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# Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable SAM BROWNBACK, a Senator from the State of Kansas.

## PRAYER

The guest Chaplain, Bishop Sharon A. Brown Christopher, United Methodist Church of Illinois, offered the following prayer:

Let us pray.

O God, our foundation that anchors us in stormy times, our hope when all doors seem to close around us, and our light that awakens within us courage to move compassionately toward our neighbor, we give You thanks for Your abiding presence in our lives.

Amid the complexities and anxieties of these days, we ask that You open our ears to hear with clarity the cries of Your human family, especially the children. Open our eyes to see Your vision of life's unity in rich diversity. Open our hearts so that we may in our actions transcend all that keeps us from living lives of generosity, trusting and following You, the source of all life.

May our work today and every day reflect Your intentions for our world. We pray this in Your name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, November 5, 2003.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable SAM BROWNBACK, a Senator from the State of Kansas, to perform the duties of the Chair.

TED STEVENS,
*President pro tempore.*

Mr. BROWNBACK thereupon assumed the Chair as Acting President pro tempore.

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

## MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for 60 minutes, with the first 30 minutes under the control of the Senator from Kansas, Mr. ROBERTS, or his designee, and the second 30 minutes under the control of the Democratic leader, or his designee.

The Senator from Nevada is recognized.

Mr. REID. Mr. President, so that Democratic Senators will have some knowledge of what is going to happen in the time we have, we have three Senators who have asked to speak—Senators AKAKA, HARKIN, and BEN NELSON. That should use up our 30 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized.

## SCHEDULE

Mr. ROBERTS. Mr. President, as the Acting President pro tempore has indicated, there will be 60 minutes of morning business. Following that, the Senate will begin the consideration of H.R. 2673, the Agriculture appropriations bill. It is the majority leader's intention to complete action on that measure during today's session. The Senate will begin working through amendments to the bill this morning. Senators who have amendments are asked to contact the bill managers as soon as possible.



● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

In addition to the Agriculture appropriations bill, the Senate will also vote on passage of S. 1753, the Fair Credit Reporting legislation.

We also have a short time agreement for the consideration of H.R. 1828, the Syria accountability bill. It is the leader's intention to complete action on this bill today as well.

I inform my colleagues, on behalf of the leader, that it will be a very busy day and rollcall votes will occur throughout the day.

It is my understanding that during morning business I have 30 minutes of time.

The ACTING PRESIDENT pro tempore. The Senator is correct.

The Senator is recognized for up to 30 minutes.

Mr. ROBERTS. I yield 5 minutes to the distinguished Senator from Georgia.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized.

## SENATE INTELLIGENCE COMMITTEE

Mr. CHAMBLISS. Mr. President, I thank the Senator from Kansas for conducting this time for morning business.

I rise in a very different mood today—different from any other mood I have been in since I had the privilege of becoming a Member of this body. I had the privilege of serving for 8 years in the House of Representatives, and now for a year in my first term in the Senate. During my last 2 years in the House, I served on the House Intelligence Committee. For the past year now, I have served on the Senate Intelligence Committee, under the strong leadership of the Senator from Kansas, Senator ROBERTS, as well as his vice chairman, Senator ROCKEFELLER of West Virginia. We operate in a very bipartisan way in both the House and Senate Intelligence Committees.

I was privileged to serve alongside of the now-ranking member of the House Intelligence Committee in conducting a very thorough and detailed review of the intelligence community leading up to September 11 and particularly concluding with a report detailing the failures in the intelligence community leading up to September 11, 2001. All of this oversight work has been done in a very bipartisan way since I have been in the Senate. Again, we have operated within the Intelligence Committee in a very bipartisan way. We can have our differences, and we have had them; but it has been a very healthy debate up to this point in time.

Unfortunately, yesterday, the Republicans on the Senate side of the Intelligence Committee came into possession of a two-page memorandum that details a systematic way in which the other side of the aisle intends to undermine and attack the President of the United States on the intelligence information not only leading up to the conflict in Iraq, but also moving beyond that, into the policy area—again, trying to undermine the policy of the President of the United States with respect to the conflict in Iraq.

This is a different road than the Intelligence Committees on the House and Senate sides have been down before. It is not the kind of road an Intelligence Committee should be traveling down. I rise to say that I don't know where this memo came from. I have seen a copy of it. I don't know whether it was staff driven or member driven. I have great respect for the members of the Intelligence Committee on both sides of the aisle, and I don't think anyone on the other side of the aisle would intentionally try to undermine the operation of our troops in Iraq today. Yet, as I looked at this memorandum and read through it, there was a very clear and definite outline of undermining the policy of the President of the United States, the Department of Defense, the intelligence community, and anybody involved in the current conflict with Iraq.

If that particular outline were followed, it would be devastating not only to this body—the bipartisan integrity of this body—but it would have the potential effect of truly undermining the operation in Iraq.

I hope my colleagues on the other side of the aisle will rethink the position if it is one in which they are moving toward. I hope they will certainly disavow any knowledge of the position or intent to undermine the operation in Iraq from an intelligence or oversight standpoint within the Senate Intelligence Committee with respect to a report we are going to be concluding and preparing within a matter of days or weeks.

I truly hope we can move forward in a positive way, with a strong, positive attitude toward ensuring the operation in Iraq is concluded in a satisfactory manner, and that the intelligence community can move forward knowing they have the support, in a bipartisan way, of the Senate Intelligence Committee, and the matter-of-fact ideas and plans laid out in this memorandum will certainly not be carried out.

I thank the chairman for his leadership and position on this. I yield the floor.

Mr. ROBERTS. Mr. President, I yield 10 minutes to the Senator from Missouri, Senator BOND.

Mr. BOND. Mr. President, I thank the chairman of the Intelligence Committee, who I believe is doing a very fine job under very difficult circumstances, leading a bipartisan inquiry, which is the legitimate scope of the Intelligence Committee on how we can improve our intelligence system.

When we are fighting the battle against terrorism, there is no question that intelligence is the coin of the realm. There is no way we can deter terrorist attacks by threatening to retaliate or administer retributive justice to those who make terrorist strikes against us. When you are dealing with suicide bombers, there is not going to be anything left for us to retaliate against or take retribution against.

Finding the holes in our intelligence system, and how we can do a better job, is a major challenge. I joined the Intelligence Committee this year because I realized how important it is to the future of peace and security in the world and to our own security. I know from personal experience that we and our staffs—and particularly our staffs—have been engaged in an exhaustive examination of what the intelligence was prior to declaring Operation Iraqi Freedom. This was a major effort.

As those in the Chamber may know, I have supported the President. I supported the Iraqi supplemental, and I thank our colleagues for passing that bill to defend our troops and also to make sure we build Iraq so we can move our troops out.

But when the revelation came out yesterday of a memorandum apparently from Democratic staff, minority staff on the Intelligence Committee, indicating there was a different agenda, I was very much concerned. The key element in the Intelligence Committee, unlike any other committee, is that we have to do our work in confidence. We have to be able to maintain the confidence of the intelligence community that comes before us. We must protect intelligence sources, and we cannot get engaged in partisan battles.

Yet the memorandum that came out yesterday has such interesting quotes such as:

> Pull the majority along as far as we can on issues that may lead to major new disclosures regarding improper or questionable conduct by administration officials.

They are not looking at the Intelligence Committee; they are looking at the administration. They say:

> We need to look at activities of the Office of the Secretary of Defense and the State Department.

They talk about preparing additional views. And they say:

> Among other things, we will castigate the majority for seeking to limit the scope of the inquiry.

They talk about an independent investigation, and they say:

> We can pull the trigger on an independent investigation on the administration's use of intelligence at any time.

When you talk about what goes on and how intelligence is used, that is a topic of debate in the political realm, and there is no shortage of that debate in particularly the Democratic primaries right now. We see many of the candidates who are arguing very forcefully about it. I am disappointed that the discussion in the Presidential primary has totally ignored or forgotten the old adage that politics stops at the water's edge; that we should not be getting into political battles when we have troops in harm's way, and there is no question we have troops in harm's way.

It appears this memo suggests there is, at least at the staff level, a Democratic game plan to make the Intelligence Committee a focal point for the 2004 Presidential debates. This memorandum said:

Yet, we have an important role to play in revealing the misleading, if not flagrantly dishonest, methods and motives of the senior administration officials who made the case for a unilaterally preemptive war.

Those are pretty harsh words. Those are the words of a political attack.

Unfortunately, it is not just the staff who has been talking about them. There is an article in the Sunday Telegraph of London quoting a Democratic member of the Intelligence Committee:

We want to know whether the administration put pressure on the agencies to come up with certain kinds of information. It's a question that's been explored at great length in Britain. If the Republican leadership of the Senate Intelligence Committee is determined to protect the administration at any cost, we'll do the investigative job on our own.

I can assure you that this inquiry goes into every area that we can find in the intelligence operation, in many intelligence agencies, how that information is developed. There are suggestions that there is improper influence. This is something we are exploring assiduously. The committee staff has interviewed many members of the Intelligence Committee, anybody who might have information. They have been asked: Were they pressured? Was the information tainted or changed or pressured? And absolutely not. If there is evidence of pressure, that will undoubtedly be included in the chairman and vice chairman's report.

Moreover, I tell you regrettably, it will be leaked almost immediately because the committee has a tendency right now to leak like a sieve. There was one person who said he had a problem, and I turned to my colleague on the Intelligence Committee and said: Let's take bets on how long before it is on the national news wire. It was less than an hour. It turns out that the analyst did not have any problem with the intelligence related to the operations of Iraq, but it came out immediately.

The question that is being raised that some of our Democratic colleagues want to address in the Intelligence Committee is: Can we find a way to undercut the President, the Vice President and the administration? That, I submit, is not the role of the Intelligence Committee. The Intelligence Committee has a very important responsibility. We need to determine how to improve our intelligence system to win the war on terrorism, not to win the war for the White House.

What is the job of the Intelligence Committee? Is it to determine and argue with the policy or is it to find out if the intelligence-gathering information is appropriate? The people in the intelligence community have to deal with information that is fragmentary. We criticized them as a result of 9/11 for not having connected all the dots and come together to forecast and perhaps forestall the attacks of 9/11. Now we are saying they didn't have enough information, but this information has been available and has been supplied by the Intelligence Committee for some time.

I quote a statement by the President. The President said:

Heavy as they are, the cost of action must be weighed against the price of inaction. If Saddam defies the world and we fail to respond, we will face a far greater threat in the future. Saddam will strike again at his neighbors. He will make war on his own people. And mark my words, he will develop weapons of mass destruction, he will deploy them, and he will use them.

Those are the words of the President talking about intelligence that he received. And by the way, that was a speech on December 16, 1998, by President Bill Clinton. That was based on the information he was receiving at the time.

If that intelligence was grossly inaccurate or inadequate, then we in the Intelligence Committee need to fix it. I happen to think there were some major mistakes made 7 or 8 years ago in the intelligence community when they decided to restrict severely the number of human intelligence sources they could use by refusing to take intelligence sources from people who didn't meet the highest moral and ethical standards. Frankly, those people often don't deal with terrorists and provide us the information we need.

We need to do a better job. We are making improvements in intelligence, but I don't think anybody will say we have an intelligence system that is as good as it should be. I can tell you, the battle over how intelligence is used is a broader political battle.

Leaving aside the question of whether it should be carried on while we have troops in harm's way in Iraq, it is not a question, in any case, to be fought out in the Intelligence Committee by trying to change or develop information that is not there.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. BOND. I thank the Chair, and I urge our colleagues to remember that the battle of the Intelligence Committee is to win the war against terrorism, not to win the White House.

Mr. ROBERTS. Mr. President, how much time do we have remaining?

The ACTING PRESIDENT pro tempore. The Senator retains 15 minutes.

Mr. ROBERTS. I yield 5 minutes to the distinguished Senator from Arizona.

The ACTING PRESIDENT pro tempore. The Senator from Arizona is recognized for up to 5 minutes.

Mr. KYL. Mr. President, I thank the distinguished chairman of the Intelligence Committee and applaud him for the work he has been doing and commiserate with him today. Having served on that committee for 8 years, I know how difficult it is to keep focused on the important intelligence issues that confront our country, especially in this time of war, and do that in a way that maintains the traditional bipartisan relationship that has heretofore characterized the members of the Intelligence Committee.

Having served there for 8 years, I never saw the kind of blatant, partisan politics emerge that has apparently emerged as revealed in this memorandum that has been discussed this morning. It is a disgusting possibility that Members of the Senate would actually try to politicize intelligence, especially at a time of war, even apparently reaching conclusions before investigations have been performed.

This memo refers to the fact that, for example, if we carry this plan out that has been discussed already, we will identify additional views and castigate—well, I will quote it exactly:

Our additional views will, among other things, castigate the majority for seeking to limit the scope of the inquiry.

In other words, before something is even done, the plan has already been devised about how they are going to criticize the majority about something it has not even done yet. This is blatant partisan politics.

Now, our Democratic colleagues have denied that this memorandum represents their plan. One of two things is true. It either is or it is not. If it is, it is reprehensible. If it is not, there is a sure way to prove it and that is to repudiate the memorandum and to ensure that this plan of action is never carried out. So we shall see.

Are the denials of the Democrats going to result in this plan being repudiated and not carried out? That will be the test of whether this is really the plan of the Democrats.

I note that parts of the plan appear already to have been set in motion. The first item of the plan:

Pull the majority along as far as we can on issues that may lead to new disclosures. . . . We are having some success in that regard.

I mean, this is being done. This is not a plan that somebody had, an idea that is out in the future someplace. It is part of what is currently a Democratic process in the committee.

Secondly, the suggestion that there should be an independent commission, well, while there is some confusion in the memo about when to ''pull the trigger'' on that, the ranking member on the committee has already called for an independent commission. So there appears to be some elements of a plan that are already in play, but I am willing to accept the denials of my Democratic colleagues that this represents their proposed course of action. As I said, the sure way to prove that is for them to repudiate it and to ensure that, in fact, that plan does not go forward.

I note one other thing. There is much in this memo that deals with how the Republican position will be characterized. We are talking about a Republican Senate position. I urge my Democratic colleagues to consider this. It is

unethical and improper under the rules of the Senate to characterize the motives of fellow Senators. We all know that. We do not do that. That begins the breakdown of the comity that must exist in this body.

I do not question my colleagues' motives and clearly they should not question mine, but there is an opportunity in this memorandum for questioning motives. I want to bring this to the attention of people because clearly this should not be a part of anything we do in this body.

In the summary, the memorandum itself says:

> Yet we have an important role to play in revealing the misleading, if not flagrantly dishonest, methods and motives of senior administration officials who made the case for unilateral preemptive war.

I think it may be inappropriate to question the motives of senior administration officials, as well as Senators. In any event, as I say, there is much in here that goes to the questioning of the report that they presume will be prepared by the majority. That would be a breach of ethics, and I urge my colleagues to strongly consider what that would result in and to repudiate this memorandum because of language like that.

We do not need more reviews. We have already had the review that was conducted when I was on the Intelligence Committee that resulted in a lengthy report. The Kean Commission is doing its work right now; and, third, we have the Intelligence Committee doing its work. So I think that enough review has occurred. We certainly should not let partisan politics intrude into the important work of the Intelligence Committee.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. ROBERTS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Kansas retains 10 minutes.

Mr. ROBERTS. I yield 4 minutes to the distinguished Senator from Mississippi.

