual privacy.

(3) The Federal Government requires virtually every individual in the United States to obtain and maintain a Social Security number in order to pay taxes, to qualify for Social Security benefits, or to seek employment. An unintended consequence of these requirements is that Social Security numbers have become one of the tools that can be used to facilitate crime, fraud, and invasions of the privacy of the individuals to whom the numbers are assigned. Because the Federal Government created and maintains this system, and because the Federal Government does not permit individuals to exempt themselves from those requirements, it is appropriate for the Federal Government to take steps to stem the abuse of Social Security numbers.

(4) The display, sale, or purchase of Social Security numbers in no way facilitates uninhibited, robust, and wide-open public debate, and restrictions on such display, sale, or purchase would not affect public debate.

(5) No one should seek to profit from the display, sale, or purchase of Social Security numbers in circumstances that create a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(6) Consequently, this Act provides each individual that has been assigned a Social Security number some degree of protection from the display, sale, and purchase of that number in any circumstance that might facilitate unlawful conduct.

SEC. 3. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1028A the following:

"§ 1028B. Prohibition of the display, sale, or purchase of Social Security numbers

''(a) DEFINITIONS.—In this section:

''(1) DISPLAY.—The term 'display' means to intentionally communicate or otherwise make available (on the Internet or in any other manner) to the general public an individual's Social Security number.

''(2) PERSON.—The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

''(3) PURCHASE.—The term 'purchase' means providing directly or indirectly, anything of value in exchange for a Social Security number.

''(4) SALE.—The term 'sale' means obtaining, directly or indirectly, anything of value in exchange for a Social Security number.

''(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

''(b) LIMITATION ON DISPLAY.—Except as provided in section 1028C, no person may display any individual's Social Security number to the general public without the affirmatively expressed consent of the individual.

''(c) LIMITATION ON SALE OR PURCHASE.—Except as otherwise provided in this section, no person may sell or purchase any individual's Social Security number without the affirmatively expressed consent of the individual.

''(d) PREREQUISITES FOR CONSENT.—In order for consent to exist under subsection (b) or (c), the person displaying or seeking to display, selling or attempting to sell, or purchasing or attempting to purchase, an individual's Social Security number shall—

''(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number may be available, and the scope of transactions permitted by the consent; and

''(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

''(e) EXCEPTIONS.—Nothing in this section shall be construed to prohibit or limit the display, sale, or purchase of a Social Security number—

''(1) required, authorized, or excepted under any Federal law;

''(2) for a public health purpose, including the protection of the health or safety of an individual in an emergency situation;

''(3) for a national security purpose;

''(4) for a law enforcement purpose, including the investigation of fraud and the enforcement of a child support obligation;

''(5) if the display, sale, or purchase of the number is for a use occurring as a result of an interaction between businesses, governments, or business and government (regardless of which entity initiates the interaction), including, but not limited to—

''(A) the prevention of fraud (including fraud in protecting an employee's right to employment benefits);

''(B) the facilitation of credit checks or the facilitation of background checks of employees, prospective employees, or volunteers;

''(C) the retrieval of other information from other businesses, commercial enterprises, government entities, or private nonprofit organizations; or

''(D) when the transmission of the number is incidental to, and in the course of, the sale, lease, franchising, or merger of all, or a portion of, a business;

''(6) if the transfer of such a number is part of a data matching program involving a Federal, State, or local agency; or

''(7) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program;

except that, nothing in this subsection shall be construed as permitting a professional or commercial user to display or sell a Social Security number to the general public.

''(f) LIMITATION.—Nothing in this section shall prohibit or limit the display, sale, or purchase of Social Security numbers as permitted under title V of the Gramm-Leach-Bliley Act, or for the purpose of affiliate sharing as permitted under the Fair Credit Reporting Act, except that no entity regulated under such Acts may make Social Security numbers available to the general public, as may be determined by the appropriate regulators under such Acts. For purposes of this subsection, the general public shall not include affiliates or unaffiliated third-party business entities as may be defined by the appropriate regulators.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following:

''1028B. Prohibition of the display, sale, or purchase of Social Security numbers.''.

(b) STUDY; REPORT.—

(1) IN GENERAL.—The Attorney General shall conduct a study and prepare a report on all of the uses of Social Security numbers permitted, required, authorized, or excepted under any Federal law. The report shall include a detailed description of the uses allowed as of the date of enactment of this Act, the impact of such uses on privacy and data security, and shall evaluate whether such uses should be continued or discontinued by appropriate legislative action.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall report to Congress findings under this subsection. The report shall include such recommendations for legislation based on criteria the Attorney General determines to be appropriate.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 30 days after the date on which the final regulations promulgated under section 5 are published in the Federal Register.

SEC. 4. APPLICATION OF PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS TO PUBLIC RECORDS.

(a) PUBLIC RECORDS EXCEPTION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code (as amended by section 3(a)(1)), is amended by inserting after section 1028B the following:

"§ 1028C. Display, sale, or purchase of public records containing Social Security numbers

''(a) DEFINITION.—In this section, the term 'public record' means any governmental record that is made available to the general public.

''(b) IN GENERAL.—Except as provided in subsections (c), (d), and (e), section 1028B shall not apply to a public record.

''(c) PUBLIC RECORDS ON THE INTERNET OR IN AN ELECTRONIC MEDIUM.—

''(1) IN GENERAL.—Section 1028B shall apply to any public record first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity after the date of enactment of this section, except as limited by the Attorney General in accordance with paragraph (2).

''(2) EXCEPTION FOR GOVERNMENT ENTITIES ALREADY PLACING PUBLIC RECORDS ON THE INTERNET OR IN ELECTRONIC FORM.—Not later than 60 days after the date of enactment of this section, the Attorney General shall issue regulations regarding the applicability of section 1028B to any record of a category of public records first posted onto the Internet or provided in an electronic medium by, or on behalf of a government entity prior to the date of enactment of this section. The regulations will determine which individual records within categories of records of these government entities, if any, may continue to be posted on the Internet or in electronic form after the effective date of this section. In promulgating these regulations, the Attorney General may include in the regulations a set of procedures for implementing the regulations and shall consider the following:

''(A) The cost and availability of technology available to a governmental entity to redact Social Security numbers from public records first provided in electronic form after the effective date of this section.

''(B) The cost or burden to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments of complying with section 1028B with respect to such records.

''(C) The benefit to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028B should apply to such records.

Nothing in the regulation shall permit a public entity to post a category of public records on the Internet or in electronic form after the effective date of this section if such category had not been placed on the Internet or in electronic form prior to such effective date.

''(d) HARVESTED SOCIAL SECURITY NUMBERS.—Section 1028B shall apply to any public record of a government entity which contains Social Security numbers extracted from other public records for the purpose of displaying or selling such numbers to the general public.

''(e) ATTORNEY GENERAL RULEMAKING ON PAPER RECORDS.—

''(1) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Attorney General shall determine the feasibility and advisability of applying section 1028B to the records listed in paragraph (2) when they appear on paper or on another nonelectronic medium. If the Attorney General deems it appropriate, the Attorney General may issue regulations applying section 1028B to such records.

''(2) LIST OF PAPER AND OTHER NONELECTRONIC RECORDS.—The records listed in this paragraph are as follows:

''(A) Professional or occupational licenses.

''(B) Marriage licenses.

''(C) Birth certificates.

''(D) Death certificates.

''(E) Other short public documents that display a Social Security number in a routine and consistent manner on the face of the document.

''(3) CRITERIA FOR ATTORNEY GENERAL REVIEW.—In determining whether section 1028B should apply to the records listed in paragraph (2), the Attorney General shall consider the following:

''(A) The cost or burden to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments of complying with section 1028B.

''(B) The benefit to the general public, businesses, commercial enterprises, nonprofit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028B should apply to such records.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code (as amended by section 3(a)(2)), is amended by inserting after the item relating to section 1028B the following:

''1028C. Display, sale, or purchase of public records containing Social Security numbers.''.

(b) STUDY AND REPORT ON SOCIAL SECURITY NUMBERS IN PUBLIC RECORDS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study and prepare a report on Social Security numbers in public records. In developing the report, the Comptroller General shall consult with the Administrative Office of the United States Courts, State and local governments that store, maintain, or disseminate public records, and other stakeholders, including members of the private sector who routinely use public records that contain Social Security numbers.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1). The report shall include a detailed description of the activities and results of the study and recommendations for such legislative action as the Comptroller General considers appropriate. The report, at a minimum, shall include—

(A) a review of the uses of Social Security numbers in non-federal public records;

(B) a review of the manner in which public records are stored (with separate reviews for both paper records and electronic records);

(C) a review of the advantages or utility of public records that contain Social Security numbers, including the utility for law enforcement, and for the promotion of homeland security;

(D) a review of the disadvantages or drawbacks of public records that contain Social Security numbers, including criminal activity, compromised personal privacy, or threats to homeland security;

(E) the costs and benefits for State and local governments of removing Social Security numbers from public records, including a review of current technologies and procedures for removing Social Security numbers from public records; and

(F) an assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of Social Security numbers on public records (with separate assessments for both paper records and electronic records).

(c) EFFECTIVE DATE.—The prohibition with respect to electronic versions of new classes of public records under section 1028C(b) of title 18, United States Code (as added by subsection (a)(1)) shall not take effect until the date that is 60 days after the date of enactment of this Act.

SEC. 5. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.

(a) IN GENERAL.—Except as provided in subsection (b), the Attorney General may prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 1028B(e)(5) of title 18, United States Code (as added by section 3(a)(1)).

(b) DISPLAY, SALE, OR PURCHASE RULEMAKING WITH RESPECT TO INTERACTIONS BETWEEN BUSINESSES, GOVERNMENTS, OR BUSINESS AND GOVERNMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Commissioner of Social Security, the Chairman of the Federal Trade Commission, and such other heads of Federal agencies as the Attorney General determines appropriate, shall conduct such rulemaking procedures in accordance with subchapter II of chapter 5 of title 5, United States Code, as are necessary to promulgate regulations to implement and clarify the uses occurring as a result of an interaction between businesses, governments, or business and government (regardless of which entity initiates the interaction) permitted under section 1028B(e)(5) of title 18, United States Code (as added by section 3(a)(1)).

(2) FACTORS TO BE CONSIDERED.—In promulgating the regulations required under paragraph (1), the Attorney General shall, at a minimum, consider the following:

(A) The benefit to a particular business, to customers of the business, and to the general public of the display, sale, or purchase of an individual's Social Security number.

(B) The costs that businesses, customers of businesses, and the general public may incur as a result of prohibitions on the display, sale, or purchase of Social Security numbers.

(C) The risk that a particular business practice will promote the use of a Social Security number to commit fraud, deception, or crime.

(D) The presence of adequate safeguards, procedures, and technologies to prevent—

(i) misuse of Social Security numbers by employees within a business; and

(ii) misappropriation of Social Security numbers by the general public, while permitting internal business uses of such numbers.

(E) The presence of procedures to prevent identity thieves, stalkers, and other individuals with ill intent from posing as legitimate businesses to obtain Social Security numbers.

(F) The impact of such uses on privacy.

SEC. 6. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following:

''SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

''(a) IN GENERAL.—A commercial entity may not require an individual to provide the individual's Social Security number when purchasing a commercial good or service or deny an individual the good or service for refusing to provide that number except—

''(1) for any purpose relating to—

''(A) obtaining a consumer report for any purpose permitted under the Fair Credit Reporting Act;

''(B) a background check of the individual conducted by a landlord, lessor, employer, voluntary service agency, or other entity as determined by the Attorney General;

''(C) law enforcement; or

''(D) a Federal, State, or local law requirement; or

''(2) if the Social Security number is necessary to verify the identity of the consumer to effect, administer, or enforce the specific transaction requested or authorized by the consumer, or to prevent fraud.

''(b) APPLICATION OF CIVIL MONEY PENALTIES.—A violation of this section shall be deemed to be a violation of section 1129(a)(3)(F).

''(c) APPLICATION OF CRIMINAL PENALTIES.—A violation of this section shall be deemed to be a violation of section 208(a)(8).

''(d) LIMITATION ON CLASS ACTIONS.—No class action alleging a violation of this section shall be maintained under this section by an individual or any private party in Federal or State court.

''(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

''(1) IN GENERAL.—

''(A) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under this section, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

''(i) enjoin that practice;

''(ii) enforce compliance with such section;

''(iii) obtain damages, restitution, or other compensation on behalf of residents of the State; or

''(iv) obtain such other relief as the court may consider appropriate.

''(B) NOTICE.—

''(i) IN GENERAL.—Before filing an action under subparagraph (A), the attorney general of the State involved shall provide to the Attorney General—

''(I) written notice of the action; and

''(II) a copy of the complaint for the action.

''(ii) EXEMPTION.—

''(I) IN GENERAL.—Clause (i) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in such subparagraph before the filing of the action.

''(II) NOTIFICATION.—With respect to an action described in subclause (I), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action.

''(2) INTERVENTION.—

''(A) IN GENERAL.—On receiving notice under paragraph (1)(B), the Attorney General

shall have the right to intervene in the action that is the subject of the notice.

''(B) EFFECT OF INTERVENTION.—If the Attorney General intervenes in the action under paragraph (1), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

''(A) conduct investigations;

''(B) administer oaths or affirmations; or

''(C) compel the attendance of witnesses or the production of documentary and other evidence.

''(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General for violation of a practice that is prohibited under this section, no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint in that action for violation of that practice.

''(5) VENUE; SERVICE OF PROCESS.—

''(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

''(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

''(i) is an inhabitant; or

''(ii) may be found.

''(f) SUNSET.—This section shall not apply on or after the date that is 6 years after the effective date of this section.''.

(b) EVALUATION AND REPORT.—Not later than the date that is 6 years and 6 months after the date of enactment of this Act, the Attorney General, in consultation with the chairman of the Federal Trade Commission, shall issue a report evaluating the effectiveness and efficiency of section 1150A of the Social Security Act (as added by subsection (a)) and shall make recommendations to Congress as to any legislative action determined to be necessary or advisable with respect to such section, including a recommendation regarding whether to reauthorize such section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests to provide a Social Security number occurring after the date that is 1 year after the date of enactment of this Act.

SEC. 7. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' and inserting ''who—'';

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(B) makes such a statement or representation for such use with knowing disregard for the truth; or

''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to'';

(C) by inserting ''or each receipt of such benefits while withholding disclosure of such fact'' after ''each such statement or representation'';

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation''; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation''.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129A(a) of the Social Security Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking ''who'' and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(2) makes such a statement or representation for such use with knowing disregard for the truth; or

''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading, shall be subject to''.

(b) APPLICATION OF CIVIL MONEY PENALTIES TO ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8(a)), as amended by subsection (a)(1), is amended—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by redesignating the last sentence of paragraph (1) as paragraph (2) and inserting such paragraph after paragraph (1); and

(3) by inserting after paragraph (2) (as so redesignated) the following:

''(3) Any person (including an organization, agency, or other entity) who—

''(A) uses a Social Security account number that such person knows or should know has been assigned by the Commissioner of Social Security (in an exercise of authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner by any person;

''(B) falsely represents a number to be the Social Security account number assigned by the Commissioner of Social Security to any individual, when such person knows or should know that such number is not the Social Security account number assigned by the Commissioner to such individual;

''(C) knowingly alters a Social Security card issued by the Commissioner of Social Security, or possesses such a card with intent to alter it;

''(D) knowingly displays, sells, or purchases a card that is, or purports to be, a card issued by the Commissioner of Social Security, or possesses such a card with intent to display, purchase, or sell it;

''(E) counterfeits a Social Security card, or possesses a counterfeit Social Security card with intent to display, sell, or purchase it;

''(F) discloses, uses, compels the disclosure of, or knowingly displays, sells, or purchases the Social Security account number of any person in violation of the laws of the United States;

''(G) with intent to deceive the Commissioner of Social Security as to such person's true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner with respect to any information required by the Commissioner in connection with the establishment and maintenance of the records provided for in section 205(c)(2);

''(H) offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, an additional Social Security account number or a number which purports to be a Social Security account number; or

''(I) being an officer or employee of a Federal, State, or local agency in possession of any individual's Social Security account number, willfully acts or fails to act so as to cause a violation by such agency of clause (vi)(II) or (x) of section 205(c)(2)(C), shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each violation. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from such violation, of not more than twice the amount of any benefits or payments paid as a result of such violation.''.

(c) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of the Social Security Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of the Social Security Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320–8 and 1320a–8a), as amended by this section, committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 1129(a)(3)(I) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)(I)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date described in section 3(c).

(f) REPEAL.—Section 201 of the Social Security Protection Act of 2004 is repealed.

SEC. 8. CRIMINAL PENALTIES FOR THE MISUSE OF A SOCIAL SECURITY NUMBER.

(a) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual's Social Security

number for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

(b) CRIMINAL SANCTIONS.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (8), by inserting ''or'' after the semicolon; and

(2) by inserting after paragraph (8) the following:

''(9) except as provided in subsections (e) and (f) of section 1028B of title 18, United States Code, knowingly and willfully displays, sells, or purchases (as those terms are defined in section 1028B(a) of title 18, United States Code) any individual's Social Security account number without having met the prerequisites for consent under section 1028B(d) of title 18, United States Code; or

''(10) obtains any individual's Social Security number for the purpose of locating or identifying the individual with the intent to injure or to harm that individual, or to use the identity of that individual for an illegal purpose;''.

SEC. 9. CIVIL ACTIONS AND CIVIL PENALTIES.

(a) CIVIL ACTION IN STATE COURTS.—

(1) IN GENERAL.—Any individual aggrieved by an act of any person in violation of this Act or any amendments made by this Act may, if otherwise permitted by the laws or rules of the court of a State, bring in an appropriate court of that State—

(A) an action to enjoin such violation;

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater; or

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of the regulations prescribed under this Act. If the court finds that the defendant willfully or knowingly violated the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

(2) STATUTE OF LIMITATIONS.—An action may be commenced under this subsection not later than the earlier of—

(A) 5 years after the date on which the alleged violation occurred; or

(B) 3 years after the date on which the alleged violation was or should have been reasonably discovered by the aggrieved individual.

(3) NONEXCLUSIVE REMEDY.—The remedy provided under this subsection shall be in addition to any other remedies available to the individual.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—Any person who the Attorney General determines has violated any section of this Act or of any amendments made by this Act shall be subject, in addition to any other penalties that may be prescribed by law—

(A) to a civil penalty of not more than $5,000 for each such violation; and

(B) to a civil penalty of not more than $50,000, if the violations have occurred with such frequency as to constitute a general business practice.

(2) DETERMINATION OF VIOLATIONS.—Any willful violation committed contemporaneously with respect to the Social Security numbers of 2 or more individuals by means of mail, telecommunication, or otherwise, shall be treated as a separate violation with respect to each such individual.

(3) ENFORCEMENT PROCEDURES.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a), other than subsections (a), (b), (f), (h), (i), (j), (m), and (n) and the first sentence of subsection (c) of such section, and the provisions of subsections (d) and (e) of section 205 of such Act (42 U.S.C. 405) shall apply to a civil penalty action under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act (42 U.S.C. 1320a–7a(a)), except that, for purposes of this paragraph, any reference in section 1128A of such Act (42 U.S.C. 1320a–7a) to the Secretary shall be deemed to be a reference to the Attorney General.

SEC. 10. FEDERAL INJUNCTIVE AUTHORITY.

In addition to any other enforcement authority conferred under this Act or the amendments made by this Act, the Federal Government shall have injunctive authority with respect to any violation by a public entity of any provision of this Act or of any amendments made by this Act.

By Mr. SANDERS (for himself, Mr. NELSON of Florida, Mr. BLUMENTHAL, Mr. MERKLEY, Mr. FRANKEN, and Mr. WHITEHOUSE):

S. 1200. A bill to require the Chairman of the Commodity Futures Trading Commission to impose unilaterally position limits and margin requirements to eliminate excessive oil speculation, and to take other actions to ensure that the price of crude oil, gasoline, diesel fuel, jet fuel, and heating oil accurately reflects the fundamentals of supply and demand, to remain in effect until the date on which the Commission establishes position limits to diminish, eliminate, or prevent excessive speculation as required by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. SANDERS. Mr. President, I think every American understands that the very high price of oil and gas is having a very negative impact on our fragile economic recovery. Also, in rural States, such as Vermont, Montana, and other rural States, it is wreaking real hardship on working people who in many cases drive long distances to work. In Vermont certainly, it is not uncommon for people to be driving 50 miles to their job and 50 miles back. When the price of gas gets to be $3.80 a gallon or $4 a gallon, it really hurts. When wages are stagnant, when many people have seen a decline in their paychecks, high gas prices have just taken another chunk out of their limited income. It is something that as a Congress we have to address.

The price of oil today, while declining somewhat in recent weeks, is still over $97 a barrel. In Vermont, it is over $3.80 a gallon at the pump. The theory behind the setting of oil prices that we learned in high school is that oil prices are set by supply and demand. When there is limited supply and a lot of demand, oil prices go up. When there is a lot of supply and limited demand, oil prices should go down.

So let's be clear: The fact is today there is more supply than there was 2 years ago, today there is less demand than there was 2 years ago; therefore, oil prices should be substantially lower than was the case 2 years ago. The fact, however, is just the opposite. In Vermont today, gas prices are $3.80 a gallon. Two years ago, they were approximately $2.44 a gallon. So the explanation of supply and demand in terms of why oil prices have soared just does not carry any weight.

While we cannot ignore the fact that big oil companies have been gouging consumers at the pump for years and have made almost $1 trillion in profits over the past decade, there is mounting evidence that the increased price of gasoline and oil has nothing to do with supply and demand and everything to do with Wall Street speculators who are dominating the oil futures market and driving prices up, up, and up. Ten years ago, speculators only controlled about 30 percent of that market. Today, Wall Street speculators control over 80 percent—over 80 percent—of the oil futures market, and many of them will never use one drop of that oil. So we are not talking about airlines that use gas and oil. We are not talking about trucking companies. We are not talking about home heating companies. We are talking about speculators whose only function in this entire process is to make as much money as they can by raising prices and then selling.

This is not just Senator BERNIE SANDERS making this point. Let me quote from a June 2 article from the Wall Street Journal:

> Wall Street is tapping a real gusher in 2011, as heightened volatility and higher prices of oil and other raw materials boost banks' profits . . . by 55 percent in the first quarter.

Banks' profits are soaring as a result of oil speculation. That is the fact. It is not just the Wall Street Journal. The CEO of ExxonMobil, Rex Tillerson, in response to a question at a recent Senate hearing, estimated that speculation was driving up the price of a barrel of oil by as much as 40 percent. That is the CEO of ExxonMobil. He might know something about that issue.

The general counsel of Delta Airlines—a major consumer of fuel—Ben Hirst, and the experts at Goldman Sachs have all said that excessive speculation is causing oil prices to spike by 20 to 40 percent.

Even Saudi Arabia, the largest exporter of oil in the world, told the Bush administration back in 2008—when the Bush administration went to them and said: We need to drive prices down. Produce more oil. Sell more oil—they said that is not the problem. Saudi Arabia said: We have all the oil we need. The problem is speculation. And they estimated that speculation could result in about $40 a barrel.

In other words, the same Wall Street speculators who caused the worst financial crisis since the 1930s through their greed, recklessness, and illegal behavior are back at it again, and this time they are ripping off the American people by gambling that the price of oil

and gas will continue to go up and up and in that process are driving the price of gas and oil up and up.

Sadly—and this is the important point—this spike in oil and gasoline prices was entirely avoidable. This was avoidable. The Wall Street Reform Act that we passed last year, the Dodd-Frank legislation, required—underline ''required''—the Commodity Futures Trading Commission to impose strict limits on the amount of oil Wall Street speculators could trade in the energy futures market by January 17 of this year.

We passed legislation that said to the Commodity Futures Trading Commission: You have to impose rules by January 17 with strict limits on excessive oil speculation.

Mr. President, 6 months have come and gone. They have not done what they were required to do.

Almost 5 months later, the CFTC has still not imposed those speculation requirements. In other words, the chief regulator on oil speculation is clearly breaking the law and is not doing what he is supposed to be doing.

Last month I held a meeting in my office with Mr. Gary Gensler, who is the Chairman of the CFTC, and six other Senators. I have to tell you that I was extremely disappointed in both the tone of that meeting and the complete lack of urgency at the CFTC with respect to cracking down on oil speculators as required by the law.

Therefore, today I have introduced legislation, along with Senators BLUMENTHAL, MERKLEY, FRANKEN, WHITEHOUSE, and BILL NELSON to end excessive speculation once and for all—once and for all. The American people cannot continue to be ripped off by Wall Street which is artificially driving up the price of oil and gas.

I am very pleased to also announce that Congressman MAURICE HINCHEY will be introducing this legislation in the House. This legislation mandates that the Chairman of the CFTC take immediate action to eliminate excessive oil speculation within 2 weeks—2 weeks.

One. Our bill requires the Chairman to establish speculative oil position limits equal to the position accountability levels that have been in place at the New York Mercantile Exchange since 2001.

Two. This bill requires the Chairman of the CFTC to double the margin requirements on speculative oil trading so that Wall Street investment banks back their bets with real capital.

Three. Under this bill, Goldman Sachs, Morgan Stanley, and other Wall Street investment banks engaged in proprietary oil trading would be classified as speculators instead of bona fide hedgers.

Four. The Chairman of the CFTC would be required under this bill to take any other action necessary to eliminate excessive speculation and ensure that the price of oil accurately reflects the fundamentals of supply and demand.

I am pleased to announce that this legislation already has the support of a very diverse group of organizations representing small businesses, fuel dealers, consumers, workers, airlines, and farmers. Some of those organizations are: Americans for Financial Reform; the Consumer Federation of America; Delta Airlines; the Gasoline and Automotive Service Dealers of America; the International Brotherhood of Teamsters; the Main Street Alliance; the National Farmers Union; New England Fuel Institute; Public Citizen; and the Vermont Fuel Dealers Association. This is just a few.

I want to thank all of those organizations for their support. The American people are sick and tired of being ripped off at the gas pump. People in the northern States, whether it is Vermont or Minnesota, worry about what the price of home heating oil will be next winter. What we are seeing now in terms of excessively high oil and gas prices has nothing to do with supply and demand and everything to do with Wall Street speculation.

This Congress has told the CFTC to act. They have failed to act. Now is the time for us to tell them exactly what must happen.

By Mr. LIEBERMAN (for himself, Mr. CRAPO, Mr. TESTER, Mr. BINGAMAN, Ms. MURKOWSKI, Mr. WHITEHOUSE, Mr. BEGICH, Mr. CARDIN, and Mr. UDALL of Colorado:

S. 1201. A bill to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes; to the Committee on Environment and Public Works.

Mr. LIEBERMAN. Mr. President, I rise to speak about the National Fish Habitat Conservation Act, which I am introducing today along with my colleagues Senators CRAPO, TESTER, BINGAMAN, MURKOWSKI, WHITEHOUSE, BEGICH, CARDIN, and MARK UDALL. This legislation would establish the most comprehensive effort ever attempted to treat the causes of fish habitat decline.

Healthy waterways and robust fish populations are vital to the well-being of our society and are a staple in many cultures throughout the United States. This bill will help provide clean water and sustainable fisheries in this country and provide recreational value to those who fish wild waters or canoe tranquil streams. This means more recreational fishing opportunity, which translates into more jobs and economic output. Currently, recreational fishing supports approximately one million jobs and $45 billion in direct expenditures. Today, nearly half, 40 percent, of our fish populations are in decline, over 700 species in total, and 50 percent of our Nation's waters are impaired. Unless we act in an informed and coordinated fashion, fish habitats will continue to be lost at a rapid pace. This bill is about better habitat, better recreational fishing opportunity as well as a better economy.

Currently, our Nation's efforts to address threats to fish species are often highly disjointed and not extensive enough to reverse this downward trend. Under the National Fish Habitat Conservation Act, Federal Government agencies, State and local governments, conservation groups, fishing industry groups and related businesses will work together collectively for the first time to conserve and protect aquatic habitats critical to our Nation. The National Fish Habitat Conservation Act will also provide people with clean and safe water supplies and improve ecosystems through habitat conservation projects that remediate problems on our waterways, including erosion, drainage issues and flooding.

This legislation leverages Federal, State, and private funds to build regional partnerships aimed at addressing the Nation's biggest aquatic habitat problems. By directing critical resources towards this cause through partnerships, we can foster fish habitat conservation efforts and improve the quality of life for all Americans. Using a bottom-up approach, the goal of this effort is to foster landscape scale, multi-state aquatic habitat improvements across the country that perpetuate not only fishery resources but the tradition of recreational fishing, which is enjoyed by many Americans, spanning many generations. Over 40 million anglers utilize our waterways on a yearly basis, generating $45 billion dollars in retail sales for the industry nationwide. That figure does not even include Americans who utilize our waterways for other recreational purposes.

The National Fish Habitat Conservation Act authorizes grants to be directed toward fish habitat projects that are supported by regional Fish Habitat Partnerships. Based on the highly successful North American Wetlands Conservation Act model, this legislation establishes a multi-stakeholder National Fish Habitat Board charged with recommending projects to the Secretary of Interior for assistance. Regional Fish Habitat Partnerships are responsible for implementing approved on-the-ground projects that are designed to protect, restore and enhance fish habitats and fish populations.

The National Fish Habitat Conservation Act lays the foundation for a new paradigm of how to care for fish habitats, displaying why they should be restored and protected. This bill will bring together all of the different groups that have a stake in the health and productivity of our Nation's fish habitats and I look forward to working with my colleagues to pass this important legislation and reverse the decline of our ailing waterways and fisheries.

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. 1201

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''National Fish Habitat Conservation Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings; purpose.
Sec. 3. Definitions.
Sec. 4. National Fish Habitat Board.
Sec. 5. Fish habitat partnerships.
Sec. 6. Fish habitat conservation projects.
Sec. 7. National Fish Habitat Conservation Partnership Office.
Sec. 8. Technical and scientific assistance.
Sec. 9. Conservation of aquatic habitat for fish and other aquatic organisms on Federal land.
Sec. 10. Coordination with States and Indian tribes.
Sec. 11. Accountability and reporting.
Sec. 12. Regulations.
Sec. 13. Effect of Act.
Sec. 14. Nonapplicability of Federal Advisory Committee Act.
Sec. 15. Funding.

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) healthy populations of fish and other aquatic organisms depend on the conservation, protection, restoration, and enhancement of aquatic habitats in the United States;

(2) aquatic habitats (including wetlands, streams, rivers, lakes, estuaries, coastal and marine ecosystems, and associated riparian upland habitats that buffer those areas from external factors) perform numerous valuable environmental functions that sustain environmental, social, and cultural values, including recycling nutrients, purifying water, attenuating floods, augmenting and maintaining stream flows, recharging ground water, acting as primary producers in the food chain, and providing essential and significant habitat for plants, fish, wildlife, and other dependent species;

(3) the extensive and diverse aquatic habitat resources of the United States are of enormous significance to the economy of the United States, providing—

(A) recreation for 44,000,000 anglers;

(B) more than 1,000,000 jobs and approximately $125,000,000,000 in economic impact each year relating to recreational fishing; and

(C) approximately 500,000 jobs and an additional $35,000,000,000 in economic impact each year relating to commercial fishing;

(4) at least 40 percent of all threatened species and endangered species in the United States are directly dependent on aquatic habitats;

(5) certain fish species are considered to be ecological indicators of aquatic habitat quality, such that the presence of those species in an aquatic ecosystem reflects high-quality habitat for other fish;

(6) loss and degradation of aquatic habitat, riparian habitat, water quality, and water volume caused by activities such as alteration of watercourses, stream blockages, water withdrawals and diversions, erosion, pollution, sedimentation, and destruction or modification of wetlands have—

(A) caused significant declines in fish populations throughout the United States, especially declines in native fish populations; and

(B) resulted in economic losses to the United States;

(7)(A) providing for the conservation and sustainability of fish and other aquatic organisms has not been fully realized, despite federally funded fish and wildlife restoration programs and other activities intended to conserve aquatic resources; and

(B) that conservation and sustainability may be significantly advanced through a renewed commitment and sustained, cooperative efforts that are complementary to existing fish and wildlife restoration programs and clean water programs;

(8) the National Fish Habitat Action Plan provides a framework for maintaining and restoring aquatic habitats to ensure perpetuation of populations of fish and other aquatic organisms;

(9) the United States can achieve significant progress toward providing aquatic habitats for the conservation and restoration of fish and other aquatic organisms through a voluntary, nonregulatory incentive program that is based on technical and financial assistance provided by the Federal Government;

(10) the creation of partnerships between local citizens, Indian tribes, Alaska Native organizations, corporations, nongovernmental organizations, and Federal, State, and tribal agencies is critical to the success of activities to restore aquatic habitats and ecosystems;

(11) the Federal Government has numerous regulatory and land and water management agencies that are critical to the implementation of the National Fish Habitat Action Plan, including—

(A) the United States Fish and Wildlife Service;

(B) the Bureau of Land Management;

(C) the National Park Service;

(D) the Bureau of Reclamation;

(E) the Bureau of Indian Affairs;

(F) the National Marine Fisheries Service;

(G) the Forest Service;

(H) the Natural Resources Conservation Service; and

(I) the Environmental Protection Agency;

(12) the United States Fish and Wildlife Service, the Forest Service, the Bureau of Land Management, and the National Marine Fisheries Service each play a vital role in—

(A) the protection, restoration, and enhancement of the fish communities and aquatic habitats in the United States; and

(B) the development, operation, and long-term success of fish habitat partnerships and project implementation;

(13) the United States Geological Survey, the United States Fish and Wildlife Service, and the National Marine Fisheries Service each play a vital role in scientific evaluation, data collection, and mapping for fishery resources in the United States;

(14) the State and territorial fish and wildlife agencies play a vital role in —

(A) the protection, restoration, and enhancement of the fish communities and aquatic habitats in the respective States and territories; and

(B) the development, operation, and long-term success of fish habitat partnerships and project implementation; and

(15) many of the programs for conservation on private farmland, ranchland, and forestland that are carried out by the Secretary of Agriculture, including the Natural Resources Conservation Service and the State and Private Forestry programs of the Forest Service, are able to significantly contribute to the implementation of the National Fish Habitat Action Plan through the engagement of private landowners.

(b) PURPOSE.—The purpose of this Act is to encourage partnerships among public agencies and other interested parties consistent with the mission and goals of the National Fish Habitat Action Plan—

(1) to protect and maintain intact and healthy aquatic habitats;

(2) to prevent further degradation of aquatic habitats that have been adversely affected;

(3) to reverse declines in the quality and quantity of aquatic habitats to improve the overall health of fish and other aquatic organisms;

(4) to increase the quality and quantity of aquatic habitats that support a broad natural diversity of fish and other aquatic species;

(5) to improve fisheries habitat in a manner that leads to improvement of the annual economic output from recreational, subsistence, and commercial fishing;

(6) to ensure coordination and facilitation of activities carried out by Federal departments and agencies under the leadership of—

(A) the Director of the United States Fish and Wildlife Service;

(B) the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration; and

(C) the Director of the United States Geological Survey; and

(7) to achieve other purposes in accordance with the mission and goals of the National Fish Habitat Action Plan.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

(A) the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) AQUATIC HABITAT.—

(A) IN GENERAL.—The term ''aquatic habitat'' means any area on which an aquatic organism depends, directly or indirectly, to carry out the life processes of the organism, including an area used by the organism for spawning, incubation, nursery, rearing, growth to maturity, food supply, or migration.

(B) INCLUSIONS.—The term ''aquatic habitat'' includes an area adjacent to an aquatic environment, if the adjacent area—

(i) contributes an element, such as the input of detrital material or the promotion of a planktonic or insect population providing food, that makes fish life possible;

(ii) protects the quality and quantity of water sources;

(iii) provides public access for the use of fishery resources; or

(iv) serves as a buffer protecting the aquatic environment.

(3) ASSISTANT ADMINISTRATOR.—The term ''Assistant Administrator'' means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.

(4) BOARD.—The term ''Board'' means the National Fish Habitat Board established by section 4(a)(1).

(5) CONSERVATION; CONSERVE; MANAGE; MANAGEMENT.—The terms ''conservation'', ''conserve'', ''manage'', and ''management'' mean to protect, sustain, and, where appropriate, restore and enhance, using methods and procedures associated with modern scientific resource programs (including protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking)—

(A) a healthy population of fish, wildlife, or plant life;

(B) a habitat required to sustain fish, wildlife, or plant life; or

(C) a habitat required to sustain fish, wildlife, or plant life productivity.

(6) DIRECTOR.—The term ''Director'' means the Director of the United States Fish and Wildlife Service.

(7) FISH.—

(A) IN GENERAL.—The term ''fish'' means any freshwater, diadromous, estuarine, or marine finfish or shellfish.

(B) INCLUSIONS.—The term ''fish'' includes the egg, spawn, spat, larval, and other juvenile stages of an organism described in subparagraph (A).

(8) FISH HABITAT CONSERVATION PROJECT.—

(A) IN GENERAL.—The term ''fish habitat conservation project'' means a project that—

(i) is submitted to the Board by a Partnership and approved by the Secretary under section 6; and

(ii) provides for the conservation or management of an aquatic habitat.

(B) INCLUSIONS.—The term ''fish habitat conservation project'' includes—

(i) the provision of technical assistance to a State, Indian tribe, or local community by the National Fish Habitat Conservation Partnership Office or any other agency to facilitate the development of strategies and priorities for the conservation of aquatic habitats; or

(ii) the obtaining of a real property interest in land or water, including water rights, in accordance with terms and conditions that ensure that the real property will be administered for the long-term conservation of—

(I) the land or water; and

(II) the fish dependent on the land or water.

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

(10) NATIONAL FISH HABITAT ACTION PLAN.—The term ''National Fish Habitat Action Plan'' means the National Fish Habitat Action Plan dated April 24, 2006, and any subsequent revisions or amendments to that plan.

(11) PARTNERSHIP.—The term ''Partnership'' means an entity designated by the Board as a Fish Habitat Conservation Partnership pursuant to section 5(a).

(12) REAL PROPERTY INTEREST.—The term ''real property interest'' means an ownership interest in—

(A) land;

(B) water (including water rights); or

(C) a building or object that is permanently affixed to land.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(14) STATE AGENCY.—The term ''State agency'' means—

(A) the fish and wildlife agency of a State;

(B) any department or division of a department or agency of a State that manages in the public trust the inland or marine fishery resources or the habitat for those fishery resources of the State pursuant to State law or the constitution of the State; or

(C) the fish and wildlife agency of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or any other territory or possession of the United States.

SEC. 4. NATIONAL FISH HABITAT BOARD.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a board, to be known as the ''National Fish Habitat Board''—

(A) to promote, oversee, and coordinate the implementation of this Act and the National Fish Habitat Action Plan;

(B) to establish national goals and priorities for aquatic habitat conservation;

(C) to designate Partnerships; and

(D) to review and make recommendations regarding fish habitat conservation projects.

(2) MEMBERSHIP.—The Board shall be composed of 27 members, of whom—

(A) 1 shall be the Director;

(B) 1 shall be the Assistant Administrator;

(C) 1 shall be the Chief of the Natural Resources Conservation Service;

(D) 1 shall be the Chief of the Forest Service;

(E) 1 shall be the Assistant Administrator for Water of the Environmental Protection Agency;

(F) 1 shall be the President of the Association of Fish and Wildlife Agencies;

(G) 1 shall be the Secretary of the Board of Directors of the National Fish and Wildlife Foundation appointed pursuant to section 3(g)(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702(g)(2)(B));

(H) 4 shall be representatives of State agencies, 1 of whom shall be nominated by a regional association of fish and wildlife agencies from each of the Northeast, Southeast, Midwest, and Western regions of the United States;

(I) 1 shall be a representative of the American Fisheries Society;

(J) 2 shall be representatives of Indian tribes, of whom—

(i) 1 shall represent Indian tribes from the State of Alaska; and

(ii) 1 shall represent Indian tribes from the other States;

(K) 1 shall be a representative of the Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852);

(L) 1 shall be a representative of the Marine Fisheries Commissions, which is composed of—

(i) the Atlantic States Marine Fisheries Commission;

(ii) the Gulf States Marine Fisheries Commission; and

(iii) the Pacific States Marine Fisheries Commission;

(M) 1 shall be a representative of the Sportfishing and Boating Partnership Council; and

(N) 10 shall be representatives selected from each of the following groups:

(i) The recreational sportfishing industry.

(ii) The commercial fishing industry.

(iii) Marine recreational anglers.

(iv) Freshwater recreational anglers.

(v) Terrestrial resource conservation organizations.

(vi) Aquatic resource conservation organizations.

(vii) The livestock and poultry production industry.

(viii) The land development industry.

(ix) The row crop industry.

(x) Natural resource commodity interests, such as petroleum or mineral extraction.

(3) COMPENSATION.—A member of the Board shall serve without compensation.

(4) TRAVEL EXPENSES.—A member of the Board 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 Board.

(b) APPOINTMENT AND TERMS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, a member of the Board described in any of subparagraphs (H) through (N) of subsection (a)(2) shall serve for a term of 3 years.

(2) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the representatives of the board established by the National Fish Habitat Action Plan shall appoint the initial members of the Board described in subparagraphs (H) through (I) and (K) through (N) of subsection (a)(2).

(B) TRIBAL REPRESENTATIVES.—Not later than 180 days after the enactment of this Act, the Secretary shall provide to the board established by the National Fish Habitat Action Plan a recommendation of not less than 4 tribal representatives, from which that board shall appoint 2 representatives pursuant to subparagraph (J) of subsection (a)(2).

(3) TRANSITIONAL TERMS.—Of the members described in subsection (a)(2)(N) initially appointed to the Board—

(A) 4 shall be appointed for a term of 1 year;

(B) 4 shall be appointed for a term of 2 years; and

(C) 3 shall be appointed for a term of 3 years.