Mr. LOTT. Mr. President, I thank the distinguished chairman of the Intelligence Committee for yielding me this time. I will adhere to the 4 minutes because I know that he wants to wrap this up, too.

First, I want to thank the chairman for his diligence in trying to make sure the Intelligence Committee does its job and does its job in a nonpartisan, bipartisan way. I went on the Intelligence Committee this year because I believe it was one of the most important committees in the Senate. I like the fact that while the committee's work is always difficult, the committee worked together in a bipartisan way and has not become a political tool.

I have also expressed myself that I am concerned about the intelligence that we have received before going into Iraq, and the intelligence that is available even today. So I am not one who is going around trying to make excuses for the intelligence community. But my approach is different. I think we need to find out where our problems are, where we need more assistance, and how we can do a better job in the future.

It should not be about the blame game. It should not be about politics. It should not be about trying to find a way to blame it on the President or the Vice President or anybody else, even though obviously there will be some criticism directed at one place or another. The thing we need to do is to make sure we have the intelligence that our officials need and our military men and women need, and that should be the focus.

This memorandum outlines a political plan of attack in the Intelligence Committee. Our adversaries around the world must be smiling this morning. They must be enjoying watching us fight among ourselves instead of focusing on doing what we need to do to get the kind of intelligence we require to do the job against the terrorists around the world. This memorandum is a very sad commentary. While I am not quite sure of its origin, whether it was written by a particular Senator or by a staff member at the direction of a Senator, it clearly is something that a Democrat staff member, working with some members of the Intelligence Committee, drafted.

When you start talking about castigating the majority or pulling the trigger on an independent investigation, or an independent commission, the Senate voted on that just a week ago and overwhelmingly defeated the idea that we kick the football over to somebody else, let somebody else do our job. I say we should do our job, do it here, and do it in a constructive, aggressive, nonpartisan, bipartisan way.

This is a very debilitating thing that we have seen. One might say, well, maybe we are protesting too much, that this does not necessarily reflect all of the Democrat members of the Intelligence Committee. But already the London Telegraph in London is quoting Democrats in the Senate Intelligence Committee using some of the exact words in the memorandum.

> We want to know whether the administration put pressure on the agencies to come up with certain kinds of information.
>
> If the Republican leadership of the Senate Intelligence Committee is determined to protect the administration at any cost . . .

I have watched the chairman aggressively pursue information and insist that the administration provide information to this committee. We have not been shrinking violets. We are doing our job.

To have this attack plan come out and make it totally political is one of the most disquieting things I have seen in recent months in the Senate. We should not proceed in this way. I hope the Democrats will disavow this whole approach and say that is not their political plan, that is not their intent. The alternative is chaos in the committee that is so critical to making sure we have what we need in terms of intelligence.

Just this week I proposed that we make the membership permanent on the Senate Intelligence Committee. I know there has been an argument that permanent membership on the committee could impact objectivity, but what I want are members who are experienced enough to do the job.

I thank the chairman for yielding me this time, and I am looking forward to hearing Democrats assure us that this is not what is going on.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator's time has expired.

Mr. ROBERTS. How much time do I have remaining?

The PRESIDING OFFICER. Five and a half minutes.

Mr. ROBERTS. Mr. President, as members of the Senate Intelligence Committee are well aware, we have spent almost 6 months pouring over thousands of documents that are related to Iraq's weapons of mass destruction programs and its ties to terrorism. We have interviewed over 100 people. This is probably the most thorough and complete review of intelligence that has ever been conducted, and the committee's process is completely open and transparent to Members on both sides of the aisle.

All staff involved certainly participate on an equal basis. I have worked to ensure the minority's voice has been heard at all times. There should be no legitimate question as to our approach or our dedication to following the information no matter where it leads. I have said that over and over. We have asked the hard questions.

When the inquiry is complete, I believe strongly the facts will speak for themselves. Yet despite all efforts to handle this review in the most professional and bipartisan way, we have learned of an effort to develop a plan to discredit the committee's work, undermine its conclusions, no matter what those conclusions may be.

Our goal is to discover the facts, not to target any individuals or to serve any agenda. We want to know that the assessments reached by the intelligence community were based on sound intelligence and that the policymakers, including the President and the Congress, got the best information possible.

I have been asked, Where do we go from here? The answer is simple: We go back to work. We build a bridge and go back to work. We have a number of documents yet to review. We have a handful of interviews yet to conduct. Then we will begin the process of drafting a committee report and preparing for public hearings. It is critical that all of this take place in an atmosphere of good faith and mutual trust. Secret plans to undermine the committee's work are examples of neither. I urge my friends across the aisle, those members of the committee, to disavow—and

if that word is too strong, just to say not to go down this path of a strategy of attack, and join us to work together to complete the business of the committee. The American people, and particularly those currently serving in uniform overseas, deserve nothing less.

I know Senator ROCKEFELLER. He is a good friend. He is a good colleague. We have had a good private discussion. It is time to put this in the past, build a bridge to the future, and let the Intelligence Committee, unique among the committees in the Congress, do our work, our congressional oversight on behalf of national security.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, on my own time I would like to ask the chairman of the Senate Intelligence Committee if he would respond to a question.

Mr. ROBERTS. Yes.

Mr. DURBIN. I ask the chairman of the Senate Intelligence Committee, is he prepared to say on the Senate floor today that the investigation of this committee will not only look into the conduct and activity of the intelligence agencies, but allow us to follow the intelligence information gathering to its use by the administration, from the President on down, specifically whether the committee, as we have requested on the Democratic side, will take this intelligence information, determine whether there was any influence by the administration on intelligence agencies, and determine whether or not the administration and any of its spokesmen, before the invasion of Iraq, in any way exaggerated or distorted the intelligence that was gathered in portraying the case to the American people?

Mr. ROBERTS. I say to my friend and colleague, we are in the process of conducting an inquiry. That inquiry I would say is about 85 percent complete. We have had full cooperation—not full cooperation but a spirit of cooperation from the White House, State Department, Department of Defense, and the CIA. Once our inquiry is complete, I think I can answer the question the Senator has posed.

We are on the right track. We want to get at the timeliness and the credibility of the intelligence that was provided. We had four goals to do that, agreed upon by Senator ROCKEFELLER. We will do that job. At that particular time, why, the Senator's question would be pertinent.

I yield.

Mr. DURBIN. Let me reclaim the time. The response or lack of response from the chairman of the Senate Intelligence Committee explains why we are in the Chamber today. There are two responsibilities of this Intelligence Committee: Not only to determine whether the intelligence agencies did their job but whether or not the information they generated was correctly portrayed by the administration.

I have just asked the chairman of the Senate Intelligence Committee directly whether this investigation will go into the use of intelligence information by the administration, and you heard his response: Only after we have completed the first round of inquiry about intelligence agencies would we consider asking the question whether anyone in the administration exerted influence on intelligence agencies or mischaracterized the information coming from those agencies.

That was the direct question. There was an opportunity for the chairman of the committee to say point blank that we will allow this investigation to take its normal course, and he deferred. He said we will wait to a later time. That, I believe, is the source of frustration within this committee.

Our ranking member on this committee, Senator JAY ROCKEFELLER of West Virginia, has shown the patience of Job. He has tried literally for months to encourage and convince the Republican majority on this committee to have a full and complete investigation. That is what the American people deserve. That is what this committee should do. But, sadly and unfortunately, the Republican majority has built a wall and said we will gather all of the information and all the investigation about intelligence—but we will not breach that wall and go over the other side to see how the administration used this information.

That is the critical issue. How can you have a complete investigation without asking both questions? Unfortunately, it has been a decision by the Republican majority that they will not allow us to look into the use of intelligence data.

I have never seen this memo that has been referred to. No one has ever given it to me. I certainly had no role in the preparation of this memo. I don't know what it said. But if that memo expressed the frustration of many Senators on the committee that we have created this firewall to protect the administration, then the memo, frankly, speaks to real feelings.

The Intelligence Committee historically has been bipartisan, as it should be. Our efforts on the Democratic side were to urge the Republican majority to take perhaps the uncomfortable but necessary step so that the investigation would be complete. You heard what Chairman ROBERTS said this morning. He is not prepared to take the investigation of the Intelligence Committee to the use of intelligence data. And as long as that wall has been created, sadly, this cannot be the kind of investigation the American people deserve.

Just several weeks ago—maybe 2—Senator JOHN CORZINE of New Jersey came to the floor and asked for an independent commission on the intelligence that was gathered and how it was used by the administration before the invasion of Iraq. At that time his amendment was rejected by the Senate. It was opposed by Chairman ROBERTS of the Senate Intelligence Committee and Senator ROCKEFELLER, the ranking Democrat. They said: Stay with the investigation of the Intelligence Committee.

I, frankly, took a different position. I really think this debate this morning proves the point that it is now time to appoint an independent commission—independent and bipartisan—that will literally take this investigation wherever it leads. If the chips fall on a previous administration or this administration, so be it. It is not our role in the Intelligence Committee, nor in Congress, to protect any political party or administration. Our role is to protect the United States of America. Our responsibility is national security. Once the chairman of the committee, as he said this morning, decided this investigation will not go into the use of intelligence data, it is clear that this Intelligence Committee cannot do its job as it should. It makes the case now more than ever that an independent commission needs to be appointed so there is integrity, transparency, and believability in this process.

Mr. LOTT. Mr. President, will the Senator yield for a question?

Mr. DURBIN. I am happy to yield for a question.

Mr. LOTT. I appreciate that because I believe Senator ROBERTS did respond to your question.

I didn't mention any names quoted in this London Telegraph article. But, Senator DURBIN, you are quoted as saying that a public split and new inquiry is inevitable. I hope that is not a quote from you.

Mr. DURBIN. Well, it is a quote from me.

Mr. LOTT. Because to prejudge——

Mr. DURBIN. Reclaiming my time——

The PRESIDING OFFICER. The Senators will respond to each other through the Chair.

Mr. DURBIN. Responding to my friend from Mississippi, let me say that quote is accurate, that quote is mine, and what you heard from our chairman this morning is the reason for the quote. If we do not allow a complete and full investigation, a split is inevitable. If a decision is made to protect this administration at any level at the expense of the credibility of this investigation, we are not serving the American people well.

Senator ROCKEFELLER has tried time and time again to convince the chairman, the Republican chairman of this committee, that we need a complete investigation. He said repeatedly to Senator ROCKEFELLER, I have been led to believe, what he said on the floor this morning: We are going to draw the line. We will not look into the use of intelligence.

That, sadly, I think, is the reason we are here today and tied in this political knot. It is time for an independent commission.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

(The remarks of Mr. HOLLINGS pertaining to the introduction of S. 1821 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Indiana.

## INTELLIGENCE INFORMATION

Mr. BAYH. Mr. President, I am pleased to offer a few remarks on behalf of myself and also the distinguished Senator from Oregon with regard to the brouhaha that has broken out over the Intelligence Committee and our inquiry into the possible existence of weapons of mass destruction and the use of intelligence information by this administration.

In many ways, it is an unfortunate debate because if there is one thing that should absolutely be above and beyond partisanship, it is the Intelligence Committee, our intelligence services, and the use to which that information is put. We need to dedicate ourselves not to scoring political points but, instead, to protecting the national interest. When we have Members' motives cast in a bad light and heated rhetoric used, it does not serve that purpose in any way whatsoever.

Senator ROCKEFELLER, the ranking member on the Intelligence Committee, has been doing a very admirable job. It is my strong impression that he has been pursuing his responsibilities in a bipartisan way, trying to get at the truth in a way that is consistent with the finest traditions of the Intelligence Committee.

I have never seen the report that has been alluded to. I understand it was simply a listing of possible options. And I can guarantee you that Senator ROCKEFELLER has been under intense pressure by some others to pursue a much more partisan line of inquiry and to be much more confrontational. Instead, he has chosen to try to pursue the cooperative path first. I compliment him for that because it is exactly the course that needs to be pursued on the Intelligence Committee and in this body. Most importantly, we need to get beyond this current controversy.

I happen to think those who are watching this debate out beyond the beltway are scratching their heads and saying: There they go again. What on Earth are they doing?

We have gone to war at least in part because of the possible existence of weapons of mass destruction in the nation of Iraq. Our credibility is at stake. We need to get to the bottom of this and understand, if they do exist, what we can do to root them out and, if they do not exist, why we were led to believe they do exist. This is important to ensuring the national security interests of our country.

We also need to get to the bottom of allegations about the possible manipulation or misuse of intelligence in the runup to the war—not for the purpose of scapegoating or witch hunting but for the purposes of ensuring that in fact it never takes place.

Those in the majority shouldn't stonewall or circle the wagons, and those on our side of the aisle shouldn't engage in finger pointing and trying to score political points in a runup to a Presidential election next year. We need an objective, dispassionate search for the truth. That is what the American people deserve. It is my understanding that is what Senator ROCKEFELLER is pursuing.

Finally, the British have some experience in this area. They have just recently gone through an inquiry of their own over what was allegedly the ''dodgy dossier.'' I think that is how it is referred to in British circles. The Prime Minister even had to offer evidence under oath as part of that inquiry.

No one is suggesting anything so intrusive on our side of the aisle. On the contrary, we would like to pursue this in a cooperative, nonpartisan manner to get at the truth, to determine whether weapons of mass destruction existed and, if not, why we were led to believe they did, and always to fairly and dispassionately analyze how information from the intelligence world was used in making the case to pursue the ouster of Saddam Hussein. That is in the national security interests of our country.

I salute Senator ROCKEFELLER for taking the appropriate course. I hope this debate will calm down and refocus on the business at hand, which is protecting the national security of our country, rather than engaging in heated, partisan rhetoric which we have way too much of around this town and in this Chamber.

Those are my thoughts.

I again compliment Senator ROCKEFELLER, and I look forward to working with Members on both sides of the aisle to bring about that kind of inquiry.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I very much share the view of the Senator from Indiana. I simply say that a lot of paper floats around Capitol Hill that never sees the light of day. The document that has to guide the members of the Intelligence Committee—both Democrats and Republicans—is the Constitution of the United States. That is the tone that our vice chairman, Senator ROCKEFELLER, has consistently set throughout this effort to get at the facts with respect to Iraq. That is the path I think every Member of the Senate ought to continue to follow. It ought to be a bipartisan goal. The American people deserve no less.

There are legitimate and very troubling questions that need to be answered about the intelligence used to bring this Nation to war in Iraq. In fact, serious issues have come up just in the last week.

I will say that I found it exceptionally troubling—really chilling—that just last week, Paul Bremer, who is the point man with respect to the efforts on the ground in Iraq, was asked about the nature of the Iraqi resistance and in fact was told there really wasn't a capability in the intelligence community to give our country the information that is so necessary to protect our courageous men and women who are in harm's way.

That is the kind of issue about which I think every Member of the Senate ought to be concerned. That is what the Intelligence Committee ought to be tackling in a bipartisan way. That is what Senator ROCKEFELLER has consistently been trying to do.

We can go through a lot of the past history. Certainly, in discussions about weapons of mass destruction, we were told right here in the U.S. Capitol on a number of occasions that those weapons have not materialized. There are issues with respect to the past that need to be examined. There are issues such as the point Mr. Bremer made just in the last week that I think are very troubling.