(4) VACANCIES.—

(A) IN GENERAL.—A vacancy of a member of the Board described in any of subparagraphs (H) through (I) or (K) through (N) of subsection (a)(2) shall be filled by an appointment made by the remaining members of the Board.

(B) TRIBAL REPRESENTATIVES.—Following a vacancy of a member of the Board described in subparagraph (J) of subsection (a)(2), the Secretary shall recommend to the Board not less than 4 tribal representatives, from which the remaining members of the Board shall appoint a representative to fill the vacancy.

(5) CONTINUATION OF SERVICE.—An individual whose term of service as a member of the Board expires may continue to serve on the Board until a successor is appointed.

(6) REMOVAL.—If a member of the Board described in any of subparagraphs (H) through (N) of subsection (a)(2) misses 3 consecutive regularly scheduled Board meetings, the members of the Board may—

(A) vote to remove that member; and

(B) appoint another individual in accordance with paragraph (4).

(c) CHAIRPERSON.—

(1) IN GENERAL.—The Board shall elect a member of the Board to serve as Chairperson of the Board.

(2) TERM.—The Chairperson of the Board shall serve for a term of 3 years.

(d) MEETINGS.—

(1) IN GENERAL.—The Board shall meet—

(A) at the call of the Chairperson; but

(B) not less frequently than twice each calendar year.

(2) PUBLIC ACCESS.—All meetings of the Board shall be open to the public.

(e) PROCEDURES.—

(1) IN GENERAL.—The Board shall establish procedures to carry out the business of the Board, including—

(A) a requirement that a quorum of the members of the Board be present to transact business;

(B) a requirement that no recommendations may be adopted by the Board, except by the vote of ⅔ of all members present and voting;

(C) procedures for establishing national goals and priorities for aquatic habitat conservation for the purposes of this Act;

(D) procedures for designating Partnerships under section 5; and

(E) procedures for reviewing, evaluating, and making recommendations regarding fish habitat conservation projects.

(2) QUORUM.—A majority of the members of the Board shall constitute a quorum.

SEC. 5. FISH HABITAT PARTNERSHIPS.

(a) AUTHORITY TO DESIGNATE.—The Board may designate Fish Habitat Partnerships in accordance with this section.

(b) PURPOSES.—The purposes of a Partnership shall be—

(1) to coordinate the implementation of the National Fish Habitat Action Plan at a regional level;

(2) to identify strategic priorities for fish habitat conservation;

(3) to recommend to the Board fish habitat conservation projects that address a strategic priority of the Board; and

(4) to develop and carry out fish habitat conservation projects.

(c) APPLICATIONS.—An entity seeking to be designated as a Partnership shall submit to the Board an application at such time, in such manner, and containing such information as the Board may reasonably require.

(d) APPROVAL.—The Board may approve an application for a Partnership submitted under subsection (c) if the Board determines that the applicant—

(1) includes representatives of a diverse group of public and private partners, including Federal, State, or local governments, nonprofit entities, Indian tribes, and private individuals, that are focused on conservation of aquatic habitats to achieve results across jurisdictional boundaries on public and private land;

(2) is organized to promote the health of important aquatic habitats and distinct geographical areas, keystone fish species, or system types, including reservoirs, natural lakes, coastal and marine environments, and estuaries;

(3) identifies strategic fish and aquatic habitat priorities for the Partnership area in the form of geographical focus areas or key stressors or impairments to facilitate strategic planning and decisionmaking;

(4) is able to address issues and priorities on a nationally significant scale;

(5) includes a governance structure that—

(A) reflects the range of all partners; and

(B) promotes joint strategic planning and decisionmaking by the applicant;

(6) demonstrates completion of, or significant progress toward the development of, a strategic plan to address the causes of system decline in fish populations, rather than simply treating symptoms in accordance with the National Fish Habitat Action Plan; and

(7) ensures collaboration in developing a strategic vision and implementation program that is scientifically sound and achievable.

SEC. 6. FISH HABITAT CONSERVATION PROJECTS.

(a) SUBMISSION TO BOARD.—Not later than March 31 of each calendar year, each Partnership shall submit to the Board a list of fish habitat conservation projects recommended by the Partnership for annual funding under this Act.

(b) RECOMMENDATIONS BY BOARD.—Not later than July 1 of each calendar year, the Board shall submit to the Secretary a description, including estimated costs, of each fish habitat conservation project that the Board recommends that the Secretary approve and fund under this Act, in order of priority, for the following fiscal year.

(c) CONSIDERATIONS.—The Board shall select each fish habitat conservation project to be recommended to the Secretary under subsection (b)—

(1) based on a recommendation of the Partnership that is, or will be, participating actively in carrying out the fish habitat conservation project; and

(2) after taking into consideration—

(A) the extent to which the fish habitat conservation project fulfills a purpose of this Act or a goal of the National Fish Habitat Action Plan;

(B) the extent to which the fish habitat conservation project addresses the national priorities established by the Board;

(C) the availability of sufficient non-Federal funds to match Federal contributions for the fish habitat conservation project, as required by subsection (e);

(D) the extent to which the fish habitat conservation project—

(i) increases fishing opportunities for the public;

(ii) will be carried out through a cooperative agreement among Federal, State, and local governments, Indian tribes, and private entities;

(iii) increases public access to land or water;

(iv) advances the conservation of fish and wildlife species that are listed, or are candidates to be listed, as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(v) where appropriate, advances the conservation of fish and fish habitats under the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) and other relevant Federal law and State wildlife action plans; and

(vi) promotes resilience such that desired biological communities are able to persist and adapt to environmental stressors such as climate change; and

(E) the substantiality of the character and design of the fish habitat conservation project.

(d) LIMITATIONS.—

(1) REQUIREMENTS FOR EVALUATION.—No fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the fish habitat conservation project includes an evaluation plan designed—

(A) to appropriately assess the biological, ecological, or other results of the habitat protection, restoration, or enhancement activities carried out using the assistance;

(B) to reflect appropriate changes to the fish habitat conservation project if the assessment substantiates that the fish habitat conservation project objectives are not being met; and

(C) to require the submission to the Board of a report describing the findings of the assessment.

(2) ACQUISITION OF REAL PROPERTY INTERESTS.—

(A) IN GENERAL.—No fish habitat conservation project that will result in the acquisition by the State, local government, or other non-Federal entity, in whole or in part, of any real property interest may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the project meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—

(i) IN GENERAL.—A real property interest may not be acquired pursuant to a fish habitat conservation project by a State, public agency, or other non-Federal entity unless the State, agency, or other non-Federal entity is obligated to undertake the management of the property being acquired in accordance with the purposes of this Act.

(ii) ADDITIONAL CONDITIONS.—Any real property interest acquired by a State, local government, or other non-Federal entity pursuant to a fish habitat conservation project shall be subject to terms and conditions that ensure that the interest will be administered for the long-term conservation and management of the aquatic ecosystem and the fish and wildlife dependent on that ecosystem.

(e) NON-FEDERAL CONTRIBUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless at least 50 percent of the cost of the fish habitat conservation project will be funded with non-Federal funds.

(2) PROJECTS ON FEDERAL LAND OR WATER.—Notwithstanding paragraph (1), Federal funds may be used for payment of 100 percent of the costs of a fish habitat conservation project located on Federal land or water.

(3) NON-FEDERAL SHARE.—The non-Federal share of the cost of a fish habitat conservation project—

(A) may not be derived from a Federal grant program; but

(B) may include in-kind contributions and cash.

(4) SPECIAL RULE FOR INDIAN TRIBES.—Notwithstanding paragraph (1) or any other provision of law, any funds made available to an Indian tribe pursuant to this Act may be considered to be non-Federal funds for the purpose of paragraph (1).

(f) APPROVAL.—

(1) IN GENERAL.—Not later than 180 days after the date of receipt of the recommendations of the Board for fish habitat conservation projects under subsection (b), and based, to the maximum extent practicable, on the criteria described in subsection (c)—

(A) the Secretary shall approve, reject, or reorder the priority of any fish habitat conservation project recommended by the Board that is not within a marine or estuarine habitat; and

(B) the Secretary and the Secretary of Commerce shall jointly approve, reject, or reorder the priority of any fish habitat conservation project recommended by the Board that is within a marine or estuarine habitat.

(2) FUNDING.—If the Secretary, or the Secretary and the Secretary of Commerce jointly, approves a fish habitat conservation project under paragraph (1), the Secretary, or the Secretary and the Secretary of Commerce jointly, shall use amounts made available to carry out this Act to provide funds to carry out the fish habitat conservation project.

(3) NOTIFICATION.—If the Secretary, or the Secretary and the Secretary of Commerce jointly, rejects or reorders the priority of any fish habitat conservation project recommended by the Board under subsection (b), the Secretary, or the Secretary and the Secretary of Commerce jointly, shall provide to the Board and the appropriate Partnership a written statement of the reasons that the Secretary, or the Secretary and the Secretary of Commerce jointly, rejected or modified the priority of the fish habitat conservation project.

(4) LIMITATION.—If the Secretary, or the Secretary and the Secretary of Commerce jointly, has not approved, rejected, or reordered the priority of the recommendations of the Board for fish habitat conservation projects by the date that is 180 days after the date of receipt of the recommendations, the recommendations shall be considered to be approved.

SEC. 7. NATIONAL FISH HABITAT CONSERVATION PARTNERSHIP OFFICE.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Director shall establish an office, to be known as the ''National Fish Habitat Conservation Partnership Office'', within the United States Fish and Wildlife Service.

(b) FUNCTIONS.—The National Fish Habitat Conservation Partnership Office shall—

(1) provide funding for the operational needs of the Partnerships, including funding for activities such as planning, project development and implementation, coordination, monitoring, evaluation, communication, and outreach;

(2) provide funding to support the detail of State and tribal fish and wildlife staff to the Office;

(3) facilitate the cooperative development and approval of Partnerships;

(4) assist the Secretary and the Board in carrying out this Act;

(5) assist the Secretary in carrying out the requirements of sections 8 and 10;

(6) facilitate communication, cohesiveness, and efficient operations for the benefit of Partnerships and the Board;

(7) facilitate, with assistance from the Director, the Assistant Administrator, and the President of the Association of Fish and Wildlife Agencies, the consideration of fish habitat conservation projects by the Board;

(8) provide support to the Director regarding the development and implementation of the interagency operational plan under subsection (c);

(9) coordinate technical and scientific reporting as required by section 11;

(10) facilitate the efficient use of resources and activities of Federal departments and agencies to carry out this Act in an efficient manner; and

(11) provide support to the Board for national communication and outreach efforts that promote public awareness of fish habitat conservation.

(c) INTERAGENCY OPERATIONAL PLAN.—Not later than 1 year after the date of enactment of this Act, and every 5 years thereafter, the Director, in cooperation with the Assistant Administrator and the heads of other appropriate Federal departments and agencies, shall develop an interagency operational plan for the National Fish Habitat Conservation Partnership Office that describes—

(1) the functional, operational, technical, scientific, and general staff, administrative, and material needs of the Office; and

(2) any interagency agreements between or among Federal departments and agencies to address those needs.

(d) STAFF AND SUPPORT.—

(1) DEPARTMENTS OF INTERIOR AND COMMERCE.—The Director and the Assistant Administrator shall each provide appropriate staff to support the National Fish Habitat Conservation Partnership Office, subject to the availability of funds under section 15.

(2) STATES AND INDIAN TRIBES.—Each State and Indian tribe is encouraged to provide staff to support the National Fish Habitat Conservation Partnership Office.

(3) DETAILEES AND CONTRACTORS.—The National Fish Habitat Conservation Partnership Office may accept staff or other administrative support from other entities—

(A) through interagency details; or

(B) as contractors.

(4) QUALIFICATIONS.—The staff of the National Fish Habitat Conservation Partnership Office shall include members with education and experience relating to the principles of fish, wildlife, and aquatic habitat conservation.

(5) WAIVER OF REQUIREMENT.—The Secretary may waive all or part of the non-Federal contribution requirement under section 6(e)(1) if the Secretary determines that—

(A) no reasonable means are available through which the affected applicant can meet the requirement; and

(B) the probable benefit of the relevant fish habitat conservation project outweighs the public interest in meeting the requirement.

(e) REPORTS.—Not less frequently than once each year, the Director shall provide to the Board a report describing the activities of the National Fish Habitat Conservation Partnership Office.

SEC. 8. TECHNICAL AND SCIENTIFIC ASSISTANCE.

(a) IN GENERAL.—The Director, the Assistant Administrator, and the Director of the United States Geological Survey, in coordination with the Forest Service and other appropriate Federal departments and agencies, shall provide scientific and technical assistance to the Partnerships, participants in fish habitat conservation projects, and the Board.

(b) INCLUSIONS.—Scientific and technical assistance provided pursuant to subsection (a) may include—

(1) providing technical and scientific assistance to States, Indian tribes, regions, local communities, and nongovernmental organizations in the development and implementation of Partnerships;

(2) providing technical and scientific assistance to Partnerships for habitat assessment, strategic planning, and prioritization;

(3) supporting the development and implementation of fish habitat conservation projects that are identified as high priorities by Partnerships and the Board;

(4) supporting and providing recommendations regarding the development of science-based monitoring and assessment approaches for implementation through Partnerships;

(5) supporting and providing recommendations for a national fish habitat assessment; and

(6) ensuring the availability of experts to conduct scientifically based evaluation and reporting of the results of fish habitat conservation projects.

SEC. 9. CONSERVATION OF AQUATIC HABITAT FOR FISH AND OTHER AQUATIC ORGANISMS ON FEDERAL LAND.

To the extent consistent with the mission and authority of the applicable department or agency, the head of each Federal department and agency responsible for acquiring, managing, or disposing of Federal land or water shall cooperate with the Assistant Administrator and the Director to conserve the aquatic habitats for fish and other aquatic organisms within the land and water of the department or agency.

SEC. 10. COORDINATION WITH STATES AND INDIAN TRIBES.

The Secretary shall provide a notice to, and coordinate with, the appropriate State agency or tribal agency, as applicable, of each State and Indian tribe within the boundaries of which an activity is planned to be carried out pursuant to this Act by not later than 30 days before the date on which the activity is implemented.

SEC. 11. ACCOUNTABILITY AND REPORTING.

(a) IMPLEMENTATION REPORTS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Board shall submit to the appropriate congressional committees a report describing the implementation of—

(A) this Act; and

(B) the National Fish Habitat Action Plan.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an estimate of the number of acres, stream miles, or acre-feet (or other suitable measure) of aquatic habitat that was protected, restored, or enhanced under the National Fish Habitat Action Plan by Federal, State, or local governments, Indian tribes, or other entities in the United States during the 2-year period ending on the date of submission of the report;

(B) a description of the public access to aquatic habitats protected, restored, or established under the National Fish Habitat Action Plan during that 2-year period;

(C) a description of the opportunities for public fishing established under the National Fish Habitat Action Plan during that period; and

(D) an assessment of the status of fish habitat conservation projects carried out with funds provided under this Act during that period, disaggregated by year, including—

(i) a description of the fish habitat conservation projects recommended by the Board under section 6(b);

(ii) a description of each fish habitat conservation project approved by the Secretary under section 6(f), in order of priority for funding;

(iii) a justification for—

(I) the approval of each fish habitat conservation project; and

(II) the order of priority for funding of each fish habitat conservation project;

(iv) a justification for any rejection or reordering of the priority of each fish habitat conservation project recommended by the Board under section 6(b) that was based on a factor other than the criteria described in section 6(c); and

(v) an accounting of expenditures by Federal, State, or local governments, Indian tribes, or other entities to carry out fish habitat conservation projects.

(b) STATUS AND TRENDS REPORT.—Not later than December 31, 2012, and every 5 years thereafter, the Board shall submit to the appropriate congressional committees a report describing the status of aquatic habitats in the United States.

(c) REVISIONS.—Not later than December 31, 2013, and every 5 years thereafter, the Board shall revise the goals and other elements of the National Fish Habitat Action Plan, after consideration of each report required by subsection (b).

SEC. 12. REGULATIONS.

The Secretary may promulgate such regulations as the Secretary determines to be necessary to carry out this Act.

SEC. 13. EFFECT OF ACT.

(a) WATER RIGHTS.—Nothing in this Act—

(1) establishes any express or implied reserved water right in the United States for any purpose;

(2) affects any water right in existence on the date of enactment of this Act;

(3) preempts or affects any State water law or interstate compact governing water; or

(4) affects any Federal or State law in existence on the date of enactment of the Act regarding water quality or water quantity.

(b) STATE AUTHORITY.—Nothing in this Act—

(1) affects the authority, jurisdiction, or responsibility of a State to manage, control, or regulate fish and wildlife under the laws and regulations of the State; or

(2) authorizes the Secretary to control or regulate within a State the fishing or hunting of fish and wildlife.

(c) EFFECT ON INDIAN TRIBES.—Nothing in this Act abrogates, abridges, affects, modifies, supersedes, or alters any right of an Indian tribe recognized by treaty or any other means, including—

(1) an agreement between the Indian tribe and the United States;

(2) Federal law (including regulations);

(3) an Executive order; or

(4) a judicial decree.

(d) ADJUDICATION OF WATER RIGHTS.—Nothing in this Act diminishes or affects the ability of the Secretary to join an adjudication of rights to the use of water pursuant to subsection (a), (b), or (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666).

(e) EFFECT ON OTHER AUTHORITIES.—

(1) ACQUISITION OF LAND AND WATER.—Nothing in this Act alters or otherwise affects the authorities, responsibilities, obligations, or powers of the Secretary to acquire land, water, or an interest in land or water under any other provision of law.

(2) PRIVATE PROPERTY PROTECTION.—Nothing in this Act permits the use of funds made available to carry out this Act to acquire real property or a real property interest without the written consent of each owner of the real property or real property interest.

(3) MITIGATION.—Nothing in this Act permits the use of funds made available to carry

out this Act for fish and wildlife mitigation purposes under—

(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(B) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

(C) the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4082); or

(D) any other Federal law or court settlement.

SEC. 14. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to—

(1) the Board; or

(2) any Partnership.

SEC. 15. FUNDING.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) FISH HABITAT CONSERVATION PROJECTS.—There is authorized to be appropriated to the Secretary $7,200,000 for each of fiscal years 2012 through 2016 to provide funds for fish habitat conservation projects approved under section 6(f), of which 5 percent shall be made available for each fiscal year for projects carried out by Indian tribes.

(2) NATIONAL FISH HABITAT CONSERVATION PARTNERSHIP OFFICE.—

(A) IN GENERAL.—There is authorized to be appropriated to the Secretary for each of fiscal years 2012 through 2016 for the National Fish Habitat Conservation Partnership Office, and to carry out section 11, an amount equal to 5 percent of the amount appropriated for the applicable fiscal year pursuant to paragraph (1).

(B) REQUIRED TRANSFERS.—The Secretary shall annually transfer to other Federal departments and agencies such percentage of the amounts made available pursuant to subparagraph (A) as is required to support participation by those departments and agencies in the National Fish Habitat Conservation Partnership Office pursuant to the interagency operational plan under section 7(c).

(3) TECHNICAL AND SCIENTIFIC ASSISTANCE.—There are authorized to be appropriated for each of fiscal years 2012 through 2016 to carry out, and provide technical and scientific assistance under, section 8—

(A) $500,000 to the Secretary for use by the United States Fish and Wildlife Service;

(B) $500,000 to the Assistant Administrator for use by the National Oceanic and Atmospheric Administration; and

(C) $500,000 to the Secretary for use by the United States Geological Survey.

(4) PLANNING AND ADMINISTRATIVE EXPENSES.—There is authorized to be appropriated to the Secretary for each of fiscal years 2012 through 2016 for use by the Board, the Director, and the Assistant Administrator for planning and administrative expenses an amount equal to 3 percent of the amount appropriated for the applicable fiscal year pursuant to paragraph (1).

(b) AGREEMENTS AND GRANTS.—The Secretary may—

(1) on the recommendation of the Board, and notwithstanding sections 6304 and 6305 of title 31, United States Code, and the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note; Public Law 106–107), enter into a grant agreement, cooperative agreement, or contract with a Partnership or other entity for a fish habitat conservation project or restoration or enhancement project;

(2) apply for, accept, and use a grant from any individual or entity to carry out the purposes of this Act; and

(3) make funds available to any Federal department or agency for use by that department or agency to provide grants for any fish habitat protection project, restoration project, or enhancement project that the Secretary determines to be consistent with this Act.

(c) DONATIONS.—

(1) IN GENERAL.—The Secretary may—

(A) enter into an agreement with any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of that Code to solicit private donations to carry out the purposes of this Act; and

(B) accept donations of funds, property, and services to carry out the purposes of this Act.

(2) TREATMENT.—A donation accepted under this section—

(A) shall be considered to be a gift or bequest to, or otherwise for the use of, the United States; and

(B) may be—

(i) used directly by the Secretary; or

(ii) provided to another Federal department or agency through an interagency agreement.

By Mr. LEAHY (for himself, Mr. LEVIN, Mr. AKAKA, and Mr. DURBIN):

S. 1202. A bill to amend the Immigration and Nationality Act to reaffirm the United States' historic commitment to protecting refugees who are fleeing persecution or torture; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I am pleased to introduce the Refugee Protection Act. This bill, which is cosponsored by Senators LEVIN, AKAKA, and DURBIN, will reaffirm the commitments our Nation made in ratifying the 1951 Refugee Convention, and help to restore the United States as a global leader on human rights. This bill would repeal the most harsh and unnecessary elements of current law, and restore the United States to its rightful role as a safe and welcoming home for those suffering from persecution around the world.

During this challenging economic time, it can be tempting to look inward rather than to fulfill our global humanitarian commitments. However, this bill is necessary now more than ever. Millions of refugees remain displaced and warehoused in refugee camps in Eastern Africa, Southeast Asia, and other parts of the world. The ''Arab Spring'' is helping to move governments of the Middle East toward democracy, but some governments have responded to peaceful demonstrations with violence. We will continue to see genuine refugees who are in need of protection. I was pleased to be able to protect funding for refugee assistance and resettlement programs in the fiscal year 2011 appropriations continuing resolution, when many other programs were cut.

In my home state of Vermont, I have seen how the admission of refugees and asylum seekers has revitalized and enriched communities, resulting in the creation of new businesses, safer neighborhoods, and stronger schools. Since Senator Ted Kennedy authored the 1980 Refugee Act, more than 2.6 million refugees and asylum seekers have been granted protection in the United States. And since 1989, almost 5,600 refugees have been resettled in Vermont. We are fortunate to have the Vermont Refugee Resettlement Program, with its decades of experience and award-wining volunteer program, leading this effort. Over the last five years, many of these new Vermonters have come from Bhutan, Burma, and the Congo. Their culture is enriching my historically Anglo Saxon and French Canadian state.

Once resettled, these refugees have become nursing assistants, soccer coaches, and small business owners. In Burlington's Old North End, there are two thriving halal markets, side by side. The Nadia International Halal Market is run by an Iraqi refugee. Next door is the Banadir Market, run by a Somali Bantu refugee. Vermonters enjoy these new additions to the culture, and these thriving small businesses create local jobs in a historically disadvantaged neighborhood.

Equally important are the family- and community-based values of these new Vermonters. The Burlington Chief of Police has commented that refugees have reduced crime in some historically troubled areas, creating more family oriented neighborhoods.

Vermonters have played a tremendous role in welcoming refugees and asylees to their communities. Many have hosted refugee families in their homes until suitable housing could be found. The Ohavi Zedek Synagogue has made an effort to help all refugee families, regardless of their faith. The synagogue offers free English language classes so that refugees can improve their English skills. In this year's Passover service, refugees were encouraged to share their own personal tales of exodus.

The synagogue also runs a thrift shop where refugees who have been in the country for less than a year are allowed to take whatever they need without charge. Yet, a refugee from Bhutan has offered to help make physical improvements to the building's foundation, a testament to his desire to give back to the communities that have helped refugees build new lives. Many other places of worships have also reached out to these new Vermonters.

The Association for Africans Living in Vermont, AALV, which now assists any refugee in Vermont regardless of the country of origin, helps refugees access social services, organizes community cultural events, and provides cross-cultural training to Vermont service providers. The organization offers workforce development programs to ensure refugees can find meaningful work that sustains their families. The AALV New Farms for New Americans program enables refugees, many of whom farmed in their home countries, to learn to grow crops well suited to the Vermont climate. This program can connect such refugees to their heritage, and invites them to become part of Vermont's longstanding and vibrant agricultural tradition.

In cooperation with Vermont Adult Learning, AALV offers the Personal

Care Assistant Workforce Training Program, which trains refugees to serve as personal care assistants, the first level of service in the nursing profession. Graduates are able to pursue additional training as a licensed nursing assistant.

Vermont's resettlement program and the community support are not without their challenges. We experience many of the same hurdles faced by resettlement efforts and receiving communities across the Nation. The Refugee Protection Act of 2011 includes provisions that will help the nationwide resettlement effort operate more effectively. I want to acknowledge the leadership of Senator LUGAR who has investigated the resettlement program and called for a GAO study to obtain recommendations for improvement. I also appreciate the efforts of Representative GARY PETERS of Michigan, who introduced a resettlement bill in the House of Representatives to improve communication among all stakeholders.

In addition to support and improvement of the resettlement program, this bill addresses several areas of domestic asylum adjudication that are in need of significant reform. This bill would repeal the one-year filing deadline for asylum seekers, removing an unnecessary barrier to protection. The bill would allow arriving aliens and minors to seek asylum first before the Asylum Office rather than referring those cases immediately to immigration court. The Asylum Office is well trained to screen for fraud and able to handle a slight increase in its caseload. Meanwhile, as we learned in a May 18, 2011, hearing before the Judiciary Committee, the immigration courts are overburdened, under-resourced, and facing steady increases in their caseloads.

The Refugee Protection Act ensures that persons who were victims of terrorism or persecution by terrorist groups will not be doubly victimized with a denial of protection in the United States. Vermont Immigration and Asylum Advocates, a legal aid and torture treatment provider, continues to see cases where persons granted asylum are later blocked from bringing their families to the United States or applying for permanent residency by overly broad definitions in current law. This bill would help such persons prove their cases without taking any shortcuts on national security. The bill also gives the President the authority to designate certain groups of particularly vulnerable groups for expedited consideration. All refugees would still have to complete security and background checks prior to entry to the United States.

Finally, the bill addresses the need to treat genuine asylum seekers as persons in need of protection, not as criminals. It calls for asylum seekers who can prove their identity and who pose no threat to the United States to be released from immigration detention. Vermont Immigration and Asylum Advocates, like other legal aid providers across the Nation, struggle to visit detention facilities located at a distance from urban centers, or to reach clients who have been transferred to far away locations. I appreciate efforts made by the Obama administration to parole eligible asylum seekers and to improve the conditions of detention overall, but more must be done. The Refugee Protection Act will improve access to counsel so that asylum seekers with genuine claims can gain legal assistance in presenting their claims. It will require the Government to codify detention standards so that reforms are meaningful and enforceable.

There is no question that the United States is a leader among nations in refugee protection, but we can do better. The refugees we welcome to our shores contribute to the fabric of our Nation, and enrich the communities where they settle. I urge all Senators to support the Refugee Protection Act of 2011.

Mr. President, I ask unanimous consent that a section by section analysis and a list of support organizations be printed in the RECORD.

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

THE LEAHY-LEVIN-AKAKA-DURBIN REFUGEE PROTECTION ACT OF 2011

SECTIONAL ANALYSIS

The Refugee Act of 1980 was a landmark piece of legislation that sought to fulfill the United States' obligations under the 1951 Refugee Convention. Unfortunately, in the intervening years, U.S. law has fallen short of those obligations. Last year, on the thirtieth anniversary of the Refugee Act of 1980, Senator Leahy, introduced the Refugee Protection Act of 2010 (S. 3113, 111th Congress), a comprehensive package of improvements to our law. On June 15, 2011, Senator Leahy, along with Senators Levin, Akaka, and Durbin, introduced a new version of the bill for the 112th Congress. The Refugee Protection Act of 2011 will ensure that refugees and asylum seekers with bona fide claims are protected by the United States, restoring the United States as a beacon of hope for those who suffer from persecution.

Sec. 1. Short Title.

The short title is the Refugee Protection Act of 2011.

Sec. 2. Definitions.

This section defines the terms ''asylum seeker'' and ''Secretary of Homeland Security.''

Sec. 3. Elimination of Time Limits on Asylum Applications.

This section eliminates the one-year time limit for filing an asylum claim. The stated intent of Congress in 1996 in enacting the one-year deadline was to prevent fraud, not to deprive bona fide applicants from securing protection under our laws. Yet, even in 1996, problems related to fraud had been resolved through administrative reform implemented by the Immigration & Naturalization Service, which opposed the implementation of an application deadline. Since the one-year deadline was enacted, and despite exceptions available in the law for extraordinary or changed circumstances that may prevent the timely filing of an application, many asylum seekers with genuine claims have been denied protection. The exceptions to the one-year deadline are not uniformly applied to applicants, leading to unfair treatment of those who have legitimate reasons for applying after the one-year deadline. Moreover, a significant number of applicants have subsequently met the higher standard for withholding of removal, demonstrating that their claims were valid. This section allows such an asylum seeker to reopen his asylum claim if he is still in the United States, has not subsequently been awarded lawful permanent residence status, is not subject to a bar to asylum, and should not be denied asylum as a matter of discretion.

Sec. 4. Protecting Victims of Terrorism from Being Defined as Terrorists.

Under current law, any asylum seeker or refugee who is individually culpable of engaging in terrorist conduct, or direct support for it, is barred under prohibitions to entry for a threat to national security, serious non-political crime, persecution of others, or engaging in terrorist activity. Changes in the law since September 11, 2001, have resulted in innocent activity, or coerced actions, being labeled as ''material support'' for terrorism, a determination that can render genuine refugees ineligible for protection in the United States. This section would amend the law to ensure that asylum seekers and refugees are not barred from admission to the United States under an overly broad definition of ''terrorist organization'' in the Immigration and Nationality Act (INA).

This section would define the term ''material support'' to mean support that is significant and of a kind directly relevant to terrorist activity. This section also gives the Secretary of Homeland Security discretion to waive application of the terrorism bars for certain applicants.

This section clarifies that those who committed certain acts (such as military-type training, solicitation, or other non-violent actions) under duress may not be deemed inadmissible if they pose no threat to the United States. It gives the Secretary discretion to consider the age of the applicant at the time the acts were committed in determining whether those acts were committed under duress.

This section also creates an exception for those who were forced to recruit child soldiers under duress, or who engaged in such recruitment under the age of 18. Finally, this section would repeal an unduly harsh provision in current law that makes spouses and children inadmissible for the acts of a spouse or parent.

All applicants for asylum or refugee status must meet all of the other traditional background and security checks.

Sec. 5. Protecting Certain Vulnerable Groups of Asylum Seekers.

To be eligible for asylum under the Refugee Convention and domestic law, an applicant must show that he or she has experienced persecution or have a well-founded fear of future persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. This section makes several modifications to current law to ensure that particularly vulnerable groups of asylum seekers have a full and fair opportunity to seek protection in the United States.

Subsection (a) codifies the holding of the landmark Board of Immigration Appeals (BIA) decision in Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985). That holding defined the basis of persecution based on membership in a ''particular social group'' as one comprised of individuals who share a common characteristic they either cannot change, or should not be required to change because the

characteristic is fundamental to their identity or conscience. The Acosta precedent has been clouded in recent years by BIA opinions that require asylum applicants to prove additional factors, some of which are unnecessary or contrary to the spirit of domestic law and the Refugee Convention. Most damaging is a requirement that the social group in question be ''socially visible,'' a factor that could endanger certain categories of refugees, such as victims of gender persecution or LGBT asylum seekers. These are groups that, as Judge Posner of the Seventh Circuit Court of Appeals described, are at great pains to remain socially invisible. This subsection codifies the definition of social group in Matter of Acosta such that inappropriate, additional factors such as social visibility cannot be required by the BIA.

Subsection (b) makes additional changes to current law. Paragraph (1): United States law has long recognized that persecutors may have mixed motives for harming their victims. For example, a militia that operates outside government control may persecute a particular race of persons because of xenophobia and also because it seeks to deprive the persecuted race of valuable land and property. The fact that the persecutor is motivated by two intertwined goals should not prevent the victims from obtaining protection. Nonetheless, the REAL ID Act of 2005 raised the burden of proof that asylum seekers must meet in order to show that they fear persecution on account of one of the five grounds enumerated in the Refugee Convention and in U.S. law. (The five grounds are race, religion, nationality, membership in a particular social group, or political opinion.) The REAL ID Act requires that the asylum seeker demonstrate that harm on account of a protected ground is ''at least one central reason'' for the feared persecution. See INA §208(b)(1)(B)(i). The ''one central reason'' language is modified in this section, which does not fully repeal the notion of persecutor intent but applies it in a manner that is both realistic and fair. This paragraph strikes the language that requires the protected ground (e.g., race) to be one central reason for the persecution and requires instead that the protected ground ''was or will be a factor in the applicant's persecution or fear of persecution.''

Paragraph (2): The REAL ID Act of 2005 added requirements to the INA with regard to an asylum seeker's duty to provide corroborating evidence when it is requested by an immigration judge. The REAL ID Act stated that ''such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.'' Corroborating evidence can be an important component of an asylum claim, but asylum seekers must have a fair opportunity to respond to requests for corroboration. In addition, as courts have noted, it is sometimes virtually impossible for asylum seekers to obtain certain types of corroborating evidence. Therefore, this paragraph requires that when the trier of fact seeks corroborating evidence, the trier of fact must provide notice and allow the asylum applicant a reasonable opportunity to file such evidence unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

Paragraph (3) renumbers text in the statute.

Paragraph (4): As noted above, an asylum seeker must show that his or her well-founded fear of persecution is on account of one of the five grounds of asylum. This link is often called the nexus requirement. Some genuine asylum seekers have been denied asylum because of a lack of clear guidance on how the nexus requirement may be established when the persecutor is a non-state actor. The Department of Justice issued draft regulations in 2000 that made clear that an asylum seeker can demonstrate nexus through either ''direct or circumstantial'' evidence. This draft regulation was consistent with the U.S. Supreme Court's decision in INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992). This paragraph would codify the draft regulation by making clear that either direct or circumstantial evidence may establish that persecution is on account of one of the five grounds.

Paragraph (5): The REAL ID Act also modified the INA with regard to factors that an immigration judge may consider in determining the asylum seeker's credibility. In short, the REAL ID gave heightened importance to inconsistencies in an asylum seeker's claim, even if those inconsistencies were minor or immaterial to the heart of the claim. In practice, an asylum seeker with limited English skills, with post-traumatic stress disorder, or with other conditions, may make simple, minor errors in the telling and retelling of their story. This paragraph modifies the INA to state that if the immigration judge determines that there are inconsistencies or omissions in the claim, the asylum seeker should be given an opportunity to explain and to provide support or evidence to clarify such inconsistencies or omissions. Subsection (c) makes identical corrections to the corroboration and credibility determinations for removal proceedings that are described in paragraphs (2) and (5) above.

Sec. 6. Effective Adjudication of Proceedings.

This section authorizes the Attorney General to appoint counsel to an alien in removal proceedings where fair resolution or effective adjudication of the case would be served by doing so. In certain cases, such as those involving highly complex asylum claims, unaccompanied minors, mentally impaired persons, or individuals who are incapable of pro se representation, delays in adjudication may result while an alien prepares a case or searches for pro bono representation. The immigration courts will operate more efficiently (with savings to taxpayers) if the Attorney General is provided explicit authority to exercise discretion to appoint counsel in certain instances, such as those described above.

Sec. 7. Scope and Standard for Review.

This section prevents the removal of an alien during the 30-day period an alien has to file a petition for review to a Federal Circuit Court of Appeals after the alien has been ordered removed. Staying the removal during this period will enable an applicant to carefully consider whether to file an appeal rather than rush to file in order to preserve his or her rights. In weak cases, the alien will likely decline to appeal, and deport voluntarily or via government removal. This section also restores judicial review to a fair and reasonable standard consistent with principles of administrative law. The standard in this section is that the Court of Appeals shall sustain a final decision ordering the removal of an alien unless that decision is contrary to law, an abuse of discretion, or not supported by substantial evidence. The decision must be based on the administrative record on which the order of removal is based.

Sec. 8. Efficient Asylum Determination Process for Arriving Aliens.

Under current law, an alien who requests asylum as they attempt to enter the United States (an ''arriving alien'') is subject to detention for part or all of the time that they await an asylum hearing. Such asylum seekers are provided an initial interview with an asylum officer to determine whether they have a credible fear of persecution, but then must pursue their asylum case in immigration court, rather than in a non-adversarial proceeding. Generally speaking, the adversarial immigration hearing is considerably lengthier and costlier than a non-adversarial asylum hearing. Under this section, the DHS asylum office would be given jurisdiction over an asylum case after a positive credible fear determination. The alien would then undergo a non-adversarial asylum interview. If the asylum officer is unable to recommend a grant of asylum, the case will be referred to an immigration judge and the asylum seeker placed in removal proceedings. This structure mirrors the current process for asylum seekers who apply for asylum from within the United States.

Sec. 9. Secure Alternatives Program.

This section requires the Secretary of Homeland Security to establish a secure ''alternatives to detention'' program. The program will allow certain aliens in civil immigration custody to be released under enhanced supervision to prevent the alien from absconding and to ensure that the alien makes all required appearances associated with his or her immigration case. The program is to be designed as a continuum of alternatives based on the alien's need for supervision, which may include placement of the alien with an individual or organizational sponsor, or in a supervised group home. The program shall restrict the use of ankle monitoring devices to cases in which there is a demonstrated need for enhanced monitoring, and the use of ankle monitors shall be reviewed periodically. The program shall be designed to include individualized case management and referrals to community based organizations. In designing the program, the Secretary is instructed to consider prior successful programs, such the Vera Institute of Justice's Appearance Assistance Program.

The Secretary of Homeland Security currently has discretion to detain asylum seekers. This section maintains such discretion but clarifies that, consistent with a DHS policy announced in December 2009, it is the policy of the United States to release (''parole'') asylum seekers who have established a credible fear of persecution. Under this section, asylum seekers who have established identity will be released within 7 days of a positive credible fear determination unless DHS can show that the asylum seeker poses a risk to public safety (which may include a risk to national security) or is a flight risk. If parole is denied, DHS must provide the asylum seeker with written notification for the reason for denial conveyed in a language the asylum seeker claims to understand.

Sec. 10. Conditions of Detention.

Regulations regarding conditions for detention shall be promulgated, and must address several issues including access to legal service providers, group legal orientation presentations, translation services, recreational programs and activities, access to law libraries, prompt case notification requirements, access to working telephones, access to religious services, notice of transfers, and access to facilities by nongovernmental organization. This section also limits the use of solitary confinement, shackling, and strip searches. This section requires that, after the date of enactment, facilities first used by ICE to detain alien detainees must be located within 50 miles of a community in which there is a demonstrated capacity to provide free or low-cost legal representation.

Sec. 11. Timely Notice of Immigration Charges.

This section requires the Department of Homeland Security to file a charging document with the immigration court closest to

the location at which an alien was apprehended within 48 hours of the alien being taken into custody by the Department. The Department is also required to serve a copy of the charging document on the alien within 48 hours of apprehension. This section will serve multiple purposes. It will prevent asylum seekers and other aliens from languishing in detention at taxpayer expense without being charged. It will encourage efficient handling of cases by both the Department of Homeland Security and the immigration courts, which are operated by the Department of Justice. Finally, it will ensure that if an asylum seeker or other alien is transferred from one detention facility to another, jurisdictional and due process protections will attach.

Sec. 12. Procedures for Ensuring Accuracy and Verifiability of Sworn Statements Taken Pursuant to Expedited Removal Authority.

This section modifies current policy to ensure that asylum seekers are not harmed by error in the production of sworn statements taken during the expedited removal process. It requires that the Secretary of Homeland Security establish a procedure whereby the interviews of asylum seekers are recorded. The recording may be a video, audio or other reliable form of recording. The recording must include a written statement, in its entirety, being read back to the alien in a language that the alien claims to understand, and include the alien affirming the accuracy of the statement or making any corrections thereto. If an interpreter is necessary, such interpreter must be competent in the language of the asylum seeker. Once a record is produced and signed by the asylum seeker under these conditions, it may be considered part of the record. The Secretary may exempt facilities from the requirements of this section under certain circumstances.

Sec. 13. Study on the Effect of Expedited Removal Provisions, Practices, and Procedures on Asylum Claims.

A 2005 study by the United States Commission on International Religious Freedom (USCIRF) documented widespread problems in the implementation of expedited removal policy by U.S. Customs and Border Protection immigration officers at ports of entry. A few months prior to release of the Study, the Secretary of Homeland Security expanded expedited removal authority from immigration inspectors at Ports of Entry—as applied to arriving aliens without proper documentation—to Border Patrol agents who apprehend an alien within 100 miles of the border within 14 days after an entry without inspection. The 2005 USCIRF Study did not analyze the implementation of expedited removal by the Border Patrol, as USCIRF's data collection had been completed by that point in time. This section authorizes the Commission to conduct a new study to determine whether Border Patrol officers exercising expedited removal authority in the interior of the United States are improperly encouraging aliens to withdraw or retract claims for asylum. The Commission is also authorized to study whether immigration officers incorrectly fail to refer asylum seekers for credible fear interviews by asylum officers; incorrectly remove such aliens to a country where the alien may be persecuted; and/or detain such asylum seekers improperly or in inappropriate conditions.

Sec. 14. Refugee Opportunity Promotion.