I just urge that every Member of the Senate—and certainly those on the Intelligence Committee—recognize it is not the paper that floats around here that may or may not see the light of day and various kinds of draft documents that are important; what is important is that we do the work of oversight. That is what is in line with the document that ought to guide us—the Constitution of the United States. And that is what Senator ROCKEFELLER has set out for us in his work. I commend him for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 1822 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Michigan.

## EXTENSION OF MORNING BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent that morning business be extended for 20 minutes, equally divided between this side and the Republican side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I ask that the Chair inform me when 5 minutes have been utilized so I can share the remainder of our time with the Senator from New Jersey. I think the Senator from Indiana may be on his way over as well.

## CREATION AND USE OF INTELLIGENCE

Mr. LEVIN. Mr. President, early this morning there was a discussion on the

floor of a staff memo from some Intelligence Committee staffers which had not either been authorized or indeed shared by members of the Intelligence Committee. But it was characterized—and I think mischaracterized, quite clearly—as a Democratic plan relative to the review of the intelligence that was created and used prior to the Iraqi war.

The only thing that Democratic members of the Intelligence Committee have pressed is for a full investigation, a full inquiry into not just the creation of the intelligence but the use of that intelligence.

Without looking at the use of intelligence that was created by the intelligence community, there would only be half a picture painted. Hopefully, that half of a picture will be fully explored on a bipartisan basis. I think the first half of the picture, indeed, is being fully explored on a bipartisan basis. That is the part of the picture that looks at the intelligence community's production of intelligence and as to whether or not that intelligence community in some way either shaped or exaggerated that intelligence for whatever purpose. It has also been now added that if any of the administration put pressure on the intelligence community that would also be included in the review.

But what is left out is the critical half of the picture which the American public hears, which is the use of the intelligence given to the policymakers by those policymakers. Now, the word ''use'' of intelligence, that word ''use'' actually appears in the resolution creating the Intelligence Committee and identifying the oversight role of the Intelligence Committee. So the word ''use'' is actually embedded in the very document creating the Intelligence Committee that sets forth what its role will be and what its oversight responsibilities are. Yet so far the majority of the Intelligence Committee has said: We will not look at the use of the intelligence which was given to the policymakers.

Now, that is a huge gap. That means we will be walking up to the water's edge and stopping there. That means instead of letting the chips fall where they may, the chips will only be allowed to fall on the intelligence community's side of the fence. They will not be allowed to fall on the policymakers' role and responsibility.

We were told by the policymakers, prior to the war, that—this is Secretary Rumsfeld—

> We know where the weapons of mass destruction are.

We were told, before the war, by the Vice President:

> Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction.

We were told, before the war, by the President, himself, that:

> Intelligence gathered by this and other governments leaves no doubt that the Iraq regime continues to possess and conceal some of the most lethal weapons ever devised.

So the heart of the problem that we have at the Intelligence Committee is whether or not we are going to stop at that water's edge or look at the use of the intelligence, whether a critique will be made of the intelligence community's shaping or exaggeration, to the extent that existed, or whether or not the same searchlight will be placed upon the policymakers as to whether they exaggerated or shaped or misstated what was given to them by the intelligence community.

The Department of State had a Web site. On December 19 of last year, that Web site said:

> Why is the Iraqi regime hiding their uranium procurement?

This is months after the CIA apparently told the State Department that there was no such effort on the part of Iraq to obtain uranium, or at least that they had not reached that conclusion. Yet in December—and by the way, much later—the State Department's Web site still is representing to the public that the Iraqi regime is hiding uranium procurement.

Why should we not look into that Web site? How does that Web site get created, despite what we now believe was the intelligence community's conclusion or lack of conclusion relative to uranium acquisition?

The PRESIDING OFFICER. The Senator has used 5 minutes.

Mr. LEVIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I thank the Chair. I appreciate very much the comments of the Senator from Michigan, particularly in informing the Senate that the charge of the Intelligence Committee includes the use of intelligence as part of its mission.

Frankly, this whole discussion of this leaked memo today only reinforces my own view that we need an independent, bipartisan commission because it is now becoming a political debate about whether there is politics inside the Intelligence Committee.

I listened to the earlier discussion on the floor. People are talking about Presidential politics and talking about how inappropriate it is for people to talk in a thoughtful manner about how processes may occur over a period of time. We are missing the point.

There are men and women who are dying in Iraq because either the development or the use of our intelligence is not at a level where we are protecting the people of America and the men and women in uniform.

The issue is not whether this is a political debate. The issue is whether Iraq possessed chemical or biological weapons.

It is whether Iraq had links to al-Qaida or whether Iraq attempted to acquire uranium. It is an issue of whether we are going to turn loose the names of our intelligence operatives because there is political use of the need or want to discredit someone who might challenge some of the answers to the questions I just raised.

We have a fundamental question right here and now of whether we are going to have an intelligence operation that informs policymakers so they can make good decisions or whether we are going to have an intelligence operation that is used to justify policy decisions already taken.

The idea that we are going to debate whether this is a political issue or not really does argue in the strongest terms that we need to have an independent, bipartisan approach to understanding whether the development of our intelligence was appropriate and whether the use of that was even consistent or whether it was designed to justify as opposed to inform.

When men and women are dying, I don't understand why we are even thinking about this in the context of politics on either side of the aisle. The real issue is, we ought to get to the bottom of it. What led to decisions that don't match the reality we have come to find on the ground in Iraq?

I have over and over again—and will again—asked for an independent investigation, a bipartisan investigation, a commission to understand why we don't know what we should have known when we entered into this. It seems to me that is the essence and the most important issue we ought to be discussing, not some memo that wasn't seen by anybody else in the committee, developed by a staffer as a concept memo. That really diverts from the fundamental issue of protecting our men and women, protecting the people of the United States.

By the way, there is some reason to believe we are not getting all the information, whether it is in the Intelligence Committee. We know the independent commission studying 9/11 has said they have been stonewalled. People from both sides of the commission, as far as political background, have said that. They had to subpoena information from the FAA to be able to get information to move forward to investigate.

We are missing the point. One of the reasons I do believe we need an independent, bipartisan commission is so we don't have the kind of discussion we had on the floor today, so we can get to the facts that actually will protect the American men and women in uniform. It is high time we put our priorities right, which is understanding how our intelligence operations develop and how they are used, not whether we have a political issue that can be talked about on the talk shows at night.

I find it very hard when senior people in the State Department, who have worked there 25 or 30 years, say, speaking about folks, that we have a faith-based approach to intelligence, that we are developing intelligence to show what we want to conclude.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CORZINE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. Parliamentary inquiry: What is the pending business?

The PRESIDING OFFICER. There are 8 minutes remaining in morning business that the Senator may consume or yield back.

Mr. BENNETT. Mr. President, given that opportunity, I will consume a few of those minutes to respond to the conversations about Iraq.

I was in this body when we went to S–407 and heard the intelligence community brief us on the manufacture of chemical weapons taking place at what appeared to be a pharmaceutical factory in the Sudan. We were told repeatedly by high officials of the administration this was a plant producing weapons of mass destruction, chemical weapons; it had to be taken out by a cruise missile. Some of us asked to see the intelligence. We asked to know exactly what it was that led the administration to believe this was in fact a chemical plant.

As we were given that intelligence, I found myself questioning it. I walked away from that meeting saying to myself: This is a little bit thin. There is not a lot of substance here. But administration officials were very emphatic in saying, no, we have gone through the intelligence. It is very firm. We have to take this out.

The administration in this instance, of course, was the Clinton administration. The intelligence being presented to us was being presented by Secretary Cohen, the Secretary of Defense. We now know the intelligence was wrong. This was not, in fact, a factory for weapons of mass destruction. It was, rather, a pharmaceutical plant, just as the people said it was.

We blew it up nonetheless. We killed some people with the cruise missiles we threw in there. After recognizing the intelligence was wrong, we apologized, as indeed we should.

The question I would ask those who are now raising the issue about intelligence in Iraq would be this: Would they suggest the result of our actions in Iraq called for an American apology? Are they suggesting we should apologize to the people of Iraq for having taken out Saddam Hussein and, when we find him, replace him in power?

This is a man who killed 300,000 of his own people. We have uncovered the mass graves. This is a man responsible for over 1 million additional deaths in the two wars he started with his neighbors.

This is a man who has destroyed his own country. This is a man who has raped and brutalized those of his citizens whom he has not killed. This is a man who was willing to pay $25,000 to anyone who would wrap himself in dynamite and blow himself up, as long as he took some others with him. This is a man who had weapons of mass destruction and has used them against his own people. This is a man whose actions are clearly in violation of the U.N. Resolution 1441.

Am I supposed to apologize for having supported an effort to remove him just because some people are challenging the details of the intelligence that led us to this action? I do not apologize for one moment for supporting the war or for supporting the supplemental to pay for the war, because the consequences of the action we have taken have liberated over 20 million people and made the neighborhood in which Saddam Hussein lived substantially safer for all of the neighbors around him.

This is not similar to the case of the blowing up of a pharmaceutical plant in Sudan because the intelligence was faulty, which took place in the Clinton administration. This is an action that history will look back upon and say we did the right thing.

With that, I yield back the remainder of morning business time.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

## AGRICULTURAL, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to H.R. 2673, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2673) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Mr. President, I ask unanimous consent that all after the enacting clause be stricken, that amendment No. 2072, which is the text of Calendar No. 216, S. 1427, the Senate committee-reported bill, be inserted in lieu thereof, that the bill, as amended, be considered as original text for the purpose of further amendments, and that no points of order be waived by reason of this agreement.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. BENNETT. Mr. President, I am pleased to present the Agriculture appropriations subcommittee report to the full Senate and to recommend passage of this bill. I am very grateful to the ranking member, Senator KOHL, and his professional staff.

It has been one of the most satisfying experiences of my service in the Senate to see how Senator KOHL's staff and our staff have been integrated and have performed as truly professional staffs, regardless of any partisan affiliation. I think one of the reasons the bill moved as smoothly as it did through subcommittee and full committee is that the staffs have worked together in such a professional way. I am grateful to Senator KOHL for his wisdom in the people he has chosen, and I am grateful to them for the professional way in which they have handled it.

The bill is at the 302(b) discretionary allocation level of $17.005 billion. That is $873 million less than the fiscal 2003 level, which was $17.878 billion.

It is always difficult to bring an appropriations bill to the floor that has an allocation lower than the previous year and, in this case, it is almost $1 billion lower. That has made the challenge of putting the bill together extremely difficult and, once again, underscores the accomplishments of the professional staff as they have dealt with this challenge.

To run through the various titles of the bill and help people understand what we are talking about, I will give you the following numbers.

On title I, dealing with agricultural programs, we have a total of $26.776 billion, of which $20.658 billion is mandatory. This is $1.318 million more than fiscal year 2003.

On food safety, it is $783.761 million, which is an increase of $28.9 million over fiscal 2003. The Agricultural Research Service is at $1.092 billion. The Cooperative State Research, Education and Extension Service is at $1.118 billion. The Animal and Plant Inspection Service, APHIS, is at $711 million. That takes care of title I.

Title II, conservation programs, come in at a total of $973 million, which is $48 million less than fiscal 2003. Conservation operations are at $826.635 million.

Title III, rural economic and community development programs, the total appropriated funds will be $2.588 billion, which will support a loan level of $4.353 billion. Single-family housing is at the $4.084 billion level. The Rural Community Advancement Program is at $769.479 million. Distance learning, telemedicine, and broadband is at $685.963 million.

Title IV, domestic food programs, there is a total of $44.088 billion, of which $39.164 billion is mandatory. This is $2.197 billion more than fiscal 2003. Food stamps will be funded at $27.745 billion. WIC, Women, Infants, and Children, will be funded at $4.639 billion.

Title V, foreign assistance and related programs, there is a total of $1.486 billion, which is $349 million less than fiscal year 2003, which included supplemental funding of $369 million.

Title I, development food assistance, is $131.67 million.

Title II, emergency food assistance, is $1.192 billion. McGovern-Dole international food for education and child nutrition, which is a new discretionary account, is funded at $25 million.

On the overall bill, title VI, related agencies and the Food and Drug Administration, this is an increase. It is $1.482 billion, $16 million more than in fiscal 2003.

The Food and Drug Administration gets $1.39 billion in direct appropriations, plus an additional $302 million in user fees.

The committee provides $10 million toward the Government's share of the medical device review user fee program.

Finally, title VII, general provisions, the committee includes limitations on several farm bill mandatory programs. We do not freeze these programs at a level below fiscal 2003, and we do no harm to existing programs by these limitations.

The committee did not include a limitation on the mandatory funding level for the Environmental Quality Incentives Program, EQIP.

Now, in the bill, there are necessary pay costs for employees covered: $131.208 million.

I will make a personal and parochial observation with respect to this bill. Utah is in its fifth year of the worst drought in memory, which is a situation shared by many Western colleagues. We have not provided emergency funding for the drought, but we have made substantial investments in farm programs and conservation efforts that we think will help producers deal with these weather-related disasters.

This is an appropriations bill, not an authorizing bill. I know there is a strong temptation to use appropriations bills as a vehicle to catch up on authorization situations. Senator KOHL and I have agreed that we will oppose any authorizing amendment regardless of how salutary it may be, unless it has been cleared by both the chairman and the ranking member of the appropriate authorizing committee.

I am grateful to Senator KOHL for his willingness and leadership on this particular issue. We have done our best to accommodate Member requests in this bill. This is not always possible. The fact that we are almost $1 billion less than fiscal 2003 makes it difficult. We have done our best to be as fair as we can and as complete as we can. If there are any funding amendments, therefore, offered on the floor, they must be offset.

It is the desire of the leadership, Senator FRIST and Senator DASCHLE, to finish this bill today. I think that can be done. But if it is to be done, we are going to have to have full cooperation of all of the Senators. We know of some of the amendments that have been proposed. We have done our best to deal with those amendments at the staff level and in the committee by having conversations and occasionally colloquies. But we understand there are some amendments that will be proposed, will be debated, and will be voted on.

I ask for the cooperation of all of my colleagues and that, first, they come to the floor in a timely fashion to offer their amendments; secondly, that they would understand we need to move through these amendments as quickly as possible in order to meet the leadership's request that we finish the bill tonight. I am hoping we can finish it in good time tonight. We will stay, as I understand it from Leader FRIST, as long as we have to stay to get the bill done.

While the time seems to be hanging heavily on people's hands right now, I hope they will come to the floor and offer their amendments now, rather than rushing in at 10:30 tonight and saying: I have an amendment, and I need to have it brought up.

I will do my best to allow full and fair debate on each amendment, but I am prepared to offer a tabling motion if it appears to me all of the arguments have been made. I believe we know which are the more controversial amendments. I have talked with people who stand on both sides of those amendments and suggested to them the arguments have been made; there is really nothing new to be said about it. While we did get the information on the record, we really need to come to a conclusion and move on these particular amendments.

I don't think there is any amendment on which a Senator is undecided. I think the controversial amendments have been sufficiently discussed prior to coming to the floor so that everyone pretty much knows where he or she stands.

I will use the tabling motion judiciously. I will not attempt to cut anybody off or violate his or her privileges, but I will do what I can to keep the bill moving in a timely fashion.

AMENDMENT NO. 2073

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of myself and Senator KOHL.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself and Mr. KOHL, proposes an amendment numbered 2073.

Mr. BENNETT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 47, line 13, insert a period after ''$335,963,000'' and strike the remainder of the sentence, and on page 48, lines 7 through 9, strike all after ''transmission in'' and insert in lieu thereof the following: ''rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa.''.