The immigration statute requires a refugee who is resettled in the United States to remain on U.S. soil for a full year before adjusting to lawful permanent residence. For many, this requirement presents no obstacles, as resettled refugees immediately begin to work, learn English, and contribute to their local communities. Yet, the one-year physical presence requirement poses a significant barrier to resettled refugees who are eager and willing to serve the United States Government overseas. This section waives the continuous presence requirement for any refugee who, during their first year of residence in the United States, accepts employment overseas to aid the United States Government, such as by working as a translator or in another professional capacity.

Sec. 15. Protections for Minors Seeking Asylum.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) amended the immigration statute to exempt unaccompanied alien children from the safe third country and one-year filing deadline bars to asylum. This section will amend the statute to expand these TVPRA exemptions to all child applicants for asylum. This section also expands the exemption to the bar to asylum for applicants under 18 years of age who were previously denied asylum. The proposed language also clarifies that unaccompanied alien children who have previously been removed, or who departed voluntarily, should not have their removal orders reinstated, but should instead be placed in removal proceedings. Finally, this section states that all cases of children seeking asylum be adjudicated in the first instance by an asylum officer in a non-adversarial proceeding. These protections, which were provided to unaccompanied minors in the TVPRA, are expanded in the bill to all child asylum seekers.

Sec. 16. Legal Assistance for Refugees and Asylees.

The Immigration and Nationality Act authorizes the Secretary of Health and Human Services to make grants to non-profit organizations to assist resettled refugees with mental health counseling, social services, education (including English as a Second Language, or ESL), and other assistance to help refugees assimilate into American communities. This section would authorize the Secretary to make similar grants to assist lawfully resettled refugees with legal advice on applications for immigration benefits to which they may be eligible after residing in the United States for certain periods of time, e.g., family reunification, adjustment of status, or naturalization.

Sec. 17. Protection of Stateless Persons in the United States.

This section will enable individuals who are de jure stateless to obtain lawful status in the United States. De jure stateless persons are individuals who are not considered to be citizens under the laws of any country. They do not have a nationality and therefore cannot be returned anywhere. (These individuals are not rendered stateless by any negative action of their own, such the commission of crimes that leads the country of origin to deny return, but generally by forces beyond their control, such as the collapse of the country of origin (e.g. the Soviet Union) and the succession of a state or states that will not recognize certain former nationals.) De jure stateless persons are ineligible for lawfully recognized status in the United States based on the fact that they are stateless. This section would make such persons eligible to apply for conditional lawful status if they are not inadmissible under criminal or security grounds and if they pass all standard background checks. After five years in conditional status, de jure stateless persons would be eligible to apply for lawful permanent status.

Sec. 18. Authority to Designate Certain Groups of Refugees for Consideration.

This section authorizes the President to designate certain groups as eligible for expedited adjudication as refugees. The authority would address situations in which a group is targeted for persecution in their country of origin or country of first asylum. The designation by the President would be sufficient, if proved to the satisfaction of the Secretary of Homeland Security, to establish a well-founded fear of persecution for members of the designated group. However, each individual applicant would still have to be admissible to the United States and pass security and background checks before being admitted. Refugees admitted under this authority would not be exempt from the annual limit on refugee admissions. This section simply enables the President to call for expedited adjudication where necessary and appropriate. This section explicitly includes groups previously protected under the Lautenberg Amendment, which include, among others, Jews and Evangelical Christians from the former Soviet Union, and religious minorities from Iran.

Sec. 19. Multiple Forms of Relief.

This section simply allows individuals applying for refugee protection to simultaneously apply for other forms of admission to the United States, such as through a family-based petition. All applicants for admission must pass security and background checks. This modification to current law would not allow would-be refugees from gaming the system, but simply enable them to escape harm or persecution at the first opportunity a visa becomes available. This section also allows the very small number of asylum applicants who win the opportunity to apply for a green card through the diversity lottery the ability to apply for that diversity visa from within the United States. Typically, diversity visa applicants must apply from their home country, a requirement that would subject a genuine asylum seeker to risk of harm.

Sec. 20. Protection of Refugee Families.

This modification to current law would enable the spouse or child of a refugee (a ''derivative'') to bring their children to the United States when they accompany or follow to join the spouse or parent who was originally awarded refugee status (a ''principal''). Current law does not allow a derivative's child to be admitted as a refugee, yet given the long waits and often unsafe conditions that many derivative applicants and their children face in camps overseas, the United States should provide this group protection. This section also aids children who were orphaned or abandoned by their blood relatives and are living in the care of extended family, friends, or neighbors who are granted admission to the United States as refugees or asylees. Where it is in the best interest of such a child to join that refugee or asylee in the United States, this section creates a mechanism whereby they may be admitted. This section also repeals an unnecessary time limit in regulations on the filing of family petitions related to refugee and asylee family reunification. Finally, to facilitate the admission of eligible family members, this section requires that U.S. Citizenship and Immigration Services adjudicate family reunification petitions for those following to join refugees and asylees within 90 days of filing.

Sec. 21. Reform of Refugee Consultation Process.

Each year, the executive branch is charged with consulting with Congress over the annual allocation of refugees to be admitted to the United States. This section requires meaningful consultation to take place between Cabinet-level officers and the committees of jurisdiction of the Congress by May 1 of each year.

Sec. 22. Admission of Refugees in the Absence of the Annual Presidential Determination.

This section states that for a fiscal year in which the executive branch does not determine the allocation of refugees for that year, the admission of refugees is not delayed. Rather, until a determination is announced for the new fiscal year, in each quarter of the new fiscal year, the number of refugees equal to one-quarter for the prior fiscal year's allocation may be admitted.

Sec. 23. Update of Reception and Placement Grants.

When a refugee is resettled in the United States, the federal government assists him or her through Reception and Placement Grants to non-governmental organizations (NGOs) that help refugees find housing, place their children in school, enroll in ESL classes, and take other initial steps toward building a new life in the United States. Early in 2010, the administration increased the per capita grant level to $1800 per refugee, up to $1100 of which may be awarded directly to the refugee for immediate costs, and up to $700 of which is used by the NGO to cover the cost of dedicated staff and expenses. Prior to 2010, the per capita level had not kept pace with inflation. For years it was set at a level so low that refugees were effectively consigned to poverty upon arrival in the United States, and NGOs were only able to offset the cost of basic support services to the refugees by raising additional funds. To ensure that the per capita amount does not fall behind the minimum level required for basic needs, this section requires the per capita amount to be adjusted on an annual basis for inflation and the cost of living. It also calls for better forecasting of financial needs with regard to the number of refugees expected to be resettled each year and allows for additional amounts to be paid out in the event that a higher than anticipated number of refugees is admitted in a fiscal year.

Sec. 24. Protection for Aliens Interdicted at Sea.

The U.S. government should apply one standard, consistent with the Refugee Convention, to all asylum seekers interdicted at sea, regardless of their nationality. Yet a patchwork of policies has evolved over the past two decades often in response to mass migrations at sea. The result is disparate treatment of Cubans, Chinese and Haitians. This section will require the Secretary of Homeland Security to develop uniform policies to identify asylum seekers among those interdicted at sea and to treat those individuals fairly and in a non-discriminatory manner.

Sec. 25. Modification of Physical Presence Requirements for Aliens Serving as Translators.

Under current law, in order to be naturalized, most non-U.S. citizens must have continuous residence in the United States for five years and physical presence for periods totaling half that time (2½ years). This section would permit absence from the United States while serving as a translator for the U.S. government in Iraq or Afghanistan to count toward the 2½ years physical presence required for naturalization.

Sec. 26. Assessment of the Refugee Domestic Resettlement Program.

This section directs GAO to conduct a study on the effectiveness of the domestic refugee resettlement program operated by the Office of Refugee Resettlement (ORR) of the Department of Health and Human Services. The study will analyze issues pertaining to the definition of self sufficiency, the effectiveness of ORR in helping refugees to attain self-sufficiency, the unmet needs of the program, and the role of community-based organizations. The GAO study will issue statutory recommendations.

Sec. 27. Refugee Assistance.

This section revises the formula for social services funding allocated to states to include projections of future refugee arrivals, as well as refugee data from prior years. This section requires an annual report on secondary migration and its impact on states.

Sec. 28. Resettlement Data.

This section expands and improves data collection and reporting within ORR with regard to the mental health and housing needs of refugees. It will also collect long term employment and self-sufficiency data on resettled refugees.

Sec. 29. Protections for Refugees.

Current law makes refugees resettled in the United States eligible to apply for lawful permanent residence after one year. However, current law also suggests that a refugee who does not adjust status after one year may be taken into custody by DHS. (See Section 209 of the INA, 8 U.S.C. 1159). The agency recently issued guidance to clarify interpretation of the law, stating that detention of an unadjusted refugee who is found to be inadmissible or deportable should be determined under the statute relating to apprehension and detention of aliens. (See Section 236 of the INA, 8 U.S.C. 1226.) Accordingly, this section of the bill strikes language in current law that suggests that refugees may be taken into custody simply for remaining unadjusted. This section also allows a refugee to apply for lawful permanent residence up to three months prior to obtaining a year of presence in the United States.

Sec. 30. Extension of Eligibility Period for Social Security Benefits for Certain Refugees.

This section extends social security benefits to elderly and disabled refugees who have not yet naturalized. Typically, certain eligible refugees may receive social security for seven years. That period was extended for two years in 2008 by a bipartisan bill supported by President Bush. This section extends the social security funding for one additional year.

Sec. 31. Authorization of Appropriations.

This section authorizes such sums as are necessary to carry out the Act.

Sec. 32. Determination of Budgetary Effects.

This section contains standardized ''PAYGO'' language.

THE LEAHY-LEVIN-AKAKA-DURBIN REFUGEE PROTECTION ACT OF 2011

ENDORSEMENTS AS OF JUNE 15, 2011

American Bar Association; American Civil Liberties Union; American Humanist Association; American Immigration Lawyers Association; American Jewish Committee; Amnesty International USA; Association of Africans Living in Vermont; Asylum Access; Center for American Progress Action Fund; Center for Gender & Refugee Studies; Center for Victims of Torture; CenterLink: The Community of LGBT Centers; Church World Service, Immigration and Refugee Program; The Episcopal Church; Family Equality Council; Golden Door Coalition of Illinois; Hebrew Immigrant Aid Society; Hebrew Immigrant Aid Society Chicago; Heartland Alliance for Human Needs & Human Rights; Human Rights Campaign; Human Rights First; Human Rights Watch; Immigrant Child Advocacy Project at the University of Chicago; Immigration Equality Action Fund; International Rescue Committee; Jewish Child and Family Services (Metropolitan Chicago); Kids in Need of Defense (KIND); Lutheran Immigration and Refugee Service; National Center for Transgender Equality; National Immigrant Justice Center; National Immigration Forum; National Immigration Law Center; National Council of Jewish Women; National Latina Institute for Reproductive Health; Organization for Refuge, Asylum & Migration; PFLAG National (Parents, Families and Friends of Lesbians and Gays); RefugeeOne; Refugee Women's Network, Inc.; Refugees International; State Coordinators of Refugee Resettlement (SCORR); Tahirih Justice Center; United African Organization; U.S. Committee for Refugees and Immigrants; U.S. Conference of Catholic Bishops; Vermont Immigration and Asylum Advocates; Women's Refugee Commission.

The U.S. Commission on International Religious Freedom supports the Refugee Protection Act of 2011.

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By Ms. SNOWE (for herself, Mr. KERRY, Mr. ISAKSON, Ms. KLOBUCHAR, and Mr. INOUYE):

S. 1203. A bill to amend title XVIII of the Social Security Act to provide for the coverage of home infusion therapy under the Medicare Program; to the Committee on Finance.

Ms. SNOWE. Mr. President, today I join my colleague on the Senate Finance Committee, Senator JOHN KERRY of Massachusetts, to introduce the Medicare Home Infusion Coverage Act, which will help us improve care and reduce costs. We are joined by Senator ISAKSON, Senator KLOBUCHAR, and Senator INOUYE, who also recognize the tremendous value offered by home infusion therapy.

Today many serious conditions, including some cancers and drug-resistant infections—requires the use of infusion therapy. Such treatment involves the administration of medication directly into the bloodstream via a needle or catheter. Specialized equipment, supplies, and professional services, such as sterile drug compounding, care coordination, and patient education and monitoring, are part of such therapy. The course of infusion treatment often lasts for several hours per day over a 6-to-8 week period.

The regrettable fact is that Medicare patients requiring infusion therapy must either bear that cost themselves, or endure hospitalization in order to receive coverage. Though Medicare pays for infusion drugs, it does not pay for the services, equipment, and supplies necessary to safely provide infusion therapy in the home. Not surprisingly, even though home infusion therapy may cost as little as $100 a day, too few seniors can afford that cost.

The result is that patients are hospitalized needlessly, driving costs of treatment as much as 10–20 times higher than treatment in the home. These unnecessary hospitalizations are not only wasteful to Medicare, but they may even place the patient at risk of contracting a health care-acquired infection.

Private coverage for home infusion therapy is commonplace. Private plans also recognize that patients benefit from avoiding hospitalization. At home they have familiar, comfortable surroundings, and family conveniently at hand, no small concerns when fighting a serious illness. In fact, according to a June 2010 Government Accountability Office report, ''Health insurers contend that the benefit has been cost-effective, that is, providing infusion therapy at home generally costs less than treatment in other settings. They also contend that the benefit is largely free from inappropriate utilization and problems in quality of care.''

By extending coverage of infusion therapy to the home, we will correct this unintended and unnecessary gap in Medicare coverage. I hope my colleagues will join us in support of this legislation so we may further the goals of improving patient safety and reducing our escalating health care costs.

By Mr. UDALL of Colorado:

S. 1204. A bill to amend title 10, United States Code, to reform Department of Defense energy policy, and for other purposes; to the Committee on Armed Services.

Mr. UDALL of Colorado. Mr. President, I rise to speak about the Department of Defense Energy Security Act of 2011 or DODESA, that I am introducing today.

This bill takes a number of important steps toward addressing some of our most critical national energy security challenges. It authorizes increased development of alternative fuels and increased usage of hybrid drive systems and electric vehicles. The bill streamlines communication between agencies responsible for energy programs across the DOD, and authorizes DOD to examine where the greatest potential exists for renewable energy programs. And it authorizes DOD to determine how best to incorporate smart grid technology and to work with local communities to develop contingency plans in the event of a power outage caused by cyber attacks or natural disasters.

Simply put, this bill addresses the military's single largest vulnerability: Its dependence on fossil fuel. When you talk about that dependency in theater—you're talking about putting service members' lives at risk. During the wars in Iraq and Afghanistan, thousands of service men and women have been injured and killed each year in attacks on fuel convoys. Osama bin Laden reportedly called those convoys our military's ''umbilical cord.'' In the words of the Chairman of the Joint Chiefs of Staff, Admiral Mike Mullen: ''Saving energy saves lives.'' He said: ''Energy needs to be the first thing we think about before we deploy another soldier, before we build another ship or plane.''

That dependence on oil also costs taxpayers a staggering amount of money. But our military's reliance on vulnerable energy resources is not just on the battlefield. At home, defense facilities rely on a fragile national grid, leaving critical assets vulnerable. The Defense Science Board found in its 2008 report, ''More Fight—Less Fuel'' that, ''critical national security and homeland defense missions are at an unacceptably high risk of extended outage from failure of the grid.''

All told, the military spends $20 billion on energy each year, consuming a whopping 135 million barrels of oil and 30 million megawatt-hours of electricity. It consumes more fuel and electricity each year than most countries.

The Pentagon's energy consumption has serious national security implications, but it also presents opportunities. As the Logistics Management Institute wrote, ''Aggressively developing and applying energy-saving technologies to military applications would potentially do more to solve the most pressing long-term challenges facing DOD and our national security than any other single investment area.''

That is why we have introduced this legislation. I say ''we'' because this bill is the product of a joint effort with Congresswoman GIFFORDS' office. GABBY is a great friend, and we introduced this bill together last Congress. This year, my staff has worked closely with hers on this updated version. This is an issue that is near and dear to GABBY's heart, and I know that she is eager to continue her work on it in the House.

I am very proud of this legislation for a number of reasons.

First and foremost, DODESA will help the Department of Defense cut fuel consumption and long-term costs.

Secondly, it provides authorization that will expand existing renewable energy studies and pilot programs through a Joint Contingency Base Resource Security Project. This project will help the service branches share lessons learned as they study the best ways to incorporate renewable energy sources and fuel reduction initiatives, such as the Marine Corps' outstanding Experimental Forward Operating Base, and the Army's Net Zero Installations.

Third, Colorado is leading the way in this commonsense area of energy security. In particular, I would like to highlight the leadership of Fort Carson, in my home state, which has been chosen as one of two bases to participate in the Army's ''Triple Net Zero'' pilot program. They are truly pioneers in this important work, and I appreciate all of their efforts.

In sum, our legislation will make America more secure, will save taxpayer dollars, and it will save lives. There is no single solution to our energy security challenges. DODESA is not a silver bullet that will solve all of our problems. However, it's part of a silver buckshot solution that will require multiple changes in the way that we do business.

We owe it to our service members and the American people to find ways to use energy smarter and more efficiently, and I believe this bill takes a number of important steps in the right direction.

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. 1204

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 ''Department of Defense Energy Security Act of 2011''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Congressional defense committees defined.
Sec. 3. Sense of Congress on Department of Defense energy savings initiatives.
Sec. 4. Waiver authority.

TITLE I—OPERATIONAL ENERGY SECURITY

Sec. 101. Joint contingency base resource pilot project.
Sec. 102. Research and development activities to incorporate hybrid-drive technology into current and future tactical fleet of military ground vehicles.
Sec. 103. Conversion of Department of Defense fleet of non-tactical motor vehicles to electric and hybrid motor vehicles.
Sec. 104. Ten-year extension of authorized initial term of contracts for storage, handling or distribution of liquid fuels and natural gas.
Sec. 105. Establishment of Department of Defense Joint Task Force for Alternative Fuel Development.

TITLE II—INSTALLATION ENERGY SECURITY

Sec. 201. Funding for Installation Energy Test Bed.
Sec. 202. Funding for energy conservation projects.
Sec. 203. Report on energy-efficiency standards.
Sec. 204. Identification of energy-efficient products for use in construction, repair, or renovation of Department of Defense facilities.
Sec. 205. Core curriculum and certification standards for Department of Defense energy managers.
Sec. 206. Requirement for Department of Defense to capture and track data generated in metering department facilities.
Sec. 207. Establishment of milestones for achieving Department of Defense 2025 renewable energy goal.
Sec. 208. Development of renewable energy sources on military lands.
Sec. 209. Development of renewable energy on military installations.

Sec. 210. Report on cross-agency renewable energy development efforts.
Sec. 211. Elimination of approval requirement for long-term contracts for energy or fuel for military installations.
Sec. 212. Consideration of energy security in developing energy projects on military installations using renewable energy sources.
Sec. 213. Study on installation energy security and societal impacts.

SEC. 2. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

In this Act, the term ''congressional defense committees'' means the Committees on Armed Services and Appropriations of the Senate and the House of Representatives.

SEC. 3. SENSE OF CONGRESS ON DEPARTMENT OF DEFENSE ENERGY SAVINGS INITIATIVES.

It is the sense of Congress that—

(1) the Department of Defense should develop, test, field, and maintain operationally-effective technologies that reduce the energy needs of forward-deployed forces;

(2) the Secretary of Defense should ensure the energy security of Department of Defense facilities;

(3) the Assistant Secretary of Defense for Operational Energy Plans and Programs and the Deputy Under Secretary of Defense for Installations and Environment should act in concert to implement strategies and coordinate activities across the services to meet Department-wide and service energy goals, including service initiatives such as the Navy's Great Green Fleet, the Air Force's alternative fuel certification program, the Army's Net Zero installation pilot program, and the Marine Corps experimental forward operating base project; and

(4) in general, the Department of Defense should aggressively pursue opportunities to save energy, reduce energy-related costs, decrease reliance on foreign oil, decrease the energy-related logistics burden for deployed forces, ensure the long-term sustainability of military installations, and strengthen United States energy security.

SEC. 4. WAIVER AUTHORITY.

(a) IN GENERAL.—The Secretary of Defense may waive the implementation or operation of a provision of this Act or an amendment made by this Act if the Secretary certifies to Congress that implementation or continued operation of such provision would adversely impact the national security of the United States.

(b) INTELLIGENCE ACTIVITY WAIVER.—The Director of National Intelligence may, in consultation with the Secretary of Defense, exempt an intelligence activity of the United States, and related personnel, resources, and facilities, from a provision of this Act or an amendment made by this Act to the extent the Director and Secretary determine necessary to protect intelligence sources and methods from unauthorized disclosure.

TITLE I—OPERATIONAL ENERGY SECURITY

SEC. 101. JOINT CONTINGENCY BASE RESOURCE PILOT PROJECT.