Mr. BENNETT. Mr. President, I understand Senator KOHL is on his way and will be here shortly. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. Mr. President, I rise today in support of the fiscal year 2004 appropriations bill for Agriculture, Rural Development and Related Agencies. This year, the subcommittee faced a difficult task. The allocation provided to the subcommittee, just over $17 billion in discretionary funding, was a significant decrease from the fiscal year 2003 funding level. Our new chairman, Senator BENNETT, worked extremely hard to balance priorities in this bill with limited funding. It has been a pleasure to work with him, and I appreciate the good job that he has done.

I would like to briefly mention some of the highlights of this bill.

Continued funding has been provided for important research projects ranging from nutrition issues to the control of emerging diseases. As we witnessed the devastating economic effect that one case of mad cow disease had on Canada, the importance of knowing all we can about it and making certain that our borders are protected becomes very clear. Further, outbreaks of Chronic Wasting Disease and West Nile Virus demonstrate how small the world has become, and research funded in this bill plays an integral role in keeping America prepared.

Continued funding has also been provided for ongoing conservation projects across the country. The Natural Resources Conservation Service provides basic services to help ensure that agriculture and our natural resources can fully complement each other. Risks from drought and flooding are reduced due to activities carried out by the NRCS. In recent years and recent days, it seems nearly every community in America has been faced with one or the other, and the NRCS, along with the Farm Service Agency, has played a vital role in protecting and assisting affected communities.

Funding has been provided to improve food safety, including funding for the Food Safety and Inspection Service to hire an additional 87 food safety inspectors and foreign program auditors. Funding for additional training, to improve the scientific and surveillance skills of these inspectors, as well as improved laboratory capability to ensure that they have access to modern equipment, is also included in this bill. The Food and Drug Administration is provided funding to improve monitoring of the food industry, improve the FDA's laboratory preparedness, and to implement the recently mandated Food Registration System.

For rural development, this bill provides adequate resources to continue

the important programs that include homeownership, essential community facilities, water and waste assistance, business loan and grant programs. The committee has also provided sufficient funds for farm credit programs, which are essential to farmers who could not obtain funding from the commercial sector for ownership and operating loans.

The bill provides sufficient funding for the WIC program to support a monthly participation level of approximately 7.8 million low-income women, infants and children, the same participation level requested in the budget. This level includes funding for several initiatives requested by the President, and includes $25 million for the popular WIC Farmers' Market program and a $125 million contingency fund. Funding for the food stamp program and the commodity supplemental food program is also provided in this bill.

Funding for the child nutrition programs, which include school breakfast, school lunch, the child and adult care feeding program, and the summer food service program, is included at the President's request level. In previous years, I have worked to include several provisions in this bill to expand the availability of these important programs. This year, due to the scheduled reauthorization of the child nutrition programs, these provisions are not included. Instead, I have been working with the chairman and ranking member of the Agriculture Committee to have these provisions included permanently in child nutrition reauthorization.

The FDA is funded in this bill at sufficient levels to continue its mission of promoting and protecting the public health. Increased funding is provided for the food safety items I previously mentioned, as well as patient safety activities, medical device review, over the counter drugs, generic drugs, and pharmaceuticals for children. Last year, consumers spent nearly $1.5 trillion dollars on FDA-regulated products. The work done there is vital to this country, and the nearly $1.4 billion in funding provided to the agency reflects that importance.

I believe that more could be done with additional funding. However, with the dollars available, the chairman has put together a good bill that I fully support. I would like to thank Senator BENNETT for his leadership and hard work, as well as the hard work of his staff Pat Raymond, Fitzhugh Elder, Hunter Moorhead, and Dianne Preece. It is hard to believe that this is their first year working on this bill. Their expertise and professionalism would indicate that they had many years experience on this subcommittee.

Again, I strongly support this bill, and I urge all Members to vote for its passage.

Mr. NICKLES. Mr. President, I commend the distinguished Chairman and the Ranking Member for bringing the Senate a carefully crafted spending bill within the subcommittee's 302(b) allocation and consistent with the discretionary spending cap for 2004.

The Senate reported bill provides $17.0 billion in discretionary budget authority and $17.6 billion in discretionary outlays for fiscal year 2004 for the Department of Agriculture. This is 8.5 percent less than last year in discretionary budget authority and 1.6 percent less than last year in discretionary outlays. This bill also provides $55.5 billion in mandatory budget authority and $39.5 billion in mandatory outlays in fiscal year 2004 for the Department of Agriculture.

The Senate reported bill is at the subcommittee's 302(b) allocation for budget authority and $171 million in outlays below the 302(b) allocation. The bill provides $1.57 billion less in budget authority and $279 million less in outlays than the FY 2003 level and $22 million more in BA and $96 million less in outlays than the President's request.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of the bill be printed in the RECORD at the conclusion of my remarks.

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

S. 1427, AGRICULTURE APPROPRIATIONS, 2004.—SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal year 2004 $ millions]

| | General purpose | Mandatory | Total |
|---|---|---|---|
| Senate-reported bill: | | | |
| Budget authority | 17,005 | 55,536 | 72,541 |
| Outlays | 17,632 | 39,472 | 57,104 |
| Senate Committee allocation: | | | |
| Budget authority | 17,005 | 55,536 | 72,541 |
| Outlays | 17,803 | 39,472 | 57,275 |
| 2003 level: | | | |
| Budget authority | 18,575 | 52,763 | 71,338 |
| Outlays | 17,911 | 40,712 | 58,623 |
| President's request: | | | |
| Budget authority | 16,983 | 55,536 | 72,519 |
| Outlays | 17,728 | 39,472 | 57,200 |
| House-passed bill: | | | |
| Budget authority | 17,004 | 55,143 | 72,147 |
| Outlays | 17,657 | 39,142 | 56,799 |
| Senate-Reported Bill Compared To | | | |
| Senate 302(b) allocation: | | | |
| Budget authority | 0 | 0 | 0 |
| Outlays | −171 | 0 | −171 |
| 2003 level: | | | |
| Budget authority | −1,570 | 2,773 | 1,203 |
| Outlays | −279 | −1,240 | −1,519 |
| President's request: | | | |
| Budget authority | 22 | 0 | 22 |
| Outlays | −96 | 0 | −96 |
| House-passed bill: | | | |
| Budget authority | 1 | 393 | 394 |
| Outlays | −25 | 330 | 305 |

Note: Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions.

Mr. BYRD. Mr. President, the Senate is now considering the fiscal year 2004 Agriculture, rural development, and related agencies appropriations bill, and I would like to speak on the issue of increased funding provisions related to the treatment of animals.

Two agencies in the Department of Agriculture are charged with the responsibility of carrying out regulatory programs to protect animals from mistreatment, called for under the Animal Welfare Act and the Humane Methods of Slaughter Act. The Animal Welfare Act is enforced by the Animal and Plant Health Inspection Service, and the Humane Methods of Slaughter Act enforced by the Food Safety and Inspection Service.

The need for this increase in funding and commitment is due, in part, to media reports above livestock being raised in unspeakable conditions where they did not even have room to lie down, and about animal slaughter operations where animals are not properly stunned before beginning the process of dismemberment. While the U.S. Department of Agriculture, and certain state authorities, did initiate investigations regarding some of the more egregious reports, I understand that those charges were dismissed due to evidentiary problems, leaving unanswered the actual degree of severity to which humane slaughter regulations were violated in the reported cases, or the degree to which similar violations occur throughout the Nation.

During consideration of the fiscal year 2003 omnibus appropriations bill, the Senate included, at my request, $5 million for the hiring of at least 50 additional humane slaughter inspectors. Report language accompanying that bill instructed these new inspectors to work solely on the enforcement of the Humane Slaughter Act.

Prior to the $1.25 million allocation in the fiscal year 2001 supplemental appropriations bill for the hiring of 17 district veterinary medical specialists at the Food Safety Inspection Service to work solely on the enforcement of the Humane Slaughter Act, there were no inspectors employed exclusively for this purpose.

On May 7, 2003, the Secretary of Agriculture testified before the Senate Appropriations Subcommittee on Agriculture regarding the administration's fiscal year 2004 budget request. At that hearing, I asked the Secretary about the hiring of additional Food Safety Inspection Service inspectors for which funding had been appropriated in the previously enacted appropriations bill; however, it became apparent that the Department had yet to hire any new inspectors.

As a result of continued interest in this matter, the Senate Appropriations Committee included additional report language clarifying the funding provided in fiscal year 2003 regarding the Department's goal for hiring 38 new inspectors by the end of fiscal year 2003. As of October 28, 2003, this goal was met, and I understand that the remaining 12 inspectors will be hired by the end of this calender year.

The fiscal year 2004 Senate Agriculture appropriations bill provides statutory language to continue funding for the 50 humane slaughter inspectors and the 17 district veterinary medical specialists, and outlines the Committee's expectation that this funding will be included in the Department's fiscal year 2005 budget request.

I strongly believe that much work remains to be done. I believe that continued attention should be placed on enforcement on both the Animal Welfare Act and the Humane Methods of

Slaughter Act to put a stop to the mistreatment of animals.

Mr. President, I thank the chairman and ranking member of the Agriculture Appropriations Subcommittee for their support in this every important effort.

## STATUS OF APPROPRIATIONS BILLS

Mr. BYRD. Mr. President, as Members are aware, all 13 appropriations bills have cleared the Senate Appropriations Committee.

Four bills have been sent to the President for signature, of which three have been signed into law. The Defense, Homeland Security, and Legislative Branch appropriations bills have been signed, and the Interior appropriations bill is awaiting signature.

Five appropriations bills are in conference. These are the Military Construction, Energy and Water Development, Labor-HHS-Education, Foreign Operations, and Transportation and Treasury appropriations bills. The Military Construction appropriations bill completed conference yesterday, and the Energy and Water Development conference met today.

Four appropriations bills are awaiting completion of Senate action—Agriculture, VA–HUD, Commerce-Justice-State, and the District of Columbia. The Agriculture appropriations bill is being considered on the floor today.

Mr. President, the Senate should proceed to process these four final bills on the floor and to send them to conference with the House. This will protect our rights as Senators to offer amendments. The Senate should process 13 individual appropriations bills, and avoid an omnibus appropriations bill. Omnibus appropriations bills have the effect of shoehorning large segments of the Federal Government into one monstrous bill. Members' rights to amend legislation are severely limited, and they will not be able to know what they are voting for or against. Omnibus appropriations legislation also has the result of bringing the White House to the table, which has the effect of blurring the distinction between the responsibilities of the executive branch and the constitutional responsibilities of the legislative branch to develop legislation under the separation of powers. This is no way to legislate.

I thank and commend the distinguished chairman of the Appropriations Committee, Mr. STEVENS, for his steadfast pursuit of the goal of processing 13 individual appropriations bills. The Senate would not be at this stage of processing the appropriations bills, if my friend, the Senator from Alaska, had not pursued this matter with such vigor on his side.

Again, I thank my distinguished and able colleague, Mr. STEVENS, for his efforts.

## RURAL UTILITIES SERVICE BROADBAND LOAN PROGRAM

Mrs. CLINTON. Mr. President, I support the effort spearheaded by my colleagues, Senator BURNS and Senator DORGAN, and have serious objections to the Bush administration's proposal to gut the only national program we've ever enacted to get broadband high speed Internet connectivity deployed across our country.

It was just last year that Congress passed, as part of the farm bill, the only national broadband deployment incentive I am aware of that has been enacted by the Federal Government—a program that was supposed to provide over $700 million in loans a year to help get broadband to all parts of the country—$700 million in loans a year to help create and bring jobs to rural parts of the country—$700 million a year to help improve health care and education delivery to places like Upstate New York, rural Montana, North Dakota, Alaska, Iowa, and all across the country—$700 million a year to help improve emergency communications systems so that our first responders can actually receive those calls for help.

From a fiscal perspective, you couldn't ask for a better deal. It takes just $20 million in Federal resources to leverage over $700 million in loans—$700 million in loans plus at least another 20 percent in investment from the private sector. Has the program been popular? You better believe it has. In just 9 months since the Rural Utilities Service published regulations for the broadband loan program, the RUS has received applications that total over $1 billion. Our rural communities across the country recognize the promise of new telecommunications technologies.

Our rural communities and the coalition of Members from Congress that helped create the RUS broadband loan program in last year's farm bill aren't the only ones who recognize the promise of broadband. Look what other countries are doing.

A recent study by the International Telecommunications Union, the UN's telecommunications agency, confirmed what many of us already know. South Korea is leading the world in numbers of high-speed Internet connections per capita, with Hong Kong and Canada coming in at second and third. Where is the U.S. a distant 11th.

And these other countries are outspending us on broadband infrastructure. Sweden has set aside some $800 million on broadband deployment in rural areas of the country. France is following suit, having announced not long ago its plans to invest $1.5 billion on broadband infrastructure over 5 years. In Japan, through the majority government owned Nippon Telegraph and Telephone, the country is in the middle of a huge fiber-to-the-home project across the country. In Korea, the government is laying out some $15 billion to provide an optical fiber connection to 84 percent of homes by 2005.

We are falling behind. I don't know about the rest of my colleagues, but I think that's a huge problem. People in upstate New York know it's a huge problem. There is little disputing that a nation with ubiquitous broadband will be more efficient and productive than a nation without it. Just a couple weeks ago, the Wall Street Journal had a story titled, What's Slowing Us Down?, with the byline, ''Broadband is seen as a critical part of the national economy. Yet the U.S. lags behind other countries.''

The Wall Street Journal piece points out that, ''Rising rates of high-speed Internet access are expected to trigger everything from increased sales of new computers to a massive rise in worker productivity.'' A recent Brookings Institution study found that universal broadband access could add $300 billion a year to the U.S. economy. Forgoing a major broadband rollout, the Wall Street Journal notes, might not only hinder economic growth, but also worsen an already bleak picture for battered telecommunications and high-tech industries.

That explains the letter that a host of companies and high-tech associations have sent to Senators BENNETT and KOHL, the managers on this important bill. This letter pleading to restore funding of the RUS broadband loan program is signed by 3M, Alcatel, Cisco Systems, Corning, Intel, Nortel Networks, Siemens, and so many others who recognize the importance of this modest investment.

But they are not the only ones we're hearing from. I am hearing from small carriers across New York who need assistance to get broadband deployed to their rural areas—companies like Castle Cable Television in Alexandria Bay, NY who want to do the right thing—who recognize the potential of broadband to bring jobs and better services to their communities.

So what is our plan, our national strategy to help ensure broadband gets deployed across America? What is our plan to ensure America's competitiveness? Well, the administration's plan and the one that's come out of committee in the Senate is to crush the one permanent broadband deployment program the Federal government has ever enacted.

I understand that we have replaced $10 million that would leverage over $350 million in broadband loans with $10 million in grants. That doesn't make any sense. I am not suggesting we not do grants—but it doesn't make fiscal sense to saw off $10 million that will leverage over $350 million in loans for a simple $10 million in grants.

And it certainly doesn't make sense to take away the Rural Utilities Service's administrative funding and capacity to process and review the pending applications. Rural communities across the country, like Alex Bay in New York, need these resources to create and attract jobs. And our country needs to make these investments if we're to stay ahead of—or at least competitive with—South Korea, Hong Kong, Japan, and our neighbors to the

north, Canada, who are making the investments in broadband to move ahead.

I commend my colleagues, Senators BURNS and DORGAN, for their leadership in helping restore the full funding level for the RUS broadband loan program, and I ask the managers of this bill and for the administration to join in what should be a national strategy to deploy broadband across America.

Mr. KOHL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. I ask unanimous consent to speak as if in morning business.

Mr. BENNETT. Mr. President, reserving the right to object, could I ask the Senator from West Virginia how long he intends to speak?

Mr. ROCKEFELLER. I would say 15 to 18 minutes.

Mr. BENNETT. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. Mr. President, I thank my distinguished friend and colleague.

LEAK OF STAFF DRAFT MEMO

Mr. ROCKEFELLER. There have been statements made on the floor today—which I was not here to listen to because I was in a Commerce Committee meeting—expressing concern, outrage, et cetera, about what is happening with the Senate Intelligence Committee's inquiry into the prewar Iraqi intelligence. We have heard charges that a draft memo taken from the Intelligence Committee spaces and provided to the media somehow represents a plan to discredit what the Intelligence Committee is doing and to politicize the inquiry. These charges are inaccurate and unfortunate. I wish to speak to them as vice chairman of that committee.

I would suggest to my colleagues that there is in fact reason for concern today, but it is not because of the content of this draft staff memo—a memo which, for the record, was not approved by me, was not given to any other member of the Senate Intelligence Committee, nor to any other staff person, my own staff on the Intelligence Committee, nor to any other member of the Senate, nor anybody else. It was an internal draft memo. It happens all the time in the Senate. At some point very soon the committee and the Senate are going to have to explore the chain of events surrounding this draft memo since it raises serious questions about whether the majority is obtaining unauthorized access to private internal materials of the minority, and who made the decision in this case to leak the draft of an unofficial memo to the press.

It is disturbing that individuals are seeking, perhaps or perhaps not, to score political points with a draft paper describing the rights of the minority to push for a full and fair review of the issues of the committee and that the memo is being so grossly mischaracterized to try to deflect attention from the real issue.

More importantly, the concern this body should feel today is that the Intelligence Committee is not conducting a thorough and in-depth inquiry into all aspects of the intelligence process leading up to the war in Iraq. This body should be disturbed that 5 months after we started asking questions, we are still going, in essence, hat in hand to the administration to try to get the documents we need to conduct this review.

I most sincerely regret the impression that the draft memo has apparently given to some of my Republican colleagues, but it clearly reflects staff frustration that the Senate Intelligence Committee's investigation has not tackled all of the tough issues, and frustration with the difficulties we have had in obtaining information from the administration. It should come as no surprise to anyone that there is tension on the committee. I have said publicly for months that the committee must review not only the accuracy of prewar intelligence on weapons of mass destruction and terrorism but also the use or misuse of that intelligence by senior policymakers in this administration. This is fundamental to answering the questions the American people have about how we got into this war. But at every turn, the chairman has made it clear that the inquiry will be limited to reviewing the prewar intelligence against the low threshold of a standard called reasonableness. We have a basic disagreement. These kinds of things happen in the Senate.

I was pleased last week ended with the chairman and myself standing side by side, as we should, insisting on the committee's need for evidence wherever it might be located. But the information we have requested to date is only part of our work. It should be obvious to all that our committee still has much to do to assure that our inquiry into prewar intelligence about Iraq's weapons of mass destruction and links to terrorism fulfills our responsibilities to the Senate and to the American public.

I want to take a minute—it is important for me to do so—to describe these responsibilities because I am not sure all of our colleagues know. The committee's responsibilities come to us from the Senate. We don't make them up. The Senate created the Senate Select Committee on Intelligence in 1976. The measure that established it, S. Res. 400 of the 95th Congress, remains the Senate's charter to us as a committee. It is very specific.

S. Res. 400 was not a casual measure. It was the product of years of interest in improving oversight of intelligence, a major investigation chaired by Senator Church, reports of several standing committees, about eight or nine, and extensive floor consideration. It is not up to the 17 of us who happen now to be on that committee to make up the boundaries of our responsibility. They are given to us and written out very clearly.

S. Res. 400 begins by stating its purpose: To create a Senate select committee ''to oversee and make continuing studies of the intelligence activities and programs of the United States Government.''

The Senate did not leave the term ''intelligence activities'', the object of oversight, to the imagination of generations of members of the Intelligence Committee. Instead, the Senate carefully defined the term ''intelligence activities'' in section 14 of the resolution to include ''the collection, analysis, production, dissemination, or use of the information.''

The five elements of intelligence activity—that is collection, analysis, production, dissemination, and use—represent the full cycle with which the committee must be concerned. That is our charter. If we examine analysis of information without considering the collection of it, we fail in our responsibility. If we examine both of them but not the production of reports and the dissemination of information, we fail in our responsibility. If we stop at dissemination and do not examine the use of intelligence, we will equally fail in our responsibility. That examination is what I have been pushing for and it is what I will continue seeking.

I have heard it said that policy is the responsibility of other committees. Of course, other committees have responsibilities relating to national security policies. But so do we. Our mandate from the Senate is clear. S. Res. 400 also says the information which is subject to the committee's oversight includes information relating to foreign countries and to ''the defense, the foreign policy, the national security, or related policies of the United States.'' It is broad. It is thorough.

We should be committed as a committee to developing a full record. The joint letters the chairman and I wrote last week insisting the administration provide us with the necessary documents and interviews are a step in the right direction which I very much appreciate. But there is a lot more to be done. Even if we might disagree about the evaluation of evidence, we should put the full weight of the committee behind obtaining all the facts our members believe to be necessary for a complete inquiry. For me, that means all communications, not just a limited list, about Iraqi weapons of mass destruction and terrorism intelligence between the Intelligence Committee and policymakers, including the White House.

Without those, our record will not be complete. We cannot assess, for example, whether intelligence agencies were

pressured to conform to the views of policymakers unless we know what policymakers were asking of these agencies. This is a key objective of this inquiry, and we are in danger of completely missing it.

Albeit in strong language, what staff suggests in the draft memo—which, again, nobody on the committee saw and nobody else had seen it until it was leaked, and then everybody has it—is that the minority work with the majority to get as far as we can in this effort. That was our purpose—to work as far as we can and be as successful as we can in this effort, and if the majority continued to refuse, then the minority should be prepared to point out shortcomings consistent with the rules.

It is misleading to suggest this possible approach comes as a surprise to anyone in this body. I have been clear with the chairman for months that there is growing interest among many members of the committee in pursuing a separate investigation. It is not a course I choose to follow. Many Senate Democrats are on record in support of an independent commission. We voted it down the other day. I voted against it, but many Members did not; they voted for it. I am on record opposing that approach and I continue to oppose it. But, it is an option that cannot be ruled out.

Exploring or asserting the rights of the minority under the Intelligence Committee rules in no way amounts to politicizing intelligence. A substantive disagreement is not grounds for charges of partisan politics; it is a difference of approach, a difference of opinion.

I have worked for months within the committee to try to get these critical questions answered. It was not until the committee Democrats, in fact, exercised their rights under the rules and forced a meeting in June that the committee first discussed the parameters of a review. Democrats, some of them, wanted a formal investigation and ultimately agreed to the majority's less formal, less structured approach because the issue was too important to descend into political bickering.

In August, I wrote the chairman with a list of 14 areas where I thought the committee needed to do more work. I got no response. In September, after press reports that the chairman was planning to wrap up the interim investigation by the end of September, I wrote again to express my belief that we had more work to do and set out a framework for how we should approach the task we faced. I got no response. I met with the chairman on numerous occasions and got no response.

Then, 2 weeks ago, after reading press stories from the chairman describing a committee report that I had not seen and a deadline I knew we could not meet, I sat down with the chairman—again, we are good friends, and we will remain that way—to talk about where the inquiry was and what was left to do. In that meeting, I provided him with draft letters to the different agencies that owed us documents and interviews which the committee staff, under the control of the majority, had long since asked for, months ago. I cosigned a tough letter, along with the chairman, to the head of the Central Intelligence Agency, pressing him to provide materials requested by the committee staff—fundamentally one which his staff director directs. When I provided the majority with a list of nine examples of the use of intelligence we must have to understand the interplay between policymakers and the intelligence community, I was turned down.

The fact is that I have approached the majority in every way I know how—in private letters, in meetings, in committee meetings, in public statements, on the Senate floor, imploring the majority to work together with us and imploring the majority to meet the committee's fundamental responsibility to investigate the potential misuse of intelligence by policymakers leading up to the war in Iraq. My entreaties have been to no avail, eliciting either no response or, worse yet, public statements by the chairman unilaterally announcing that the committee will, in fact, not pursue the critical issue of use.

The majority has left the Senate minority with two choices: Either abandon what we believe is a fundamental obligation in this body to the American people as is laid out in the Senate resolution creating us, or, reluctantly, part ways and use our rights as a minority to get the job done on our own. I prefer not to do that. It is not my nature. I prefer not to do that. That calls for members working together and calls for following committee rules and following our charter.

Throughout this difficult situation, I have remained committed to the committee's investigation. I have been vocal in my appreciation of the absolutely excellent job done to date by the staff on the aspects of the investigation they have been asked to perform, which is reviewing the prewar Iraqi intelligence. They have done a superb job, absolutely superb job.

I still strongly believe the committee can and should do this job. I am confident that, presented with the facts, the American people can and will judge this administration fairly. For my part, I have and I will continue to support the President when I believe he is right. I had the same approach with the previous President, President Clinton. When I believed he was wrong, I went after him really hard, on steel and other things. But when he was right, I said so. On the other hand, I will also challenge and question the President and his administration when I think they are in error. That is my duty. I am an elected Senator and I represent my people. That is my job as a Senator. It is my responsibility as vice chairman of the Senate Intelligence Committee.

I conclude by saying I am also confident that the members of the Intelligence Committee can put aside their differences and continue with the tough tasks facing members. Maybe it took this to somehow embarrass all of us enough to bring us together. I want the result to be that we do this together under the Senate resolution. I hope we can put this behind us.

I suggest to the chairman that the full committee meet again this week to bring us to a point of consensus. We must pursue this inquiry to the end. These are extraordinarily important matters we are discussing, not to score political points on either side but because we must make sure we fix problems and provide our country with the best intelligence possible. That is our job.

I yield the floor.

Mr. BENNETT. Mr. President, we are back on the bill. I see some Senators have come to the floor and I ask those who are here if they intend to offer amendments.

Mr. DORGAN. Mr. President, in response to the Senator from Utah, it is my intention to offer an amendment. I would like to speak about a subject that is going to prompt the amendment and then discuss with my colleague, Senator BURNS from Montana, who will be joining me with an amendment. There are several ways we might offer this amendment. I would like to have a discussion with Senator BURNS and also with Senator KOHL and Senator BENNETT about the specific amendment because my hope is we can work things out as this bill is on the floor.

It is my intention to offer an amendment with my colleague, Senator BURNS from Montana. I would like to speak about it, and he would probably want to speak as well.

Mr. REID. Mr. President, if I may respond, the Senator from California is here. In fact, she left a very important conference committee to come here because she feels strongly about her amendment. She has an amendment to offer and she is not in a position to agree to any time. She will probably take an hour, an hour and a half. So it will be the first lengthy amendment on this bill.

Mr. BENNETT. I understand the Senator from California had the desire to offer her amendment, and I encouraged her to come to the floor to do so. Now she has come.

I ask the Senator from North Dakota how long he might want to take because I want to accommodate the Senator from California. I say that as if I control the time, which I clearly do not, but the Senator from Nevada has suggested the Senator from California be allowed to offer her amendment and I want to be as accommodating as I can be to all Senators.

Mr. DORGAN. Might I inquire of the Senator from Utah? First of all, I would like to speak for perhaps 5 to 7 minutes initially. I guess the Senator from Montana may want to speak for a

very short time. Following the presentation by Senator FEINSTEIN and perhaps after a meeting I will attend, I will speak at greater length, if I could be recognized—I would be very brief—in order to describe to the Senator from Wisconsin and the Senator from Utah what Senator BURNS and I want to try to achieve this afternoon on this piece of legislation.

I think we can introduce that very shortly and then perhaps discuss it at greater length at a later time.

Mr. BURNS. If the Senator from North Dakota will yield.

Mr. DORGAN. I yield.

Mr. BURNS. It is a good idea to give us time to work it out to the agreement of both sides. This can be done. We are going to have to offset it. We would work with the chairman and the ranking member.

I don't need any time prior to Senator FEINSTEIN speaking. We can do that after because she has come, with all good intentions, to offer her amendment, and I think she should be allowed to do so.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. In that case, Mr. President, I ask unanimous consent that the Senator from North Dakota be recognized for 7 minutes and, further, that he be followed by the Senator from California.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator is recognized for 7 minutes.

Mr. DORGAN. Mr. President, as I said, I will speak about this at greater length this afternoon, but I did want to advance the topic Senator CONRAD BURNS and I wish to advance, an amendment on this bill dealing with something called the Broadband Loan Program.

Let me describe what that is. Let me describe it by telling you I was recently in my hometown, a town of fewer than 300 people, in southwestern North Dakota. I visited a home there. I stopped by to say hello, and there was a woman in that home who had a little device on her counter. It looked different to me. It had a camera mounted on it. It was no bigger than a shoe box. She had a bracelet hanging on a little round projectile on it.

I said: Well, what are you doing there? She said: I am taking a picture of this bracelet. I said: Why are you doing that? She said: I sell on eBay.

Here in my hometown is a woman who sells on eBay, and she takes a picture of those products and puts them on her computer. She told me she has been supplementing her income by doing business on eBay.

It describes the need, even in a town of 300 people, for computer access, the need for broadband, the need for the big pipes in which you can do business on the Internet in a way that does not take you a day to download something others are downloading in 5 minutes.

So the question of the building out of broadband to rural communities all across this country, including rural areas especially, is a very important question. Because if you do not build out broadband capability, then what happens is you leave some parts of the country behind. You have an Internet divide. You have people on the right side of it and you have people on the wrong side. The people on the wrong side will never have any economic development opportunities because when you talk to somebody about building a business in this town, they will ask: Do you have the capability to connect us by computer with some reasonable speed? When you say: No, we don't, they will say: Well, so long. We're going elsewhere. That is why this is so important.

Let me describe quickly what we did. In the farm bill, a group of us—Senator BURNS, myself, and others—included a provision that deals with a broadband loan program. It is the first and the only program in this country designed to spur the development of the buildout of broadband capability to rural areas. It was scheduled to use $100 million in direct spending to subsidize $3.5 billion of loans over the 6 years of the farm bill.

Pursuant to that, RUS, down at the Department of Agriculture, put together the first 2 years $40 million, and they announced they would make $1.4 billion in loans available. As a result of that, they set a July 31 deadline. They received $1 billion in loan applications because we have people with interests and businesses really interested in building out this broadband capability to rural areas, very much like the old REA program.

Prior to REA, there was no electricity on America's farms. They were dark. When the Sun went down, you could not plug into anything because no one built electricity infrastructure out to America's farms. We created the Rural Electrification Act, and all of a sudden America's farms got electricity. It created dramatic explosions in productivity on America's farms. That is what this is about: the buildout of the infrastructure for broadband to our small rural communities and to our farms.

So what happened was the USDA put together this program. The loans were requested. We have applications for loans. They came in by July 31. What happened, however, is the language that is included now in this appropriations bill eliminates the broadband section of the farm bill—it eliminates it—and in its place puts a $9.1 billion appropriation, which is less than half the amount that should have been available this year.