(a) PILOT PROJECT AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Defense shall, in consultation with the Secretary of Energy, as appropriate, carry out a pilot project to assess the feasibility and advisability of various joint and multi-service mechanisms to decrease energy usage by deployed military units, including by minimizing at forward operating bases the production of waste water, consumption of drinking water, energy, and materials, and reducing impacts on habitat and perimeter security and by maximizing capacity and effectiveness at such bases while promoting operational independence from supply lines and minimizing the resource footprint. The Secretary of Defense shall designate a lead officer for the pilot project.

(2) MECHANISMS TO BE ASSESSED.—The mechanisms assessed under the pilot project shall include new energy and energy-efficiency technologies and such other systems, components, and technologies as the Secretary shall identify for purposes of the pilot project.

(3) UTILIZATION OF SMALL BUSINESS.—In carrying out the pilot project, the Secretary shall, to the extent practicable, seek to work with small businesses through small-scale procurement of systems, components, and technologies described in paragraph (2).

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 2012 $4,000,000 to carry out the pilot project authorized by subsection (a).

SEC. 102. RESEARCH AND DEVELOPMENT ACTIVITIES TO INCORPORATE HYBRID-DRIVE TECHNOLOGY INTO CURRENT AND FUTURE TACTICAL FLEET OF MILITARY GROUND VEHICLES.

(a) IDENTIFICATION OF USABLE HYBRID-DRIVE TECHNOLOGY.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Energy, as appropriate, shall submit to Congress a report identifying hybrid-drive technologies suitable for incorporation into the next reset and recap of motor vehicles of the current tactical fleet of the military services. In identifying suitable hybrid-drive technologies, the Secretary shall consider the feasibility and costs and benefits of incorporating a hybrid-drive technology into each type and variant of vehicle, including fuel savings, and the design changes and amount of time required for incorporation.

(b) HYBRID-DRIVE TECHNOLOGY DEFINED.—In this section, the term ''hybrid-drive technology'' means a propulsion system, including the engine and drive train, that draws energy from onboard sources of stored energy that involve—

(1) an internal combustion or heat engine using combustible fuel; and

(2) a rechargeable energy storage system.

SEC. 103. CONVERSION OF DEPARTMENT OF DEFENSE FLEET OF NON-TACTICAL MOTOR VEHICLES TO ELECTRIC AND HYBRID MOTOR VEHICLES.

(a) CONVERSION REQUIRED.—

(1) IN GENERAL.—Subchapter II of chapter 173 of title 10, United States Code, is amended by inserting after section 2922c the following new section:

''§ 2922c-1. Conversion of Department of Defense non-tactical motor vehicle fleet to motor vehicles using electric or hybrid propulsion systems

''(a) DEADLINE FOR CONVERSION.—Beginning on October 1, 2017, the Secretary of Defense, the Secretary of a military department, or the head of a Defense Agency may not procure non-tactical motor vehicles or buses unless such vehicles use—

''(1) electric propulsion;

''(2) hybrid propulsion; or

''(3) an alternative propulsion system sufficient to make such non-tactical motor vehicles and buses meet or exceed applicable Corporate Average Fuel Economy standards.

''(b) PREFERENCE.—In procuring motor vehicles for use by a military department or defense agency after the date of the enactment of this section, the Secretary concerned or the head of the defense agency shall provide a preference for the procurement of non-tactical motor vehicles with a propulsion system described in paragraph (1), (2), or (3) of subsection (a), including plug-in hybrid systems, if the motor vehicles—

''(1) will meet the requirement or the need for the procurement; and

''(2) are commercially available at a cost reasonably comparable, on the basis of life-cycle cost, to motor vehicles containing only an internal combustion or heat engine using combustible fuel.

''(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibitions under subsection (a) with respect to a class of non-tactical vehicles if the Secretary determines that there is a lack of commercial availability for the class of vehicles or if the acquisition of such vehicles is cost prohibitive.

''(d) HYBRID DEFINED.—In this section, the term 'hybrid', with respect to a motor vehicle, means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

''(1) an internal combustion or heat engine using combustible fuel; and

''(2) a rechargeable energy storage system.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2922c the following new item:

''2922c-1. Conversion of Department of Defense non-tactical motor vehicle fleet to motor vehicles using electric or hybrid propulsion systems.''.

(b) APPLICABILITY.—The prohibition under section 2922c–1(a) of title 10, United States Code, as added by subsection (a), does not apply to contracts for the procurement of non-tactical vehicles entered into before the date of the enactment of this Act.

SEC. 104. TEN-YEAR EXTENSION OF AUTHORIZED INITIAL TERM OF CONTRACTS FOR STORAGE, HANDLING OR DISTRIBUTION OF LIQUID FUELS AND NATURAL GAS.

Section 2922 of title 10, United States Code, is amended—

(1) in subsection (a), by adding at the end the following: ''Contracts for the procurement of liquid fuels, or natural gas entered into pursuant to this section shall comply with the requirements of section 526 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17142).''.

(2) in subsection (b), in the first sentence, by striking ''5 years'' and inserting ''15 years''.

SEC. 105. ESTABLISHMENT OF DEPARTMENT OF DEFENSE JOINT TASK FORCE FOR ALTERNATIVE FUEL DEVELOPMENT.

(a) ESTABLISHMENT OF TASK FORCE.—The Assistant Secretary of Defense for Operational Energy, Plans, and Programs shall chair a joint task force for alternative fuel development, consisting of the Secretaries of the military departments, or their designees, the Assistant Secretary for Research and Engineering, and other members determined appropriate. The task force shall—

(1) lead the military departments in the development of alternative fuel;

(2) streamline the current investments of each of the military departments and ensure that such investments account for the requirements of the military departments;

(3) collaborate with and leverage investments made by the Department of Energy and other Federal agencies to advance alternative fuel development;

(4) coordinate proposed alternative fuel investments in accordance with section 138c(e) of title 10, United States Code; and

(5) focus its efforts on fuels that are compliant with the provisions of section 526 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17142).

(b) IMPLEMENTATION.—The Assistant Secretary of Defense for Operational Energy, Plans, and Programs shall prescribe policy

for the task force established pursuant to subsection (a) and certify the budget associated with alternative fuel investments of the Department of Defense.

(c) NOTIFICATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a copy of the policy prescribed under subsection (b).

TITLE II—INSTALLATION ENERGY SECURITY

SEC. 201. FUNDING FOR INSTALLATION ENERGY TEST BED.

There is authorized to be appropriated $47,000,000 for each of fiscal years 2012 through 2016 for research, development, test, and evaluation, Defense-wide, for the Installation Energy Test Bed (PE 0603XXXD8Z). As appropriate, all Department of Defense projects funded through this program shall be open and available to the Department of Energy and its commercialization team.

SEC. 202. FUNDING FOR ENERGY CONSERVATION PROJECTS.

(a) AUTHORIZATION TO OBLIGATE FUNDS.—The Secretary of Defense may obligate, from amounts appropriated for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) and available to carry out energy conservation projects, $135,000,000 for fiscal year 2012 to carry out energy conservation projects under chapter 173 of title 10, United States Code, to accelerate implementation of the energy performance plan of the Department of Defense and achievement of the energy performance goals established under section 2911 of such title, as amended by this Act.

(b) AUTHORIZATION OF APPROPRIATIONS TO COMPENSATE FOR DEFICIENCY.—There is authorized to be appropriated to the Secretary of Defense for fiscal year 2012 an amount equal to the difference between—

(1) the amount that may be obligated by the Secretary of Defense under subsection (a); and

(2) the amount appropriated for such fiscal year for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) and available to carry out energy conservation projects.

SEC. 203. REPORT ON ENERGY-EFFICIENCY STANDARDS.

(a) REPORT REQUIRED.—Not later than January 30, 2013, the Secretary of Defense shall submit to the congressional defense committees a report on the energy-efficiency standards utilized by the Department of Defense for military construction.

(b) CONTENTS OF REPORT.—The report shall include the following:

(1) A cost-benefit analysis, on a life cycle basis, of adopting American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) building standard 189.1 versus 90.1 for sustainable design and development for the construction and renovation of non-temporary buildings and structures for the use of the Department of Defense.

(2) Department of Defense policy prescribing a comprehensive strategy for the development of design and building standards across the Department that include specific energy-efficiency standards and sustainable design attributes for military construction based on the cost-benefit analysis required by paragraph (1), and consistent with the requirement under subsection (c).

(c) ENERGY EFFICIENCY STANDARDS.—The Secretary of Defense shall prescribe Department-wide standards, to be effective no later than January 1, 2014, for the design, construction, and renovation of Department of Defense facilities that mandate energy efficiency standards equivalent, at a minimum, to ASHRAE building standard 189.1.

SEC. 204. IDENTIFICATION OF ENERGY-EFFICIENT PRODUCTS FOR USE IN CONSTRUCTION, REPAIR, OR RENOVATION OF DEPARTMENT OF DEFENSE FACILITIES.

(a) RESPONSIBILITY OF SECRETARY OF DEFENSE.—Section 2915(e) of title 10, United States Code, is amended by striking paragraph (2) and inserting the following new paragraph:

''(2)(A) Not later than December 31, 2012, the Secretary of Defense shall prescribe a definition of the term 'energy-efficient product' for purposes of this subsection and establish and maintain a list of products satisfying the definition. The definition and list shall be developed in consultation with the Secretary of Energy to ensure, to the maximum extent practicable, consistency with definitions of the term used by other Federal agencies.

''(B) The Secretary shall modify the definition and list of energy-efficient products as necessary, but not less than annually, to account for emerging or changing technologies.

''(C) The list of energy-efficient products shall be included as part of the energy performance master plan developed pursuant to section 2911(b)(2) of this title. The Secretary of Defense shall report any research on topics related to technologies covered in this subsection being funded at national laboratories to the relevant program management offices of the Department of Energy to ensure research agendas are coordinated, where appropriate.''.

(b) CONFORMING AMENDMENT TO ENERGY PERFORMANCE MASTER PLAN.—Section 2911(b)(2) of such title is amended by adding at the end the following new subparagraph:

''(F) The up-to date list of energy-efficient products maintained under section 2915(e)(2) of this title.''.

SEC. 205. CORE CURRICULUM AND CERTIFICATION STANDARDS FOR DEPARTMENT OF DEFENSE ENERGY MANAGERS.

(a) TRAINING PROGRAM AND ISSUANCE OF GUIDANCE.—

(1) IN GENERAL.—Subchapter I of chapter 173 of title 10, United States Code, is amended by inserting after section 2915 the following new section:

''§ 2915a. Facilities: department of defense energy managers

''(a) TRAINING PROGRAM REQUIRED.—The Secretary of Defense shall establish a training program for Department of Defense energy managers designated for military installations—

''(1) to improve the knowledge, skills, and abilities of energy managers; and

''(2) to improve consistency among energy managers throughout the Department in the performance of their responsibilities.

''(b) CURRICULUM AND CERTIFICATION.—(1) The Secretary of Defense shall identify core curriculum and certification standards required for energy managers. At a minimum, the curriculum shall include the following:

''(A) Details of the energy laws that the Department of Defense is obligated to comply with and the mandates that the Department of Defense is obligated to implement.

''(B) Details of energy contracting options for third-party financing of facility energy projects.

''(C) Details of the interaction of Federal laws with State and local renewable portfolio standards.

''(D) Details of current renewable energy technology options, and lessons learned from exemplary installations.

''(E) Details of strategies to improve individual installation acceptance of its responsibility for reducing energy consumption.

''(F) Details of how to conduct an energy audit and the responsibilities for commissioning, recommissioning, and continuous commissioning of facilities.

''(2) The curriculum and certification standards shall leverage the best practices of each of the military departments.

''(3) The certification standards shall identify professional qualifications required to be designated as an energy manager.

''(c) USE OF EXISTING ENERGY CERTIFICATION PROGRAMS.—The Deputy Under Secretary for Installations and Environment may determine that an existing Federal energy certification program is suitable to be used instead of the program described in subsection (b) to improve the knowledge, skills, and abilities of energy managers designated for military installations.

''(d) INFORMATION SHARING.—The Secretary of Defense shall ensure that there are opportunities and forums, not less than annually, for energy managers to exchange ideas and lessons learned within each military department, as well as across the Department of Defense.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2915 the following new item:

''2915a. Facilities: Department of Defense energy managers.''.

(b) ISSUANCE OF GUIDANCE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance for the implementation of the core curriculum and certification standards for energy managers required by section 2915a of title 10, United States Code, as added by subsection (a).

(c) BRIEFING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, or designated representatives of the Secretary, shall brief the Committees on Armed Services of the Senate and House of Representatives regarding the details of the energy manager core curriculum and certification requirements.

SEC. 206. REQUIREMENT FOR DEPARTMENT OF DEFENSE TO CAPTURE AND TRACK DATA GENERATED IN METERING DEPARTMENT FACILITIES.

(a) STUDY.—The Secretary of Defense shall conduct a study on the collection of data generated in the energy metering of Department of Defense facilities, including an assessment of what data is most relevant to energy efficiency determinations and an examination of methods to collect such data. The study shall include recommendations for transmitting metering data electronically in a way that ensures protection from cyberthreats.

(b) DATA CAPTURE REQUIREMENT.—The Secretary of Defense shall require that the information generated by the installation energy meters be captured and tracked to determine baseline energy consumption and facilitate efforts to reduce energy consumption. The data shall be made available to procurement officials to enable decisions regarding technology acquisitions to include consideration of relevant energy efficiency information.

SEC. 207. ESTABLISHMENT OF MILESTONES FOR ACHIEVING DEPARTMENT OF DEFENSE 2025 RENEWABLE ENERGY GOAL.

Section 2911(e) of title 10, United States Code, is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

''(2) In achieving the goal specified in paragraph (1) regarding the use of renewable energy by the Department of Defense—

''(A) after September 30, 2015, the Department shall produce or procure from renewable energy sources not less than 12 percent

of the total quantity of facility energy it consumes within its facilities;

''(B) after September 30, 2018, the Department shall produce or procure from renewable energy sources not less than 16 percent of the total quantity of facility energy it consumes within its facilities; and

''(C) after September 30, 2021, the Department shall produce or procure from renewable energy sources not less than 20 percent of the total quantity of facility energy it consumes within its facilities.''.

SEC. 208. DEVELOPMENT OF RENEWABLE ENERGY SOURCES ON MILITARY LANDS.

(a) EXPANSION OF CURRENT GEOTHERMAL AUTHORITY.—Section 2917 of title 10, United States Code, is amended—

(1) by striking ''The Secretary'' and inserting ''(a) IN GENERAL.—The Secretary'';

(2) by striking ''geothermal energy resource'' and inserting ''renewable energy source''; and

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

''(b) CONSIDERATION OF ENERGY SECURITY.—The development of a renewable energy resource under subsection (a) shall include consideration of energy security in the design and development of the project to ensure that it does not have an adverse impact on mission needs.

''(c) DEFINITIONS.—In this section:

''(1) RENEWABLE ENERGY.—The term 'renewable energy' means electric energy generated from—

''(A) solar energy;

''(B) wind energy;

''(C) marine and hydrokinetic renewable energy;

''(D) geothermal energy;

''(E) qualified hydropower;

''(F) biomass; or

''(G) landfill gas.

''(2) BIOMASS.—The term 'biomass' has the meaning given the term in section 203(b) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)).

''(3) QUALIFIED HYDROPOWER.—

''(A) IN GENERAL.—The term 'qualified hydropower' means—

''(i) incremental hydropower;

''(ii) additions of capacity made on or after January 1, 2001, or the effective commencement date of an existing applicable State renewable electricity standard program at an existing non-hydroelectric dam, if—

''(I) the hydroelectric project installed on the non-hydroelectric dam—

''(aa) is licensed by the Federal Energy Regulatory Commission, or is exempt from licensing, and is in compliance with the terms and conditions of the license or exemption; and

''(bb) meets all other applicable environmental, licensing, and regulatory requirements, including applicable fish passage requirements;

''(II) the non-hydroelectric dam—

''(aa) was placed in service before the date of enactment of this section;

''(bb) was operated for flood control, navigation, or water supply purposes; and

''(cc) did not produce hydroelectric power as of the date of enactment of this section; and

''(III) the hydroelectric project is operated so that the water surface elevation at any given location and time that would have occurred in the absence of the hydroelectric project is maintained, subject to any license requirements imposed under applicable law that change the water surface elevation for the purpose of improving the environmental quality of the affected waterway, as certified by the Federal Energy Regulatory Commission; and

''(iii) in the case of the State of Alaska—

''(I) energy generated by a small hydroelectric facility that produces less than 50 megawatts;

''(II) energy from pumped storage; and

''(III) energy from a lake tap.

''(B) STANDARDS.—Nothing in this paragraph or the application of this paragraph shall affect the standards under which the Federal Energy Regulatory Commission issues licenses for and regulates hydropower projects under part I of the Federal Power Act (16 U.S.C. 791a et seq.).''.

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The heading of such section is amended to read as follows:

''§ 2917. Development of renewable energy sources on military lands''.

(2) TABLE OF SECTIONS.—The table of sections at the beginning of subchapter I of chapter 173 of such title is amended by striking the item relating to section 2917 and inserting the following new item:

''2917. Development of renewable energy sources on military lands.''.

SEC. 209. DEVELOPMENT OF RENEWABLE ENERGY ON MILITARY INSTALLATIONS.

(a) MILITARY INSTALLATIONS STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the heads of other Federal agencies, as appropriate, shall complete a study identifying locations on military installations and ranges, including military installations and ranges composed in whole or in part from lands withdrawn from the public domain or subject to a special use permit issued by the United States Forest Services that—

(A) exhibit a high potential for solar, wind, geothermal, and other renewable energy production; and

(B) could be developed for renewable energy production in a manner consistent with—

(i) all present and reasonably foreseeable military training and operational mission needs and research, development, testing, and evaluation requirements; and

(ii) all applicable environmental requirements.

(2) NOTICE OF INTENT TO PREPARE ENVIRONMENTAL IMPACT ANALYSIS.—Not later than 1 year after the completion of the study required under paragraph (1), the Secretary of Defense, in consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the heads of other Federal agencies, as appropriate, shall prepare and publish in the Federal Register a Notice of Intent initiating the process to prepare an environmental impact analysis document to support a program to develop renewable energy on any lands identified in the study as suitable for such production.

(3) USE OF EXISTING STUDIES AND ASSESSMENTS.—The study required by paragraph (1) shall, to the extent possible, draw from existing studies and assessments of the Department of Defense, other Federal agencies, and such other studies as may be determined by the Secretary of Defense to be relevant.

(b) ADDITIONAL MATTERS.—The Secretary of Defense, in consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Energy, and the heads of other Federal agencies, as appropriate, shall, not later than 2 years after the date of the enactment of this Act, prepare a report that—

(1) addresses the legal authorities governing authorization for the development of renewable energy facilities on military installations and ranges, including those composed in whole or in part from lands withdrawn from the public domain or subject to a special use permit issued by the United States Forest Service, and identifies Federal and State statutory and regulatory constraints to the development of renewable energy facilities on installations and ranges designed to produce power in excess of the current or projected requirements of the military installation or range concerned;

(2) contains recommendations to facilitate and incentivize large-scale renewable development on military installations and ranges, including those composed in whole or in part from lands withdrawn from the public domain or subject to a special use permit issued by the United States Forest Service; and

(3) contains recommendations on—

(A) necessary changes in any law or regulation;

(B) whether the authorization for the use of such lands for development of renewable energy projects should be pursuant to lease, contract, right-of-way, permit, or other form of authorization;

(C) methods of improving coordination among the Federal, State, and local agencies, if any, involved in authorizing renewable energy projects; and

(D) the disposition of revenues resulting from the development of renewable energy projects on such lands.

(c) SUBMISSION OF STUDY AND REPORT.—The Secretary shall, upon their completion, submit the study required by paragraph (a) and the report required by paragraph (b) to the Committee on Armed Services, the Committee on Energy and Natural Resources, and the Committee on Appropriations of the Senate and the Committee on Armed Services, the Committee on Natural Resources, and the Committee on Appropriations of the House of Representatives.

SEC. 210. REPORT ON CROSS-AGENCY RENEWABLE ENERGY DEVELOPMENT EFFORTS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of Energy, the Secretary of the Interior, and the heads of other Federal agencies, as appropriate, shall submit to Congress a report addressing cross-jurisdictional issues involved with the development of renewable energy on military installations and ranges, including military installations and ranges composed in whole or in part from lands withdrawn from the public domain or subject to a special use permit issued by the United States Forest Service. The report shall include a description of the authority to approve such development and options for disposition or use of funds generated from these renewable energy projects.

SEC. 211. ELIMINATION OF APPROVAL REQUIREMENT FOR LONG-TERM CONTRACTS FOR ENERGY OR FUEL FOR MILITARY INSTALLATIONS.

Section 2922a of title 10, United States Code, is amended—

(1) in subsection (a), by striking ''Subject to subsection (b), the Secretary of a military department'' and inserting ''The Secretary of a military department'';

(2) by striking subsection (b); and

(3) by redesignating subsection (c) as subsection (b).

SEC. 212. CONSIDERATION OF ENERGY SECURITY IN DEVELOPING ENERGY PROJECTS ON MILITARY INSTALLATIONS USING RENEWABLE ENERGY SOURCES.