If we move down this road, it appears to us the money that has been applied for, for loans will not be at this point continued. They will have to start over. You will have half the money. There is no assurance the additional money will be available in future years because this will be an appropriated amount rather than being in the farm bill which authorized this for 6 years.

This is very important. This is about the haves and have-nots in this country with respect to access to the Internet and with respect to broadband capability. If we decide that access to the Internet, with pipes that are of reasonable circumference so you get some decent speed, does not matter to rural areas, we will have, in my judgment, economic development only in areas of the country where we have broadband, and small towns and rural areas are going to be told: So long, Charlie. Just tough luck. You are not going to be developed because we have a digital divide, and we support that digital divide. That is a terrible message to come from the Congress.

What I would like to do, with my colleague, Senator BURNS, is to work with Senator BENNETT and Senator KOHL to try to deal with this problem that is created in the appropriations bill. We have two problems. One is a language problem. We need to restore the language that existed in the farm bill that calls for this Broadband Loan Program. We should not kick that out in this appropriations bill, No. 1.

No. 2, we should restore the funding that was there that was promised and upon which applicants now have applied for $1 billion in investment funds to build out broadband capability to rural areas of the country.

I know rural areas are sometimes looked at as kind of the ''back 40.'' Well, it is not the ''back 40.'' It is a wonderful part of this country. It is small towns and good families trying to make a living, often in circumstances where they are losing population. These are places with strong schools, places in which you can raise kids without worrying about their safety, with good neighbors, good places to be. But if we decide, as a country, in the age of information technology and information revolution, that only the big cities are going to have the aggressive, robust buildout of broadband, then we are consigning rural America to a pretty desperate struggle for their future. That is not what we want. That is not what Congress decided.

Congress already made this judgment when it passed the farm bill. It said: Rural America matters as well. Small towns matter, too. That is what the Congress decided. As a result of that decision, it made a specific, deliberate investment to say we are going to fund, through loans, and we are going to encourage, through loans, the buildout of broadband infrastructure to help small towns and family farms in this country.

That promise was well underway, and now what has happened is, in this bill, we have a problem that derails it. We want to fix it. I want to work with my colleagues, Senator BENNETT and Senator KOHL, to do that. I will return this afternoon to see if we can do that.

I yield the floor.

The PRESIDING OFFICER (Mr. CORNYN). The Senator's time has expired.

The Senator from California is recognized.

Mrs. FEINSTEIN. Thank you very much, Mr. President.

AMENDMENT NO. 2083

(Purpose: To improve the operation of energy markets)

Mrs. FEINSTEIN. On behalf of Senators LUGAR, LEVIN, HARKIN, CANTWELL, BOXER, LEAHY, WYDEN, DURBIN, and HOLLINGS, I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The bill clerk read as follows:

The Senator from California [Mrs. FEINSTEIN], for herself, Mr. LUGAR, Mr. LEVIN, Mr. HARKIN, Ms. CANTWELL, Mrs. BOXER, Mr. LEAHY, Mr. WYDEN, Mr. DURBIN, and Mr. HOLLINGS, proposes an amendment numbered 2083.

Mrs. FEINSTEIN. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mrs. FEINSTEIN. Mr. President, this amendment has to do with providing some regulatory oversight over energy trading. It has to do with closing the Enron loophole. It has to do with providing transparency. Energy trades today are not subject to the 2000-passed Commodity Modernization Act. Rather, these energy trades take place electronically, take place in secret, without transparency, with no records kept, with no audit trail available, and with no regulatory oversight to prevent fraud and manipulation in energy trading.

I would like, first of all, from the Derivatives Study Center, to indicate and read a couple of paragraphs from the letter they have sent, which I think defines the issue very well.

I quote:

This regulatory assistance comes at a critical time. According to the Federal Energy Regulatory Commission's Director of the Office of Market Oversight, ''energy markets are in severe financial distress.'' Along with the decline in credit quality in these markets, the loss of confidence and trust has led to a ruin in the liquidity and depth of these markets. This legislation will go a long way to address this problem.

Then he defines what derivatives are. This is important for Members to know. It is complicated. We went through this once before. I would like to give you this definition because it is a good one:

Derivatives are highly leveraged financial transactions, allowing investors to potentially take a large position in the market without committing an equivalent amount of capital. Moreover, derivatives traded in over-the-counter markets are devoid of the transparency that characterizes exchange-traded derivatives, such as futures, and this lack of transparency introduces a greater potential for abuse through fraud and manipulation.

That is exactly what happened. He goes on to say:

Derivatives are often combined into highly complex, structured transactions that are difficult, even for the seasoned securities trader and finance professionals, to understand and price in the market. Enron used such over-the-counter derivatives extensively in order to hide the nature of their activities from investors. The failure of Enron and the demise of other energy derivatives dealers has had a devastating impact on the level of trust in energy markets.

That is a good definition of what we are trying to do, why we are trying to do it, and what we are trying to involve.

Now I would like to read into the RECORD a portion of a letter from Eliot Spitzer. Mr. Spitzer is the attorney general of the State of New York. That is the place where many of these cases are now coming to trial.

He says:

I firmly support your efforts to make energy markets competitive and protect those markets from fraud and manipulation. The bill sponsored by Senators Feinstein, Levin, and Lugar, and under consideration as an amendment to the proposed 2004 agricultural appropriations bill, is a major step toward both goals.

He goes on to say:

The amendment makes a major contribution to competitive energy markets by initiating an electronic information system to be operated through the Federal Energy Regulatory Commission. This system will provide open access to comprehensive, timely, and reliable wholesale electricity and transmission, price and supply data, greatly expanding the choices of both buyers and sellers. In addition, the reliability of market information would be markedly improved by the amendment's general prohibition on manipulation of the purchase or sale of electricity or the transmission services needed to deliver electricity, and by specific prohibition of the round-trip trading manipulation used so effectively to inflate electricity prices to the public's injury.

This is a letter from the attorney general of the State of New York. As such, it places an imprimatur of correctness, of need, and of value on the amendment that we introduce today.

Now, what is in that amendment? Specifically, the amendment would improve price transparency in wholesale electricity markets. The amendment directs the Federal Energy Regulatory Commission to do just what Mr. Spitzer said it would do: to establish an electronic system to provide information about the price and availability of wholesale electricity to buyers, to sellers, and to the public. This provision is actually similar to the transparency provision offered by my colleague from New Mexico, Senator DOMENICI, in the Energy bill.

Secondly, this legislation would prohibit round-trip electricity trades. What is a round-trip trade? It is the simultaneous buying and selling of the same quantity of electricity at the same price, in the same location, with no financial gain or loss. In other words, no commodity ever changes hands. Again, this is similar to a provision that Senator DOMENICI offered during consideration of the Energy bill. Round-trip or wash trades are bogus trades. No electricity changes hands but the profits from the trades enrich the bottom line of a company's financial report.

In fact, I think we had one company—I believe it was CMS—say that 80 percent of their balance sheet in a given year was from bogus trades. And there is nothing we can do about it? Does anyone believe that is right? I think not. I don't think the American people do, and that is one of the reasons these markets are so decimated.

Next we would increase penalties for violations of the Federal Power Act and the Natural Gas Act. Maximum fines for violations of the Federal Power Act would be increased from $5,000—that is nothing to a big company—to $1 million. And maximum sentences are increased from 2 to 5 years. Remember, these rip-offs were tremendous. Just look at the people plea-bargaining from Enron, look at what they did, look at the amounts of money they fraudulently compromised.

This language is identical to section 209 of the Senate-passed Energy bill. Current fines are extraordinarily low and, therefore, provide no deterrence to illegal activity.

We also amend the Natural Gas Act to do essentially the same thing. Senator DOMENICI, in his substitute electricity title to the Energy bill, increased the fines in the Gas Act but he did not do so in the Federal Power Act. We would do both in this amendment.

Next the amendment would prohibit manipulation in electricity markets. Manipulation is prohibited in the wholesale electricity markets, and FERC is given discretionary authority to revoke market-based rates for violators.

Strangely enough, manipulation of energy markets is not prohibited in current law. Can you believe that? Manipulation of energy markets is not prohibited in current law. This would add language to part 2 of the Federal Power Act to do just that.

Most importantly, this bill would repeal the Enron exemption and allow the Commodities Futures Trading Commission, which has oversight over virtually all other trading, to monitor the over-the-counter energy market.

This would repeal what happened in 2000 when Enron pushed the Commodities Futures Modernization Act exemption for large traders in energy commodities. And it would apply antimanipulation and antifraud provisions of the Commodities Exchange Act to all over-the-counter trades in energy commodities and derivatives.

In my view, when Congress exempted energy from the Commodities Futures Modernization Act of 2000, it created the playing field for the western energy crisis of 2000 and 2001. The western energy crisis cost millions of people millions of dollars in my home State of California. So this is a charge I am making. When this Congress permitted

the Enron loophole to exist in the Commodities Modernization Act, they created the loophole for the playing field that Enron and others used to manipulate the western energy markets.

Next, our bill would provide the Commodity Futures Trading Commission the tools to monitor over-the-counter energy markets. Over-the-counter energy trade in energy commodities and derivatives performs a significant price discovery function, including trade on electronic trading facilities. Our amendment requires large, sophisticated traders to keep records and report large trades to the Commodity Futures Trading Commission. This doesn't change the law. It only applies the law that exists for futures contracts to over-the-counter trades in energy markets.

We would limit the use of data. This requires the CFTC to seek the information that is necessary for the limited purpose of detecting and preventing manipulations in the futures and over-the-counter markets for energy, to keep proprietary business data confidential, except when used for law enforcement purposes. This does not require the real-time publication of proprietary data. It does not.

This would have no effect on non-energy commodities or derivatives. The amendment would not alter or affect the regulation of futures markets, financial derivatives, or metals. We have specifically stated on page 20 the following:

The amendments by this title have no effect on the regulation of excluded commodities under the Commodity Exchange Act.

In addition, we state:

The amendments made by this title have no effect on the regulation of metals under the Commodity Exchange Act.

Mr. President, my colleagues may be asking themselves why I continue to press this cause. Here I note that Senator LEVIN has come to the floor. I want the Senate to know how helpful the Senator from Michigan has been in working on this complicated issue. He has spent hours and hours of his time. His staff has worked with my staff in evolving this measure. We have carefully vetted it. I believe we really know what we are doing here.

The energy crisis in the West demonstrated that, without Federal oversight, a business becomes solely concerned with its bottom line and not with any sense of ethical behavior; and arrests and convictions to date have clearly documented this to be the case.

Californians are still paying the price of this unethical behavior. I make the point that we are not talking about one bad player in the California market. This goes way beyond Enron. It extends to others as well—to Reliant, Dynegy, Williams, AEP, CMS, El Paso Merchant Energy, Duke, Mirant, Coral, Sempra Energy Trading—unfortunately, in my own State—Aquila, the City of Redding, Morgan Stanley Capital Group, Pacificorps, and to the Puget Sound Energy.

We believe California was duped out of $9 billion. The Federal Energy Regulatory Commission has illustrated its inability to refund California the money it is owed by recently recommending settlements that in no way, shape, or form reflect the damage that was caused to both consumers and the economy of the largest State in the Union. In fact, FERC settled with Reliant on August 29, allowed them not to admit wrongdoing, and fined them $836,000. That was $836,000 for rules of conduct that cost the State $13 million—hardly fair.

This disproportionately low fine gives credibility to the fact that the price one would have to pay in penalties, if caught manipulating the market, is worth the risk since the benefits of not getting caught far outweigh any penalty that may be levied upon a company.

I think it is pretty clear that this disproportionately low fine gives credibility to the fact that the price one would have to pay in penalties, if caught manipulating in the market today, is worth the risk. There is no deterrence, since the benefits of not getting caught far outweigh any penalties that may be levied on a company. That is what we are trying to change.

If I left any doubt in my colleagues' minds about the widespread manipulation that took place during the western energy crisis, let me point out some recent examples of a case that was brought by the Securities and Exchange Commission against David Delaney, a former chief executive with two of the most prominent divisions of Enron.

On October 30, 2002, Delaney pled guilty to insider trading. The SEC brought charges against him for selling millions of dollars in Enron stock at a time he knew it was being manipulated. While these charges appear to be financial in nature, the underlying facts of the case were that Enron was engaged in manipulative business practices, especially in California.

In March of 2003, the FERC staff report on price manipulation in western markets: Investigators said they suspected Enron was using price information obtained in regulated deals to manipulate trades in unregulated energy derivative markets.

In one instance, Enron manipulated the price of physical gas, upward, then downward. Although the price change in the physical markets was only 10 cents per million Btus, Enron profited due to the effect that this small change in the physical price had on its large financial position. Enron earned more than $3 million in the unregulated over-the-counter markets, while losing only $86,000 on the physical sale of natural gas.

I think it is important to note that the FERC report also states:

Enron's corporate culture fostered a disregard for the American energy customer. The success of the company's trading strategies, while temporary, demonstrates the need for explicit prohibitions on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.

That is what we are trying to provide in this amendment. That is what FERC says is missing.

Our amendment would provide greater oversight over these markets so that fraudulent and manipulative behavior could be prevented. It would increase the penalties if, in fact, a company engaged in fraudulent or manipulative behavior, and it would outlaw all types of manipulation including round-trip trading, wash trades, false reporting, churning, and deliberately withholding generation. All of the Enron trading strategies, such as Ricochet, Death Star, Get Shorty, Fat Boy, Non-Firm Export, Load Shift, Wheel Out, Black Widow, Red Congo, and Cuddly Bear: these are euphemisms for fraud and manipulation and our amendment would cover them all.

It is not clear to me why energy derivatives are not regulated while the Federal Government oversees some physical energy transactions. In other words, if I buy natural gas, and it is delivered to me, then that transaction is overseen by FERC, which has the authority to ensure that this transaction is both transparent and reasonably priced.

But a giant loophole is opened where there is no Government oversight, when transactions are carried out in electronic exchanges. As a result, if I sell natural gas to you, and you sell it to someone else who sells it to another person who then sells it again, none of these transactions are covered by FERC or the CFTC. Because of that, what we saw in the western energy crisis is that this particular loophole allowed energy companies to manipulate prices and to escape any investigation or prosecution by any regulatory agency.

Our amendment will close the loophole, as Senator LEVIN said, created in 2000 when Congress passed the Commodities Futures Modernization Act.

The loophole exempted energy trading from regulatory oversight, and it excluded it completely if the trade was done electronically. At the time, Enron was the main force behind getting this exemption in this act. By closing this loophole, the amendment will prohibit fraud and price manipulation in all over-the-counter energy commodity transactions and provide the CFTC the authority it needs to investigate and prosecute allegations of fraud and manipulation.

Opponents of this amendment have questioned why we need to explicitly give the CFTC this authority. The answer is we need to give the Commodities Futures Trading Commission this authority because we learned during the western energy crisis that there was, in fact, pervasive manipulation and fraud in energy markets, and that FERC and the CFTC were either unable or unwilling to use the authority they

had to intervene. I think Mr. Delaney's plea bargain is eloquent testimony to that.

We need to give the CFTC this authority because we need regulators to protect consumers and make sure they are not taken advantage of. We need to give the CFTC this authority because, when there are inadequate regulations, consumers are ripped off. Let me be clear. Our amendment will provide the same protections to consumers in energy markets as these same consumers have in all other commodity markets such as the New York Merchantile Exchange or the Chicago Merchantile Exchange. Our amendment does not provide more regulation or greater oversight than what currently exists for other commodity markets, merely the same protections: Protections which are currently lacking.

In fact, in an effort to avoid onerous or complicated requirements, Senator LEVIN, Senator LUGAR, and I have worked together to make sure the recordkeeping and reporting requirements are very clear. Our amendment only requires traders to keep records of over-the-counter trades in energy commodities and derivatives that perform a significant price discovery function. In other words, these are the trades that affect the pricing for everyone. These are the big trades, and these are the trades where there needs to be transparency because they affect the market.

If I am a large company and I sell you 1,000 decatherms of natural gas in a typical transaction on the spot market, this is a price discovery transaction because the prices of these transactions are usually covered and reported by the press and will affect prices of subsequent transactions. Trades on electronic markets serve, by their very nature, as price discovery functions. They should be available for everyone to see because they will very likely influence what price the next trader will buy or sell at in an open and transparent fashion.

Our amendment would require traders to keep records of their trades and to maintain an audit trail. This requirement would simply regulate energy trading in the same way other finite commodities are handled. Why should pork bellies or frozen concentrated orange juice have more protection for consumers than electricity?

There is nothing in this amendment that should be burdensome for traders in any way. I would think responsible traders would already be keeping records and maintaining an audit trail for their own protection in this world. In fact, the amendment only allows the CFTC to seek information to investigate allegations of wrongdoing.

We have worked for almost 3 years to craft this provision. It has had hearings in the committee. It has been discussed on the floor. We have met with dozens of people. We understand there are those who do not want to support it. But in not supporting it, what they are doing is condoning a marketplace that has practiced deep fraud and deep manipulation and for the most part gotten away with it.

I don't think we do our job as Senators if we can't protect an unsuspecting public. As the Derivative Center pointed out, these markets are in disarray now. Why are these markets in disarray? They are in disarray because people do not have confidence in them. They are in disarray because there is no transparency because there are hidden markets, and when they explode, they explode big time.

Why should Mrs. Smith from Texas or Mr. Jones from Pennsylvania or Mr. CORNYN from Texas invest in these markets? Why should he? He wouldn't have confidence in them. He would have no transparency. He would have no ability to know what is going on.

What we are trying to do is put that confidence back in the marketplace by providing some prudent, commonsense, antifraud, antimanipulation oversight by saying: If you trade this way, you must keep a record of the trade. You must keep an audit trail. And these trades must be transparent so that the Smiths, the Jones, and the Cornyns, if they so desire, can find out what in fact is going on.

Let me stress that this does not impact financial derivatives in any way whatsoever. We have clarified that. Our opponents persist in using the argument that financial derivatives are affected. They are not. Look at page 20, lines 17 to 20, if you want to see it in black and white. Nothing in this provision affects the authority of the Federal Energy Regulatory Commission. We don't change it in any way.

To respond to concerns about trading platforms that only match buyers and sellers, there is no capital requirement. Let me repeat that because people are going around saying there is. To respond to concerns about trading platforms that only match buyers and sellers, there is no capital requirement.

Bottom line: Our amendment merely gives back to the CFTC most of the authority it had before Congress passed the Commodity Futures Exchange Act.

I note that Senator LEVIN is in the Chamber. I wonder if it would be appropriate for him, if other Members would agree, to make some comments at this time.

Mr. BENNETT. Mr. President, I would have no objection to having the Senator from Michigan make his statement. But I wonder if we can arrive at some kind of time agreement as to how much longer we are going to spend on this amendment. I was told the Senator from California originally said she could deal with it in an hour and a half. I suggested an hour and was told that was not acceptable. I am now willing to say an hour and a half if we can, in fact, nail that time down, with the Senator's statement until now applying against the full hour and a half.

Mrs. FEINSTEIN. If I might respond, I believe Senator LEVIN will speak, Senator LUGAR wishes to speak, and Senator CANTWELL wishes to speak. So on our side of this issue, I believe it will be at least an hour and a half.

Mr. BENNETT. An additional hour and a half, I ask?

Mrs. FEINSTEIN. It may not be. I will try to move it rapidly along. These Senators have indicated they wish to come to the floor.

Mr. BENNETT. I ask unanimous consent, then, that the debate on the minority side be limited to an hour and a half from this point forward, and I will control the time on the majority side and see that we have no more than an hour and a half to respond.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BENNETT. In that case, I have no objection to the Senator from Michigan speaking now.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first let me thank Senator FEINSTEIN for her leadership on this issue and for her typical courtesy in interrupting her statement so I may give mine at this time. It is most appreciated. More important, I thank her for her leadership and Senator LUGAR's leadership in bringing this amendment to the floor.

Recent highly negative events in our energy markets show that there is an urgent need to prevent price manipulation in those markets, improve the transparency of energy markets, and to strengthen the ability of State and Federal agencies to enforce the rules governing the operation of those markets.

Widespread price manipulation and falsification of price information in the electricity and natural gas markets in the last few years have inflicted billions of dollars in extra costs on energy consumers and businesses and have been a severe blow to our economy.

The corruption and manipulation of these markets by Enron and other companies fueled the collapse of some energy markets in the United States, the bankruptcy of some energy companies, and a huge decline in investment and trading in the energy markets.

The bipartisan amendment of Senators FEINSTEIN, LUGAR, myself, and others would close these ''Enron loopholes.'' Enron used these loopholes, and other companies joined with them, to manipulate energy markets at the public's expense. Our amendment would strengthen prohibitions on fraud and manipulation and give both the Federal Energy Regulatory Commission, FERC, and the Commodity Futures Trading Commission, CFTC, the necessary tools to monitor the energy markets, to prevent manipulation, and ensure that prices are fairly and competitively arrived at.

This legislation is needed because companies such as Enron are now permitted to trade large amounts of energy in virtually unregulated markets, making those unregulated markets and

the resulting price of the energy we use vulnerable to fraud and manipulation.

FERC's recent report on manipulation in the western energy market provides some stunning examples of how the energy markets can be manipulated.

FERC found that Enron, through an unregulated electronics trading center called EnronOnline, ''manipulated the price of physical gas upward and downward,'' earning huge amounts of illegal profits. FERC determined that Enron often ''invited counterparties to wash trades, and these trades created a false sense of liquidity, which can distort prices. Enron also manipulated prices on the EOL by having affiliates on both sides of certain wash-like trades. This created artificial price volatility and raised prices.''

The report by FERC concluded that ''large-volume, rapid-fire trading by [Enron] . . . substantially increased natural gas prices in California.'' FERC found ''significant market manipulation'' in the ''inextricably linked'' natural gas and electricity markets, and that ''dysfunctions in each fed off one another'' during the energy crisis in California.

According to FERC:

Spot gas prices rose to extraordinary levels, facilitating the unprecedented price increase in the electricity market. Dysfunctions in the natural gas market appeared to stem, at least in part, from efforts to manipulate price indices compiled by trade publications. Reporting of false data and wash trading are examples of efforts to manipulate published price indices.

Finally, the report found:

The widespread false reporting led staff to conclude that reported prices did not reliably reflect market activity.

I would like to give one specific example on how one day, January 31, 2002, Enron used an unregulated, nontransparent Internet trading system to manipulate the natural gas market in California.

In August of 2002, the FERC staff issued an investigatory report finding that out of a total of 227 trades on that day, January 31, 2002, 174, or more than two-thirds of the trades on that day, involved Enron and a single unnamed party. Most of these trades took place during the last hour of trading with two parties buying huge amounts of natural gas from each other in numerous transactions.

FERC determined that the trades took place at ''higher prices,'' in their words, than other trades that day, and resulted in a steep price increase over the last hour of trading. FERC described this trading activity as ''difficult to rationalize as a normal or standard business practice'' and noted:

[O]nly Enron and possibly the counter party could have known that so much of the trading was going on between themselves, because parties looking at EOL's screens could only see the bid and ask prices; they could not know who the counter party was on any particular trade.

The FERC report indicated that EnronOnline's prices were routinely used to prepare published reports on natural gas prices, which meant that the Enron price data was not just affecting Enron trades but also causing higher natural gas prices industrywide. The report concluded that Enron had ''significant ability and incentive to manipulate the price data published by the reporting firms.''

This spring, FERC issued a number of recommendations to fix the problems in the energy markets. FERC recommended new policies and procedures for the oversight of commodity trades and prices and a system of market surveillance to detect and prevent manipulation.

In March of this year, following a year-long investigation, I released a Permanent Subcommittee on Investigations staff report into the operation of crude oil markets. The report describes the regulated and unregulated markets for buying and selling crude oil and explains how crude oil prices are set and how they affect the price of critical oil commodities, such as gasoline, home heating fuel, jet fuel, and diesel fuel.

The report describes the vulnerability of unregulated commodity markets to price manipulation and the need for and beneficial effects of U.S. commodity regulation. The report also explains how the over-the-counter markets are virtually unregulated and, therefore, vulnerable to manipulation.

The report recommends that traders in over-the-counter markets be required to ''provide the CFTC with routine information on large positions in crude oil and energy contracts and derivatives, as well as other information that would aid the CFTC in detecting, preventing, and halting commodity market manipulation.''

So we have two reports reaching the same conclusions about the need for more market transparency and strengthened oversight to detect and prevent fraud and manipulation in energy markets.

How did we get to this position where companies, such as Enron, are permitted to manipulate prices in our energy markets? The answer lies in how the energy markets and the Federal regulations have evolved over the last 20 years.

Billions of dollars' worth of contracts for the future delivery of energy are now traded every day. These contracts are called energy derivatives because they derive their price from the price of the energy commodity in the contract.

There are two basic types of energy derivatives. Energy derivatives that are traded on futures exchanges are called futures contracts. The trading of futures contracts on futures exchanges is regulated by the Commodity Futures Trading Commission under the Commodity Exchange Act.

The other type of energy derivatives, which are not traded on futures exchanges, are called over-the-counter energy derivatives. These derivatives may be traded by fax, by phone, in face-to-face meetings, or over the Internet. The trading of these derivatives is virtually unregulated.

Both the futures markets and the over-the-counter markets perform identical economic functions. Both markets enable traders to buy and sell commodities at fixed prices, disseminate information about commodity prices, and provide a way for buyers and sellers to hedge against changes in the price of these commodities. Commodity traders routinely use both the futures markets and the over-the-counter markets for price discovery and hedging.

Today, the types of contracts traded in the futures markets and the over-the-counter markets are virtually identical. As an indication of how indistinguishable these contracts really are, the NYMEX even calls some of the contracts that it offers on its over-the-counter electronic market ''futures contracts.''

This is an example of what is shown on the NYMEX boards. This is the way the NYMEX advertises: Light Louisiana sweet crude oil futures—futures. Futures are supposed to be bought and sold on futures markets, not over-the-counter markets, but this is an over-the-counter sale and offer.

This is a picture the New York Mercantile projects over the Internet for the purchase and sale of over-the-counter contracts. Notice it says: Trading venue is over the counter, and yet it calls that over-the-counter offer ''futures.'' If they were really futures, they would be regulated as futures contracts are by the Commodity Futures Trading Commission. But these are over-the-counter sales. These are unregulated, and yet they are characterized as futures. The language used here is interchangeable. The economic function is interchangeable. The only difference—and it is a critical difference—is that futures contracts are regulated by the Commission and over-the-counter contracts are not. And they should be. They perform the same economic function. The language used is exactly the same and yet there is one group of contracts unregulated. The other group of contracts is regulated. It is the unregulated contracts which got us into so much trouble, the lack of transparency which got us into so much trouble.

Let me give another example. The largest over-the-counter electronic trading facility is the IntercontinentalExchange, known as ICE, in Atlanta. It trades contracts that it calls futures, and yet these are not futures; these are over-the-counter transactions, described by the ICE as futures. It says you can trade futures from your desktop. Yet these are over-the-counter transactions.

Here is what they say on their Web site:

IntercontinentalExchange brings parallel trading in IPE Brent crude of futures to the ICE platform. Electronic futures trading sessions operate in parallel with the regular

open-outcry session on the IPE floor in London.

Now, that open-outcry session, as they phrase it, is the futures trading session that occurs at the exchanges. So they are treating them the same. They are saying, one can trade in futures electronically. The language now has become the same, the economic function is the same, but there is one key difference, and it is a deadly difference in terms of consumers and in terms of manipulation of prices. That difference is that futures contracts are in fact regulated and must be disclosed and are in fact transparent, whereas the over-the-counter trades are not. They are now dealt with interchangeably by the largest exchange, the largest over-the-counter electronic trading facility in the country, the IntercontinentalExchange in Atlanta.

Only real futures markets are regulated to prevent price manipulation. That is a fact. The over-the-counter market is not. That is what has got us in the hole we are in. That is what permitted Enron to dig us deeper into the hole we are in and to cause the loss of huge amounts of money to our consumers and to many customers. No disclosure, take care of these trades over the market. If the market were a regulated market, such as the futures market is, it would have been regulated. It could have been transparent. We would not have seen the Enron disaster and the manipulation that we saw in Enron and by other companies.

The Commodity Exchange Act regulates the futures exchanges so that they cannot be artificially manipulated. This regulation and transparency has bolstered the confidence of traders in the integrity of these markets and it has helped to propel our country into the leading marketplace for many commodities.

For example, the New York Mercantile Exchange, NYMEX, is the world's leading exchange for futures contracts, for energy products such as natural gas, crude oil, gasoline, and home heating oil. The CEA makes it a felony to manipulate the price of any commodity, and it contains a number of provisions to enable the futures exchanges and the CFTC to detect and prevent price manipulation. The CEA requires the regulated futures exchanges to ensure that trading is orderly and to detect and prevent price manipulation. The CEA directs the CFTC to oversee the operations of the futures exchanges and to itself perform market oversight and ensure that trading is orderly.

According to a former CFTC Chairman:

> The job of preventing price distortion is performed today by regulatory and self-regulatory rules operating before the fact and by threats of private lawsuits and disciplinary proceedings after the fact. Both elements are essential.

According to the CFTC:

> The heart of the commission's direct market surveillance is a large-trader reporting system, under which [the futures exchanges and brokers] electronically file daily reports with the commission. These reports contain the futures and option positions of traders that hold positions above specific reporting levels set by the CFTC regulations.

There are no protections against manipulation in the over-the-counter markets. Unlike the futures markets, the over-the-counter markets are not required to monitor trading to detect and deter fraud and price manipulation. Information that is routinely reported to the futures exchanges and the CFTC is not available to the over-the-counter exchanges or to the CFTC. Traders do not have to report large trades. There are no position limits or daily price limits. The over-the-counter markets lack all of the critical features of an effective program to detect and prevent price manipulation.

Over-the-counter energy derivatives are unregulated because of a provision that was added to a conference report at the last minute in an amendment to the Commodity Exchange Act in an omnibus appropriations bill at the end of the Congress in the year 2000. The Commodity Futures Modernization Act of 2000 was intended to clarify the regulation of financial instruments. Most of the provisions in the CFMA were based upon the recommendations contained in the Report of the President's Working Group on Financial Markets, Over-the-Counter Derivatives Markets and the Commodity Exchange Act, which was jointly issued in November 1999 by the Treasury Department, the Federal Reserve, the SEC, and the CFTC.

The working group recommended that financial derivatives be excluded from regulation under the CEA but that derivatives involving nonfinancial commodities with a limited supply, such as energy commodities, not be excluded.