(a) POLICY OF PURSUING ENERGY SECURITY.—

(1) POLICY REQUIRED.—The Secretary of Defense shall establish a policy under which favorable consideration is given for energy security in the design and development of renewable energy projects on military installations and ranges.

(2) NOTIFICATION.—The Secretary of Defense shall provide notification to Congress within 30 days after entering into any agreement for a facility energy project described in paragraph (1) that excludes pursuit of energy security on the grounds that inclusion of energy security is cost prohibitive. The Secretary shall also provide a cost-benefit analysis of the decision.

(3) ENERGY SECURITY DEFINED.—In this subsection, the term ''energy security'' has the meaning given that term in section 2924 of title 10, United States Code, as added by subsection (d).

(b) ADDITIONAL CONSIDERATION FOR DEVELOPING AND IMPLEMENTING ENERGY PERFORMANCE GOALS AND ENERGY PERFORMANCE MASTER PLAN.—Section 2911(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(12) Opportunities for improving energy security for facility energy projects that will use renewable energy sources.''.

(c) REPORTING REQUIREMENT.—Section 2925(a)(3) of such title is amended by inserting ''whether the project incorporates energy security into its design,'' after ''through the duration of each such mechanism,''.

(d) ENERGY SECURITY DEFINED.—

(1) IN GENERAL.—Subchapter III of chapter 173 of title 10, United States Code, is amended by inserting before section 2925 the following new section:

''§ 2924. Energy security defined

''(a) IN GENERAL.—In this chapter, the term 'energy security' means having assured access to reliable supplies of energy and the ability to protect and deliver sufficient energy to meet operational needs.

''(b) PURSUIT OF ENERGY SECURITY.—In selecting facility energy projects on a military installation that will use renewable energy sources, pursuit of energy security means the installation will give favorable consideration to projects that provide power directly into the installation electrical distribution network. In such cases, this power should be prioritized to provide the power necessary for critical assets on the installation in the event of a disruption in the commercial grid.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting before the item relating to section 2925 the following new section:

''2924. Energy security defined.''.

(e) STUDY ON USE OF RENEWABLE ENERGY TO IMPROVE ENERGY SECURITY.—

(1) STUDY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall enter into a contract with an independent entity to conduct a study on the use of renewable energy generation to improve energy security at military installations.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Chief Information Officer and the relevant energy offices within the Department of Defense, shall submit to the congressional defense committees a report on the study conducted under paragraph (1), together with the Secretary's recommendations for using renewable energy generation to improve energy security at military installations.

SEC. 213. STUDY ON INSTALLATION ENERGY SECURITY AND SOCIETAL IMPACTS.

(a) STUDY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall enter into a contract with an independent entity to conduct a study on energy security issues at military installations and related societal impacts.

(b) ELEMENTS.—The study required under subsection (a) shall include the following elements:

(1) A discussion of policy considerations, including engagement with utilities, transmission companies, and other entities involved in the incorporation of microgrids or other secure power generation infrastructure on military installations designed to assure continued mission-critical power in the event of a failure or extended interruption in the commercial power grid.

(2) An analysis of—

(A) whether, in the event a military installation has the continued use of a secure microgrid during a power disruption in an adjacent community lasting more than 36 hours, the military installation should have the capability and energy-generating capacity in excess of that required to assure continuation of mission-critical power in order to allow delivery of emergency power support to non-Department of Defense facilities and users providing emergency services and other critical functions in an adjacent community;

(B) the policy and other implications of not developing the capability and capacity described in subparagraph (A);

(C) the budgetary implication of developing the capability and capacity described in subparagraph (A); and

(D) the potential sources of funding from entities outside the Department of Defense required to develop the capability and capacity described in subparagraph (A).

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the study conducted under this section, together with a plan for implementing the recommendations of the study.

By Mr. ROCKEFELLER (for himself, Mr. BINGAMAN, Ms. STABENOW, Mr. BLUMENTHAL, Mr. BROWN of Ohio, Mrs. BOXER, Mr. FRANKEN, and Mr. MERKLEY):

S. 1206. A bill to amend title XVIII of the Social Security Act to require drug manufacturers to provide drug rebates for drugs dispensed to low-income individuals under the Medicare prescription drug benefit program; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Medicare Drug Savings Act of 2011. I am proud to be joined by my colleagues Senator JEFF BINGAMAN of New Mexico, Senator DEBBIE STABENOW of Michigan, Senator RICHARD BLUMENTHAL of Connecticut, Senator SHERROD BROWN of Ohio and Senator BARBARA BOXER of California, in introducing this important piece of legislation.

The Republican budget would end Medicare as we know it, replacing it with a voucher program that would double seniors' out of pocket costs and leave them at the mercy of private insurance companies. It would also decimate the Medicaid program, leaving millions of vulnerable individuals including seniors, children, and people with disabilities with nowhere to turn for care. We need to responsibly reduce our deficit, but taking away health care for seniors and other vulnerable people should be off the table. Rather than dismantling Medicare and Medicaid, we can save hundreds of billions of dollars by holding drug companies accountable and using the purchasing power of the federal government to negotiate lower drug prices.

That is why we are introducing the Medicare Drug Savings Act. The bill will eliminate a special deal from the 2003 Medicare prescription drug law that allows drug companies to charge Medicare higher prices for some seniors' prescription drugs. It would require prescription drug manufacturers to pay rebates to Medicare for dually eligible beneficiaries in Medicare and Medicaid. This proposal would reduce the deficit, saving taxpayers an estimated $112 billion over the next ten years, according to the Congressional Budget Office. Similar proposals were also included in the recommendations from the President's Commission on Fiscal Responsibility and Reform, and the President's framework for deficit reduction.

Prior to the creation of the Medicare prescription drug program, brand-name drug manufacturers paid a drug rebate for dually eligible beneficiaries in Medicare and Medicaid. However, when the new Medicare drug program was established, drug companies no longer had to provide these rebates, resulting in windfall profits for prescription drug manufacturers, at taxpayers' expense.

The Medicare Drug Savings Act would require prescription drug manufacturers to provide a rebate for drugs provided to dually eligible beneficiaries as well as all other enrollees in the low-income-subsidy, LIS, plan in the Medicare Part D Prescription Drug Program. Manufacturers would be required to pay the difference between the lowest current rebates they are paying to private Part D drug plans, and, the percentage of Average Manufacture Price, AMP, they currently pay under Medicaid, plus an additional rebate if their prices grow additional inflation. They would be required to participate in the rebate program in order for their drugs to be covered by Medicare Part D.

I urge my colleagues to support this bill. In doing so, we will protect Medicare for seniors, and end a giveaway to drug companies that is costing taxpayers hundreds of billions of dollars.

By Mr. PRYOR (for himself and Mr. ROCKEFELLER):

S. 1207. A bill to protect consumers by requiring reasonable security policies and procedures to protect data containing personal information, and to provide for nationwide notice in the event of a security breach; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise to say a few words on the introduction of the Data Security and Breach Notification Act. Senator PRYOR and I introduced this bill in the 111th Congress, and given the recent high-profile data breaches that have endangered the well-being of millions of ordinary American consumers, today's reintroduction of this comprehensive bill is

timely. I want to thank and commend Senator PRYOR for his leadership on this issue and for his terrific work as Chairman of the Consumer Protection Subcommittee on the Commerce Committee.

As the recent breaches at Citigroup, Sony, and Epsilon have taught us, companies that collect and store sensitive consumer information should have two important obligations: to maintain that information in a manner that is safe and secure; and to notify affected consumers as quickly as possible in the wake of a security breach in order to allow them to take necessary steps to protect themselves. Senator PRYOR's and my bill addresses both of these obligations. Currently, 47 States have data breach notification laws on the books, but very few address how companies should secure their data from the outset to prevent such breaches.

Our bill calls on the Federal Trade Commission to promulgate regulations that direct companies to establish and maintain reasonable protocols to secure consumer data from unauthorized access. In this regard, the bill also has specific provisions addressing data brokers, which are companies that collect and sell massive amounts of information on individuals, largely without their knowledge. The Data Security and Breach Notification Act would allow consumers to access and, if necessary, correct the personal information that these data brokers maintain and sell.

Furthermore, if a security breach occurs, our bill requires companies to notify affected consumers unless there is no reasonable risk of identity theft, fraud or unlawful conduct. This breach notification standard is very important and reflects the most consumer-protective standard in the country. The presumption is that companies should notify consumers of a breach. However, if the breached entity determines that there is no reasonable risk of harm, for instance, if the company has made the data unusable through advanced encryption technology, then they are spared this obligation. The FTC and state Attorneys General are tasked with enforcing the law.

The Commerce Committee has a long, well-established history of addressing data security issues, and the Committee has reported data security bills in past Congresses. As Chairman of the Commerce Committee, I intend to work with Senator PRYOR to enact this bill into law. Majority Leader REID has introduced a cyber-security bill that provides for the inclusion of a data security section, and the Obama Administration has also released a cybersecurity proposal that contains a breach notification provision. The bill that Senator PRYOR and I have introduced is a carefully balanced bill that protects consumers, but also addresses the legitimate needs of business and does not impose needless regulations and obligations. This bill has wide support from both the consumer groups and many sectors in the business community, and I will work with Senator PRYOR to address further concerns in order to garner consensus.

By Mr. WYDEN (for himself, Ms. MURKOWSKI, Mrs. MURRAY, Mr. BEGICH, and Ms. CANTWELL):

S. 1208. A bill to provide an election to terminate certain capital construction funds without penalties; to the Committee on Finance.

Mr. WYDEN. Mr. President, today I am reintroducing a bill to reform the Capital Construction Fund to address major changes in the Nation's fisheries and to allow the Nation's fishers to have access to needed funds to prevent overfishing and to help create jobs.

The Capital Construction Fund, CCF, program was originally developed at a time when American fishers were having a hard time competing with highly efficient foreign fishing vessels, modern boats that often harvested U.S. fishery resources within sight of our own shores. The initial idea behind the CCF Program was to enable U.S. fishers to accumulate the funds necessary to develop a modern fishing fleet by allowing them to deposit a portion of their fishing-related earnings into a CCF savings account on a tax-deferred basis. Under the CCF program, monies subsequently withdrawn from the CCF accounts would remain tax free as long as they were invested in new or rebuilt fishing vessels. At the same time, any unauthorized withdrawals from CCF accounts were subject to severe interest and other penalties.

The program was a success; the CCF program helped the U.S. industry build a modern state-of-the-art fishing fleet. Unfortunately, that fleet has now become overcapitalized, a problem that has been exacerbated as managers have become more and more concerned about potential overfishing and have begun to reduce the amount of fish that they allow fishers to catch each year. As a result, the U.S. commercial fishing fleet now has more harvesting capacity than the U.S. fishery resource can sustainably support. The problem now is that the monies that remain on deposit in CCF accounts represent a potential for further overcapitalization at a time when less capitalization is needed. Yet the CCF regulations currently penalize withdrawals made for anything other than a bigger or better boat.

The issue now is what to do about the money that remains ''stranded'' in existing CCF accounts. Ironically, just as the current generation of fishers is getting ready to retire, the program puts heavy penalties on them if they take money out of their CCF accounts without using it for anything other than to further capitalize an already overcapitalized fleet.

The resulting situation is problematic for the fishers, the industry and the resource. That's why I am reintroducing legislation today along with my colleague Senator MURKOWSKI—to address the problem of stranded capital still on deposit in various CCF accounts and to relieve the pressure to increase further capitalization of the fishing fleet. My legislation will enable CCF fundholders to make a one-time withdrawal from their CCF accounts without requiring them to reinvest it in the fishing industry. Instead, they will be required to pay the taxes due on the monies withdrawn, but without having to pay interest or other penalties on such withdrawals. Those funds would be freed up for other purposes, including starting a new business and finding other ways to support and create jobs. An income-averaging formula would be applied to the withdrawals so as to avoid an excessive tax rate on the one-time withdrawal. The fishers taking advantage of such an opportunity to take money out of their CCF accounts penalty free would then be required to close their CCF accounts and would be prohibited from further participation in the program. This is a win-win-win situation. The fisher gets to take the money out of his CCF without having to pay penalties and interest, but still pays the taxes when due; the government gets taxes on the withdrawals; and the resource and the fishers who remain in the fishery avoid further capitalization of an already overcapitalized industry.

I look forward to working with Senator MURKOWSKI, the fishing community, and the bill's other supporters to advance this legislation to the President's desk.

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. REED, and Mrs. BOXER):

S. 1211. A bill amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President, I rise today to introduce the Preservation of Antibiotics for Medical Treatment Act of 2011.

Introducing this bill today is bittersweet. As my colleagues know, we have been working to pass this bill for almost a decade now. But for all those years it was one of our dearest colleagues, Senator Ted Kennedy, who stood before this body to introduce the legislation.

We certainly miss Senator Kennedy's leadership, his passion, his dedication and his political skill.

But as I stand here today to introduce the Preservation of Antibiotics for Medical Treatment Act, I know that he would be proud to see the continued work and support for this bill.

Today, I am joined by Senator COLLINS, Senator REED of Rhode Island and Senator BOXER as original cosponsors of this legislation.

It is my hope that in this Congress we can make some positive changes in this important area.

Let me start by explaining what the Preservation of Antibiotics for Medical Treatment Act does.

The Preservation of Antibiotics for Medical Treatment Act directs the Food and Drug Administration to regulate the misuse of antibiotics in agriculture. It requires drug companies and producers to demonstrate that they are using antibiotics to treat clinically diagnosable diseases in farm animals. It requires that companies defend the process of adding gross amounts of antibiotics to the feed and water of livestock and it requires them to prove that this practice does not contribute to antibiotic-resistance among humans.

Unfortunately, it has become a common practice in industrial agriculture to use antibiotics for ''growth promotion.'' This practice allows for animals kept in cramped quarters to grow artificially fast, and artificially fat.

The most concerning part is that the low doses of antibiotics fed to these animals breed antibiotic resistant pathogens. These pathogens make their way into our food, our water, and our communities.

Antibiotic resistance is one of the most significant public health challenges facing us today, and numerous peer-reviewed studies have concluded that the overuse of antibiotics in animal agriculture is making the problem worse.

A recent study published in the medical journal Clinical Infectious Diseases found that nearly 50 percent of grocery store meat was contaminated with antibiotic resistant pathogens. Even more concerning, 25 percent of all meat was contaminated with pathogens that were resistant to three or more types of antibiotics.

I have heard for years that antibiotics were the closest thing to a ''silver bullet'' in human medicine. But today, tens of thousands of people in the U.S. die each year from antibiotic resistant infections. So unfortunately we are learning the hard way that these precious, life saving drugs no longer work as well as they once did.

Antibiotic resistance is a real and growing problem, and its causes are man-made.

As our use of antimicrobial drugs has increased, so has the ability of bacteria to withstand their effects. The only way to preserve the effectiveness of antibiotics is to use them responsibly.

In human medicine, this means that doctors must use better discretion when prescribing antibiotics. As patients, we must do our part and finish the prescriptions given to us.

But antibiotics are also used in animal medicine, so veterinarians and farmers must also ensure that antibiotics are used responsibly.

I was surprised to learn that the Union of Concerned Scientists estimates that 84 percent of all antibiotic usage in this country is in animals such as chickens, pigs, and cattle. Even more surprising is the vast majority of antibiotic consumption by livestock is by animals that show no clinical signs of illness.

This type of treatment, referred to by doctors and veterinarians as non-therapeutic, creates the perfect breeding ground for antibiotic resistant bacteria. Unlike therapeutic doses of medicine that are prescribed when we, or any other animal gets sick, non-therapeutic doses of antibiotics are routinely added to the food or water of livestock that are not ill.

These doses are not large enough, or powerful enough, to eliminate all the bacteria inside their bodies. Instead, the small dose of antibiotics only kills off the weakest bacteria; leaving the strongest, most resistant bacteria behind to reproduce.

Recognizing the impending health crisis, some have taken dramatic action. In 1998, Denmark became the first country to ban the routine use of antibiotics in the food and water of livestock. The entire European Union followed suit in 2006. Australia, New Zealand, Chile, Korea, Thailand, the Philippines, and Japan have also implemented full or partial bans on non-therapeutic uses of antibiotics.

But the majority of producers in the U.S. have not followed suit; and it is time for a wakeup call.

That is why I am reintroducing the Preservation of Antibiotics for Medical Treatment Act. This legislation implements a precautionary principle when it comes to using antibiotics and requires that producers and drug companies affirmatively demonstrate that the non-therapeutic antibiotics in livestock production do not contribute to the incidence of antibiotic resistant infections in humans.

Put simply, if growth promoting antibiotics can't be used safely, they shouldn't be used at all.

The real strength of this legislation is that it takes an incremental approach. The new regulations regarding antibiotic use under PAMTA would only apply to the limited number of antibiotics that are critical to human health and are used non-therapeutically.

This means that any drug not used in human medicine is left untouched by this legislation.

PAMTA also preserves the ability of farmers to use all available antibiotics to treat sick animals.

By focusing on only the most egregious misuses of medically important antibiotics, PAMTA tackles the problem of antibiotic resistance where we know we can make the most difference.

I understand that some question the need for this legislation; they say that there is no evidence that antibiotic use in agriculture leads to infections in humans.

Unfortunately they are wrong.

Rear Admiral Ali S. Khan, MD, MPH, Assistant Surgeon General and Director of the Office of Public Health Preparedness and Response at the Centers for Disease Control and Prevention recently testified in front of the House Energy Committee that ''studies related to Salmonella as both a human and animal pathogen, including many studies in the United States, have demonstrated that use of antibiotic agents in food animals results in antibiotic resistant bacteria in food animals, resistant bacteria are present in the food supply and are transmitted to humans, and resistant bacterial infections result in adverse human health consequences, e.g., increased hospitalization.

Doctor Joshua Sharfstein, Principal Deputy Commissioner of the Food and Drug Administration also testified at the hearing and agreed with Rear Admiral Khan. The FDA, he said, ''supports the conclusion that using medically important antimicrobial drugs for production purposes is not in the interest of protecting and promoting the public health.''

Quantitative evidence from the EU and Canada also support these conclusions. In response to public health concerns about the rise of cephalosporin, an antibiotic, resistance in Salmonella and E. coli, chicken hatcheries in Québec voluntarily stopped using the drug in February 2005. Following the ban, the public health agency of Canada reported a dramatic 89 percent decrease in the incidence of resistant salmonella in chicken meat and 77 percent decrease in related human infections. Once the drug was partially reintroduced in 2007, antibiotic resistant infections in people jumped back up 50 percent.

Unfortunately we are fighting an uphill battle with antibiotic resistant infections. Our tools and resources are diminishing even while the number and severity of these infections are increasing.

One example is Methicillin-resistant Staphylococcus aureus, or MRSA. According to the Centers for Disease Control and Prevention, CDC, MRSA infections in 1974 accounted for only two percent of the total number of staph infections; in 1995 it was 22 percent; and by 2004 it was 63 percent.

CDC estimates that by 2005, there were 94,360 MRSA infections in the United States. Tragically, about 19,000 of them, 20 percent, were fatal because MRSA is nearly immune to almost every antibiotic used in modern medicine.

By comparison, in 2005 there were 17,011 deaths due to AIDS; so the scope and consequence of this problem is stunning.

Of course not all MRSA is derived from the overuse of antibiotics on the farm. Many infections are acquired in the hospital, and it is believed that these bacteria became resistant to antibiotics due to the misuse of drugs in human medicine.

But MRSA is also infecting individuals who have not been in a hospital setting.

There is strong evidence that at least one strain of MRSA infecting people is

coming directly from livestock. This strain, known as ST398, has been shown to disproportionately infect farmers and their families. Like all MRSA, ST398 is resistant to the antibiotics methicillin and oxacillin. But resistance to other antibiotics is also common among ST398 strains, which makes treatment especially challenging.

A recent study by the CDC in December 2009 showed that hospital acquired strains of MRSA and community acquired MRSA strains such as ST398 are trending in opposite directions.

The study found that community acquired MRSA, a type of MRSA that did not emerge in the hospital setting and is not contracted there, increased 700 percent between 1999 and 2006.

By contrast, hospital acquired MRSA cases declined roughly 10 percent over this same time period.

Over the past decade, it has become clear that MRSA is not just a problem for hospital administrators. More and more individuals are acquiring this devastating infection in their homes, at their gyms or in restaurants.

While it is exceedingly difficult to determine the exact extent that antibiotic use in agriculture influences individual MRSA cases, we know for certain that statistical evidence overwhelmingly suggests that a reduction of antibiotic use in agriculture will result in a reduction of highly resistant MRSA cases.

Since the Union of Concerned Scientists estimates that as much as 84 percent of all antibiotic usage in this country is in veterinary medicine, one can reasonably conclude that a reduction of antibiotic use in agriculture will result in a reduction of highly resistant MRSA cases.

The reason I am so committed to this legislation is that a reduction in highly resistant infections will save lives. One of my constituents shared a truly heartbreaking story.

The Don family, from Ramona, California, is a tight knit family. They are active in the community, and loved by their neighbors. Until recently, like most happy, healthy families, antibiotic resistant infections just wasn't a subject that came up much.

So when Mr. and Mrs. Don sent their son Carlos off to sixth grade camp in 2007, they never expected that an antibiotic resistant infection would change their lives.

Carlos was the picture of health. He was a bright, vibrant, athletic 12-year old, who loved to play football.

When he returned home from camp, he had a 104 degree fever and could barely walk. It was the sickest his parents had ever seen him.

When Carlos didn't get better the next day, they took him to Urgent Care. He was given a dose of antibiotics that the doctors said would knock the bug out in a few days.

But the drugs didn't work.

The next day Carlos was in even worse shape and he had to be rushed to the hospital by an ambulance. His new doctors put him on every single antibiotic the hospital had to offer.

Even at the extremely high levels prescribed to Carlos, the drugs still didn't work.

It took doctors 48 hours to find and acquire an antibiotic that was strong enough to kill the infection.

By that time Carlos' lungs, kidneys, liver, intestines and heart had all failed.

The only thing left, doctors told his parents, was his brain. The doctors said that Carlos knew his body was failing and that he was in a fight for his life.

It pains me to say that this story does not have a happy ending. Carlos lost his life because the antibiotics that we have relied on for 80 years didn't work.

No parents should ever have to undergo the heartbreak and the tragedy that the Dons went through in 2007.

Their son was as healthy and happy as any 12-year-old could be, but he was cruelly taken away from them because of a disease that we could not fight.

I believe that with this bill we have an opportunity to prevent other families from suffering from this same tragic story.

There are some who believe this legislation may actually make our food supply less safe. Their argument is that antibiotics keep our animals healthy, and healthy animals make for healthy food.

But research shows us that these concerns are misguided. Over 375 public, consumer, and environmental health groups including the American Medical Association, the American Public Health Association, and the Infectious Diseases Society of America, support the legislation because they believe that reducing antibiotic use in agriculture will protect the health and safety of Americans.

It is not just health groups that support this approach. The fact is that farmers and meat producers can keep their animals healthy without adding hundreds of pounds of antibiotics to the food and water of their animals.

In Denmark, one of the world's largest exporters of pork, producers have made modest changes to their husbandry practices and reduced overall antibiotic use by over 50 percent. Pork production has grown, and other animal health indicators such as litter size and average daily weight gain have improved.

In Iowa, hog farmers like Paul Willis and Jude Becker have shown that antibiotic-free production is possible in the heartland of America too.

In California, companies like Niman Ranch in Alameda have proved that Beef, Pork, Poultry and Lamb can be produced profitably in America on a large scale without the routine use of antibiotics. In fact, fast-food chain Chipotle Mexican Grill has grown a highly successful business based on meats raised without antibiotics, much of it supplied by Niman Ranch.

This bipartisan bill makes incremental changes to ensure that our actions on the farm do not negatively impact the health and well being of our farmers, their families, and every one of us who consumes the food they produce.

I look forward to working with my colleagues to pass these critical reforms.

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. 1211

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 ''Preservation of Antibiotics for Medical Treatment Act of 2011''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) In January 2001, a Federal interagency task force—

(A) released an action plan to address the continuing decline in effectiveness of antibiotics against common bacterial infections, referred to as antibiotic resistance;

(B) determined that antibiotic resistance is a growing menace to all people and poses a serious threat to public health; and

(C) cautioned that if current trends continue, treatments for common infections will become increasingly limited and expensive, and, in some cases, nonexistent.

(2) Antibiotic resistance, resulting in a reduced number of effective antibiotics, may significantly impair the ability of the United States to respond to terrorist attacks involving bacterial infections or a large influx of hospitalized patients.

(3)(A) Any overuse or misuse of antibiotics contributes to the spread of antibiotic resistance, whether in human medicine or in agriculture.

(B) Recognizing the public health threat caused by antibiotic resistance, Congress took several steps to curb antibiotic overuse in human medicine through amendments to the Public Health Service Act (42 U.S.C. 201 et seq.) made by section 102 of the Public Health Threats and Emergencies Act (Public Law 106–505, title I; 114 Stat. 2315), but has not yet addressed antibiotic overuse in agriculture.

(4) In a March 2003 report, the National Academy of Sciences stated that—

(A) a decrease in antimicrobial use in human medicine alone will have little effect on the current situation; and

(B) substantial efforts must be made to decrease inappropriate overuse in animals and agriculture.

(5) In 2010, the FDA determined that—

(A) 1,300,000 kilograms of antibacterial drugs were sold for use on food animals in the United States in 2009;

(B) 3,300,000 kilograms of antibacterial drugs were used for human health in 2009; and

(C) therefore, 80 percent of antibacterial drugs disseminated in the United States in 2009 were sold for use on food animals, rather than being used for human health.

(6)(A) Large-scale, voluntary surveys by the Department of Agriculture's Animal and Plant Health Inspection Service in 1999, 2001, and 2006 revealed that—

(i) 84 percent of grower-finisher swine farms, 83 percent of cattle feedlots, and 84 percent of sheep farms administer

antimicrobials in the feed or water for health or growth promotion reasons; and

(ii) many of the antimicrobials identified are identical or closely related to drugs used in human medicine, including tetracyclines, macrolides, Bacitracin, penicillins, and sulfonamides; and

(B) these drugs are used in people to treat serious diseases such as pneumonia, scarlet fever, rheumatic fever, venereal disease, skin infections, and even pandemics like malaria and plague, as well as bioterrorism agents like smallpox and anthrax.

(7) Many scientific studies confirm that the nontherapeutic use of antibiotics in agricultural animals contributes to the development of antibiotic-resistant bacterial infections in people.

(8) The periodical entitled ''Clinical Infectious Diseases'' published a report in June 2002, that—

(A) was based on a 2-year review by experts in human and veterinary medicine, public health, microbiology, biostatistics, and risk analysis, of more than 500 scientific studies on the human health impacts of antimicrobial use in agriculture; and

(B) recommended that antimicrobial agents should no longer be used in agriculture in the absence of disease, but should be limited to therapy for diseased individual animals and prophylaxis when disease is documented in a herd or flock.

(9) The United States Geological Survey reported in March 2002 that—

(A) antibiotics were present in 48 percent of the streams tested nationwide; and

(B) almost half of the tested streams were downstream from agricultural operations.

(10) An April 1999 study by the General Accounting Office concluded that resistant strains of 3 microorganisms that cause foodborne illness or disease in humans (Salmonella, Campylobacter, and E. coli) are linked to the use of antibiotics in animals.

(11) Epidemiological research has shown that resistant Salmonella and Campylobacter infections are associated with increased numbers of ill patients and bloodstream infections, and increased death.

(12) In 2010, the peer-reviewed journal Molecular Cell published a study demonstrating that low-dosage use of antibiotics causes a dramatic increase in genetic mutation, raising new concerns about the agricultural practice of using low-dosage antibiotics in order to stimulate growth promotion and routinely prevent disease in unhealthy conditions.

(13)(A) In January 2003, Consumer Reports published test results on poultry products bought in grocery stores nationwide showing disturbingly high levels of Campylobacter and Salmonella bacteria that were resistant to the antibiotics used to treat food-borne illnesses.

(B) The Food and Drug Administration's National Antimicrobial Resistance Monitoring System routinely finds that retail meat products are contaminated with bacteria (including the foodborne pathogens Campylobacter and Salmonella) that are resistant to antibiotics important in human medicine.

(C) In December 2007, the USDA issued a fact sheet on the recently recognized link between antimicrobial drug use in animals and Methicillin Resistant Staphylococcus Aureas (MRSA) infections in humans.

(14) In October 2001, the New England Journal of Medicine published an editorial urging a ban on nontherapeutic use of medically important antibiotics in animals.

(15)(A) In 1998, the National Academy of Sciences noted that antibiotic-resistant bacteria generate a minimum of $4,000,000,000 to $5,000,000,000 in costs to United States society and individuals yearly.

(B) In 2009, Cook County Hospital and the Alliance for Prudent Use of Antibiotics estimated that the total health care cost of antibiotic resistant infections in the United States was between $16,600,000,000 and $26,000,000,000 annually.

(16) The American Medical Association, the American Public Health Association, the National Association of County and City Health Officials, and the National Campaign for Sustainable Agriculture are among the more than 300 organizations representing health, consumer, agricultural, environmental, humane, and other interests that have supported enactment of legislation to phase out nontherapeutic use in farm animals of medically important antibiotics.

(17) In 2010, the Danish Veterinary and Food Administration testified that the Danish ban of the non-therapeutic use of antibiotics in food animal production resulted in a marked reduction in antimicrobial resistance in multiple bacterial species, including Campylobacter and Enterococci.

(18) In 2009, the Congressional Research Service concluded that restrictions overseas on the use of antimicrobial drugs in the production of livestock could impact U.S. export markets for livestock and poultry.

(19) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.)—

(A) requires that all drugs be shown to be safe before the drugs are approved; and

(B) places the burden on manufacturers to account for health consequences and prove safety.

(20)(A) The Food and Drug Administration recently modified the drug approval process for antibiotics to recognize the development of resistant bacteria as an important aspect of safety, but most antibiotics currently used in animal production systems for nontherapeutic purposes were approved before the Food and Drug Administration began considering resistance during the drug-approval process.

(B) The Food and Drug Administration has not established a schedule for reviewing those existing approvals.

(21) Certain non-routine uses of antibiotics in animal agriculture are legitimate to prevent animal disease.

(22) An April 2004 study by the General Accounting Office—

(A) concluded that Federal agencies do not collect the critical data on antibiotic use in animals that they need to support research on human health risks; and

(B) recommends that the Department of Agriculture and the Department of Health and Human Services develop and implement a plan to collect data on antibiotic use in animals.

SEC. 3. PURPOSE.

The purpose of this Act is to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases by reviewing the safety of certain antibiotics for nontherapeutic purposes in food-producing animals.

SEC. 4. PROOF OF SAFETY OF CRITICAL ANTIMICROBIAL ANIMAL DRUGS.

(a) DEFINITIONS.—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(ss) CRITICAL ANTIMICROBIAL ANIMAL DRUG.—The term 'critical antimicrobial animal drug' means a drug that—

''(1) is intended for use in food-producing animals; and

''(2) is composed wholly or partly of—

''(A) any kind of penicillin, tetracycline, macrolide, lincosamide, streptogramin, aminoglycoside, or sulfonamide; or

''(B) any other drug or derivative of a drug that is used in humans or intended for use in humans to treat or prevent disease or infection caused by microorganisms.

''(tt) NONTHERAPEUTIC USE.—The term 'nontherapeutic use', with respect to a critical antimicrobial animal drug, means any use of the drug as a feed or water additive for an animal in the absence of any clinical sign of disease in the animal for growth promotion, feed efficiency, weight gain, routine disease prevention, or other routine purpose.''.

(b) APPLICATIONS PENDING OR SUBMITTED AFTER ENACTMENT.—Section 512(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(d)(1)) is amended—

(1) in the first sentence—

(A) in subparagraph (H), by striking ''or'' at the end;

(B) in subparagraph (I), by inserting ''or'' at the end; and

(C) by inserting after subparagraph (I) the following:

''(J) with respect to a critical antimicrobial animal drug or a drug of the same chemical class as a critical antimicrobial animal drug, the applicant has failed to demonstrate that there is a reasonable certainty of no harm to human health due to the development of antimicrobial resistance that is attributable, in whole or in part, to the nontherapeutic use of the drug;''; and

(2) in the second sentence, by striking ''(A) through (I)'' and inserting ''(A) through (J)''.

(c) PHASED ELIMINATION OF NONTHERAPEUTIC USE IN ANIMALS OF CRITICAL ANTIMICROBIAL ANIMAL DRUGS IMPORTANT FOR HUMAN HEALTH.—Section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b) is amended by adding at the end the following:

''(q) PHASED ELIMINATION OF NONTHERAPEUTIC USE IN ANIMALS OF CRITICAL ANTIMICROBIAL ANIMAL DRUGS IMPORTANT FOR HUMAN HEALTH.—

''(1) APPLICABILITY.—This subsection applies to the nontherapeutic use in a food-producing animal of a drug—

''(A)(i) that is a critical antimicrobial animal drug; or

''(ii) that is of the same chemical class as a critical antimicrobial animal drug; and

''(B)(i) for which there is in effect an approval of an application or an exemption under subsection (b), (i), or (j) of section 505; or

''(ii) that is otherwise marketed for use.

''(2) WITHDRAWAL.—The Secretary shall withdraw the approval of a nontherapeutic use in food-producing animals described in paragraph (1) on the date that is 2 years after the date of enactment of this subsection unless—

''(A) before the date that is 2 years after the date of the enactment of this subsection, the Secretary makes a final written determination that the holder of the approved application has demonstrated that there is a reasonable certainty of no harm to human health due to the development of antimicrobial resistance that is attributable in whole or in part to the nontherapeutic use of the drug; or

''(B) before the date specified in subparagraph (A), the Secretary makes a final written determination, with respect to a risk analysis of the drug conducted by the Secretary and other relevant information, that there is a reasonable certainty of no harm to human health due to the development of antimicrobial resistance that is attributable in whole or in part to the nontherapeutic use of the drug.

''(3) EXEMPTIONS.—Except as provided in paragraph (5), if the Secretary grants an exemption under section 505(i) for a drug that is a critical antimicrobial animal drug, the Secretary shall rescind each approval of a

nontherapeutic use in a food-producing animal of the critical antimicrobial animal drug, or of a drug in the same chemical class as the critical antimicrobial animal drug, as of the date that is 2 years after the date on which the Secretary grants the exemption.

''(4) APPROVALS.—Except as provided in paragraph (5), if an application for a drug that is a critical antimicrobial animal drug is submitted to the Secretary under section 505(b), the Secretary shall rescind each approval of a nontherapeutic use in a food-producing animal of the critical antimicrobial animal drug, or of a drug in the same chemical class as the critical antimicrobial animal drug, as of the date that is 2 years after the date on which the application is submitted to the Secretary.

''(5) EXCEPTION.—Paragraph (3) or (4), as the case may be, shall not apply if—

''(A) before the date on which approval would be rescinded under that paragraph, the Secretary makes a final written determination that the holder of the application for the approved nontherapeutic use has demonstrated that there is a reasonable certainty of no harm to human health due to the development of antimicrobial resistance that is attributable in whole or in part to the nontherapeutic use in the food-producing animal of the critical antimicrobial animal drug; or

''(B) before the date specified in subparagraph (A), the Secretary makes a final written determination, with respect to a risk analysis of the critical antimicrobial animal drug conducted by the Secretary and any other relevant information, that there is a reasonable certainty of no harm to human health due to the development of antimicrobial resistance that is attributable in whole or in part to the nontherapeutic use of the drug.''.

SEC. 5. COMMITTEE HEARINGS ON IMPLEMENTATION.

(a) IN GENERAL.—The Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate shall each hold a hearing on the implementation by the Commissioner of Food and Drugs of section 512(q) of the Federal Food, Drug, and Cosmetic Act, as added by section 4 of this Act.

(b) EXERCISE OF RULEMAKING AUTHORITY.—Subsection (a) is enacted—

(1) as an exercise of the rulemaking power of the House of Representatives and Senate, and, as such, they shall be considered as part of the rules of the House or Senate (as the case may be), and such rules shall supersede any other rule of the House or Senate only to the extent that rule is inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 208—EXPRESSING THE SENSE OF THE SENATE REGARDING MONGOLIAN PRESIDENT TSAKHIAGIIN ELBEGDORJ'S VISIT TO WASHINGTON, D.C., AND ITS SUPPORT FOR THE GROWING PARTNERSHIP BETWEEN THE UNITED STATES AND MONGOLIA

Mr. KERRY (for himself, Mr. MCCAIN, Ms. MURKOWSKI, and Mr. WEBB) submitted the following resolution; which was considered and agreed to:

S. RES. 208

Whereas the United States Government established diplomatic relations with the Government of Mongolia in January 1987, followed by the opening of a United States Embassy in Ulaanbaatar in June 1988;

Whereas in 1990, the Government of Mongolia declared an end to 1-party Communist rule and initiated lasting democratic and free market reforms;

Whereas the United States Government has a longstanding commitment, based on its interests and values, to encourage economic and political reforms in Mongolia, having made sizeable contributions to that end since 1991;

Whereas in 1991, the United States—

(1) signed a bilateral trade agreement that restored normal trade relations with Mongolia; and

(2) established a Peace Corps program in Mongolia that has had 869 total volunteers since 1991;

Whereas in 1999, the United States granted permanent normal trade relations status to Mongolia;

Whereas the Government of Mongolia has increasingly participated in the International Monetary Fund, the World Bank, the Asian Development Bank, and the European Bank for Reconstruction and Development, among other international organizations;

Whereas in 2007, the House Democracy Partnership began a program to provide parliamentary assistance to the State Great Khural, the Parliament of Mongolia, to promote transparency, legislative independence, access to information and government oversight;

Whereas on May 24, 2009, the people of Mongolia completed the country's fourth free, fair, and peaceful democratic election, which resulted in the election of opposition Democratic Party candidate Tsakhiagiin Elbegdorj;

Whereas in July 2011, Mongolia will assume the 2-year chairmanship of the Community of Democracies;

Whereas in 2013, Mongolia will host the Seventh Ministerial Meeting of the Community of Democracies in Ulaanbaatar;

Whereas the Government of Mongolia continues to work with the United States Government to combat global terrorism;

Whereas Mongolia deployed about 990 soldiers to Iraq between 2003 to 2008 and currently has 190 troops in Afghanistan;

Whereas in 2010, the Government of Mongolia deployed a United Nations Level II hospital in Darfur, Sudan;

Whereas the Government of Mongolia has actively promoted international peacekeeping efforts by sending soldiers—

(1) to protect the Special Court of Sierra Leone;

(2) to support the North Atlantic Treaty Organization mission in Kosovo; and

(3) to support United Nations missions in several African countries;

Whereas the Government of Mongolia has built a successful partnership since 2003 with the Alaska National Guard that includes humanitarian and peacekeeping exercises and efforts;

Whereas the United States Government and the Government of Mongolia share a common interest in promoting peace and stability in Northeast Asia and Central Asia;

Whereas in 1991 and 1992, the Government of Mongolia signed denuclearization agreements committing Mongolia to remain a nuclear weapons-free state;

Whereas in 2010, Mongolia became the Chair of the Board of Governors of the International Atomic Energy Agency;

Whereas in 2010, the United States and Mongolia signed a Memorandum of Understanding to promote cooperation on the peaceful use of civil nuclear energy;

Whereas the National Nuclear Security Administration and the Nuclear Energy Agency of the Government of Mongolia successfully completed training on response mechanisms to potential terrorist attacks;

Whereas between 1991 and 2011, the United States Government granted assistance to Mongolia—

(1) to advance the legal and regulatory environment for business and financial markets, including the mining sector;

(2) to promote the reduction of greenhouse gas emissions; and

(3) to support good governance programming;

Whereas in 2007, the Millennium Challenge Corporation signed an agreement with Mongolia to promote sustainable economic growth and to reduce poverty by focusing on property rights, vocational education, health, transportation, energy, and the environment;

Whereas Mongolia's plan to enhance its rail infrastructure promises to diversify its trading and investment partners, to open up new markets for its mineral exports, and to position Mongolia as a bridge between Asia and Europe;

Whereas the United States has assisted Mongolia's efforts—

(1) to address the effects of the global economic crisis;

(2) to promote sound economic, trade, and energy policy, with particular attention to the banking and mining sectors;

(3) to facilitate commercial law development; and

(4) to further activities with Mongolia's peacekeeping forces and military;

Whereas in January 2010—

(1) the United States Government and the Government of Mongolia agreed to promote greater academic exchange opportunities;

(2) the Mongolian Ministry of Education, Culture and Science pledged to financially support the U.S.-Mongolia Fulbright Program; and

(3) the United States Department of State announced its intention to increase its base allocation for the U.S.-Mongolia Fulbright Program in fiscal year 2010;

Whereas in 2011, Mongolia is celebrating the 100 year anniversary of its independence;

Whereas on June 16, 2011, President Elbegdorj, during a working visit to the United States, is scheduled to meet with President Barack Obama, Congressional leaders, academics, and representatives of the business community;

Whereas in late 2011, Vice President Joseph Biden is scheduled to travel to Mongolia to highlight our shared interests and values;

Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) Mongolian President Tsakhiagiin Elbegdorj's historic visit to Washington, D.C. cements the growing friendship between the governments and peoples of the United States and Mongolia;

(2) the continued commitment of the Mongolian people and the Government of Mongolia to advancing democratic reforms, strengthening transparency and the rule of law, and protecting investment deserves acknowledgment and celebration;

(3) the United States Government should—

(A) continue to promote economic cooperation; and

(B) consider next steps in securing increased investment and trade to promote prosperity for both countries;

(4) the United States Government should continue to support the Government of Mongolia as it works with the International