The working group stated:

> Due to the characteristics of markets for nonfinancial commodities with finite supplies, however, the working group is unanimously recommending that the exclusion not be extended to agreements involving such commodities.

A unanimous recommendation of the working group and the House and Senate bills leading up to that conference in fact did not extend the exclusion to commodities transactions. Yet the exemption in the current law for trades in over-the-counter energy derivatives, the Enron exemption, somehow or another got inserted in that law at the eleventh hour during a House-Senate conference. This exemption was never considered by any committee. It was never discussed at any hearing. It was never commented on by interested parties. It was simply inserted in the conference report at the last minute. It is one of the reasons for the Enron mess that we have had to clean up after.

This amendment would correct that situation. It is essential we have this kind of transparency regulation in the commodities markets. I hope this amendment, which is a bipartisan amendment, will be adopted by this body and close the Enron loophole which was created in the dark of night, without any debate in this body, without any knowledge of this body, in a bill which this body had passed without such an exemption, in a bill which the House had passed without such an exemption, and yet the exemption showed up nonetheless in a conference report and helped to create the Enron disaster and mess which we have been trying to clean up ever since.

Exempting energy commodity trades from the CEA did not make sense when it happened in 2000. It would be irresponsible to continue it now, especially after we have seen how it facilitated the market fraud and manipulation by Enron and others.

The amendment before us would return the commodities law to the way it was for decades prior to the passage of the Enron exemption. It would ensure that fraud and price manipulation would be a felony, and it would remove ''the Enron exemption'' as a shield against regulation and prosecution. It would authorize the CFTC to establish recordkeeping requirements to enforce the anti-fraud and anti-manipulation prohibitions in the CEA.

This amendment also contains important provisions to improve FERC's ability to ensure the transparency and integrity of wholesale energy prices. It would direct FERC to establish an electronic price reporting system, strengthen the penalties for violations of the Federal Power Act and the Natural Gas Act, prohibit wash trading and other collusive and manipulative practices in wholesale energy markets, and clarify FERC's authority to fashion appropriate remedies in cases of wholesale price manipulation.

There is a great deal of support for this legislation.

Governor Jennifer Granholm, of my home State of Michigan, writes that, in the aftermath of the massive electricity blackouts that struck Michigan and large areas of the midwest and northwest this past summer, ''all necessary steps should be taken to bolster business and consumer confidence in the Nation's energy markets and promote additional investment in reliable energy delivery at a fair price.'' Governor Granholm says our language ''would improve energy price transparency in wholesale electricity markets, greatly increase criminal and civil penalties for trading violations, prohibit market manipulation and fraud in all energy market sectors, and strengthen day-to-day energy market oversight, including over-the-counter market transactions that significantly affect energy prices.''

The American Public Gas Association supports the amendment because ''it will improve market transparency and provide the essential regulatory oversight to detect and prevent manipulation and improve the efficiency of energy markets.''

Attorney General Eliot Spitzer, from the State of New York, urges swift

adoption of the amendment, writing that ''the amendment closes loopholes used to manipulate energy markets, improves the ability to detect fraud and other manipulation, and deters manipulation by establishing substantive penalties.''

The North American Securities Administrators Association, the association representing the securities administrators of the 50 States, supports this amendment because it ''would provide more transparency to the wholesale electricity markets, supply the CFTC with the authority to detect fraud and manipulation, and help to deter wrongdoing by significantly increasing the penalties for violations of the Federal Power Act.''

Consumers Union, the Consumer Federation of America, Public Citizen, and the U.S. Public Interest Research Group support this amendment. They state it ''would go a long way towards addressing the serious problems plaguing the Nation's energy markets.''

The Derivatives Study Center comments that ''this important legislation will assure that [energy commodities] will be covered by Federal prohibitions or fraud and manipulation. . . . It will subject [energy] derivatives to some of the same regulations that apply to securities, banking, exchange-traded futures and options and other sectors of U.S. financial markets.''

The National Association of State Utility Consumer Advocates writes that this legislation ''will help fix broken energy markets and given regulators the tools needed to protect consumers from market manipulators.''

One hundred and fifty years of history of our commodity markets demonstrates that market integrity and investor confidence will not magically spring up in markets that have been tainted by manipulation. That same history shows that fair and efficient markets do not emerge by themselves. Rather, regulation and oversight are necessary to ensure that markets are fair and efficient. Without fair and efficient, and that means transparent, energy markets consumers will pay higher prices for energy products, capital will be misallocated, and out national economy and energy security will be harmed.

This history also shows that a legal prohibition against commodity market manipulation, without more, does not deter or prevent manipulation. Continuous market disclosure and oversight are essential to halt manipulation before economic damage is inflicted upon the market and the public. This is why a major portion of the CFTC's budget and resources is devoted to oversight of the futures markets.

Although some enforcement actions have been brought following the manipulation of the western markets, these enforcement actions will do little to make whole the consumers and businesses that suffered billions of dollars in losses from those misdeeds. It would be far better to ensure that such abuses do not occur in the first place, rather than rely on the hope that a few of the manipulators are caught after the fact.

We cannot afford to have more Enrons, more manipulations, more frauds, and more flight of capital in the energy sector. It is imperative that we restore the integrity and credibility of our energy markets.

Our bipartisan amendment will help create fair and transparent energy markets that investors can trust.

Mr. President, I thank the Senator from California for her tenacity on this and so many other issues. But in this matter she and her State have suffered firsthand probably more than any other State as a result of this Enron loophole which she is so heroically and determinedly trying to close this afternoon.

Mrs. FEINSTEIN. I thank the Senator from Michigan. More than just thank him, I thank him for his brilliance and for his willingness to be part of this effort. I think Senator LEVIN is really one of the fine minds in this Senate. It has been a great delight for me to have the opportunity to work with him. I think he has helped us make this a much better bill. I thank him so much.

Mr. President, at this point I would like to read into the RECORD a colloquy between the two leaders, Senators FRIST and DASCHLE, which makes clear the parameters of this and why we are on the floor on this bill. If I may:

Senator DASCHLE: Mr. President, Senator FEINSTEIN has a market manipulation amendment that she was seeking a vote on. It is my understanding that the agricultural appropriations bill would be the appropriate bill for that amendment. I would inquire of the majority leader, should she offer her amendment to that bill, would she be assured of a vote on or in relation to her amendment with no second-degree amendments, prior to such vote?

The majority leader responds:

The Democratic leader is correct. If Senator FEINSTEIN offers her amendment to that bill, she will get a vote on or in relation to it.

I just offer that to clarify the present legal situation.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I thank the distinguished Senator. I compliment her and I compliment Senator LEVIN on this work. I am pleased to be associated with them in this amendment.

I come to this amendment from an experience serving on the Agriculture Committee throughout the 27 years of my service in the Senate and 6 years as chairman of the committee. The Agriculture Committee spent a great deal of productive time working with the CFTC to make certain that the regulatory aspects with regard to trading were as strong and as just as possible. We did so, not in a sense of being punitive with regard to new markets and new innovations to weigh in on how American enterprise might flourish, but rather to try to give confidence to hundreds of thousands of traders and beyond—the farming community in particular—of our country. That was the basis for the creation of the Commodity Futures Trading Commission. We have had renewals of the CFTC during my tenure, and I believe we have improved upon the situation on each occasion.

Historically, energy has been exempted from CFTC regulations. I will not attempt to trace the history of why those exemptions occurred. But I will say, in the give and take of compromise as the legislation made its way through the committees of the House and the Senate, and conferences in consultation with the White House, on each occasion in which energy was about to be incorporated in a regulatory pattern, it was exempted as a final compromise in order to gain passage of legislation at one juncture or another. That turned out to be a fatal flaw.

The testimony before the Agriculture Committee, quite apart from testimony before other committees represented by the Senators here today, indicated it was not the entirety of the problem but certainly an example of the contribution of a very grave set of circumstances in which traders without particular scruples and with a minimum of regulation bankrupted each other, and unfortunately, a good number of other innocent parties in the process.

Even in the midst of all of this rubble, as we witnessed the whole thing collapsing, there were still brave spirits in committee and elsewhere who said: ''Let freedom rein; don't regulate anything that doesn't need regulating.'' But, of course, by that time, most of the market aspects of it—all the electronic aspects of it—the poles and the plugs, had literally been pulled.

I do not claim to understand the entirety of the complexities of how those markets work. At some point, if there are not people who can make good trades, you literally pull the plug and stop your electronic mechanism and the trading stops, and those who are still on the merry-go-round are out of luck.

There has always been the arguments that this is simply a subject for a few wealthy Americans to consider as they deal with each other. But that is not the case. The principal users of these markets are very wealthy people—people who ought to know better and who have proper legal or financial counsel so they don't make mistakes.

But there are other people who get involved. The ramifications of the energy markets are not just for private corporations but they branch out into services for communities and the governing systems of this country.

I appreciate very much those who will continue to advocate in the midst of all of the devastation which is apparent—and books are now being written about the difficulties. These books

will point out, as some already have, that the President's working group—whose members testified before the Agriculture Committee several times when I was chairman—let the markets go without regulation; and said if you have not regulated at this point, let them alone. I am here to advise the President and the member of this working group, that these markets do not work well without public confidence, and without a degree of transparency. If there is anything occurring in American financial markets now, anything encouraging to investors, it is the thought that finally many people in Government have come to their senses and realized a good number of things have been going on to undermine confidence in those markets. Those of conservative persuasion who favor the markets and believe markets work, have to take responsibility and make certain they do actually work. In order for them to work, markets must be just, and investors must understand that there are remedies, as opposed to pulling the plug, literally, and letting the trades flounder and bankruptcy ensue.

Mr. President, this is a very serious problem. I appreciate very much the persistence of the Senator from California in insisting that this issue needed to be raised again. She has raised it, and this is why I have come to the floor today in support of it.

I recognize the atmosphere in which we are involved in trying to come to grips with the Agriculture appropriation in such a short time frame. It is a necessity to complete our work.

This is not, perhaps, the most conducive manner to study this complex subject matter that Senators might require. However, I simply say, during my chairmanship, the Agriculture Committee studied this issue to a fault. Beyond circumstances I can control, I was no longer chairman, and the issue slid from the agenda. I do recall that we researched the issue, brought all the parties together, and held 2 days of study with experts on how future markets work. Many Members came to the conclusion that energy should be included, and it should be reformed. I pray that will occur.

The CFTC, I believe, is the logical repository, but I am not insistent upon that. The need for reform is at hand and this amendment advances that ball.

I yield the floor.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Indiana. He has taken a position based on extraordinary knowledge, having served on that committee for 27 years, having been its chair, having seen what happened with the Commodity Futures Oversight Act.

In resisting, as he termed it, the movement just to have anything go, let anything go, if they are not regulated, let it go that way, he realizes the American people are not well served and the investment community is not well served when every day you pick up a newspaper and someone else is being arrested for fraud or manipulation. Our laws can prevent that from happening.

I thank the Senator very much. You have been terrific. Your support is very meaningful to us.

I have stated in the Senate numerous times it is the duty of this Congress to make sure our regulators have all the authority they need to prevent fraud and manipulation in the energy markets. Simply put, this is what our amendment does.

Enron remains the perfect example of how the systems were so easily gamed. After Enron successfully lobbied for an exemption to the Commodity Futures Modernization Act in 2000, they and others in the energy sector quickly took advantage of this new freedom by trading energy derivatives absent any transparency and regulatory oversight. In other words, in secret. Thus, after the 2000 legislation was enacted, Enron began to trade energy derivatives literally without being subject to proper regulatory oversight. That is how all these schemes came about. Some hotshot trader, sitting in front of his computer, found a way to evolve a strategy for the fraudulent and manipulative action of the marketplace. They let these various strategies play out.

Unlike the NASDAQ, from which timely electronic trade reports are available to the public, even prior to its transparency-enhanced reforms in 1997—in 1997, the NASDAQ reformed itself to make their traders more transparent—EnronOnline did not offer timely reporting of executions. This means EnronOnline provided no data regarding recently executed transactions. Consequently, even after the trades, basic market information was not provided to market participants.

It should not surprise anyone that without basic transparency, without the ability to see what is happening, prices would soar. What interests me is they did and yet there is still resistance to this legislation.

In 2 years, Enron's derivatives business had been a stand-alone company. It would have been the 256th largest company in America. That year, according to author Robert Bryce, Enron claimed it made more money from its derivatives business, $7.23 billion, than Tyson made from selling chickens. That is huge, if you think about it. Think what that means. This segment of the market in one year made $7 billion and nobody knew how. No one knew what the trades were. They were all in secret. Nothing was registered. There was no audit trail. There was no antifraud, antimanipulation oversight. Boom. It happened.

EnronOnline rapidly became the biggest platform for electronic energy trading. But unlike the regulated exchanges, such as the New York Mercantile Exchange, the Chicago Mercantile Exchange, and the Chicago Board of Trade, EnronOnline was not registered with the CFTC. So Enron set its own standards. In other words, it had a very secure, quiet, protected niche on the market.

Others have tried to replicate that. The banks, for example, Senator LEVIN said, devised something called the IntercontinentalExchange so they could do the same thing Enron has done. It is wrong.

Traders and others in the energy sector came to rely on EnronOnline for pricing information. Yet the company's control over this information and its ability to manipulate it was tremendous. As author Robert Bryce went on to describe—and this is very colorful and true—Enron did not just own the casino. On any given deal, Enron could be the house, the dealer, the oddsmaker, and the guy across the table you are trying to beat in diesel fuel futures, gas futures, or the California electricity market. You tell me that is a good situation?

You tell me this Senate and this Congress should let that happen. We should not. That is just plain wrong. Those who want to protect this secret niche are just dead wrong. It is not in the American people's interest to have a secret trading niche that can be an empire for fraud and manipulation. We need to protect consumers from future Enron-like scams because they are going to happen.

Now, was Enron and its energy derivative trading arm, Enron Online, the sole reason California and the West had an energy crisis? Absolutely not. Was it a continuing factor to the crisis? I certainly believe that evidence has shown it was.

Unfortunately, because of the energy exemptions in the 2000 Commodity Futures Modernization Act, which took away the CFTC's authority to investigate, we may never know for sure. In other words, quite purposely, this Congress, in 2000, let this secret world be created and said: We are going to take energy and metals out of the entire trading regulatory structure and we are going to let them go ''on operating'' on their own, without the proper oversight. That is exactly what happened. It is just plain wrong.

I repeat, once again, the amendment we offer will subject electronic exchanges such as EnronOnline to the same oversight as other commodity exchanges, such as the Chicago Mercantile Exchange, the New York Mercantile Exchange, and the Chicago Board of Trade—no more, no less. Without this type of legislation, there is insufficient authority to investigate and prevent fraud and price manipulations since parties making the trade are not required to keep a record.

This amendment is not going to do anything to change what happened in California and the West. That is done. But it does provide the necessary authority for the CFTC to protect other parts of this country against this kind of thing happening again. And it well could happen.

Nobody thought we would ever see the kind of event that blacked out most of the east coast and the Midwest, but we did. Nobody thought we would ever see what happened in the West, but we did. Nobody ever thought anybody would come up with schemes like ''Ricochet,'' ''Death Star,'' ''Get Shorty,'' ''Fat Boy,'' but they did. Nobody thought they could use them to commit a manipulation of the market, but they did.

I will leave you with one fact: The total cost of electricity in California in 2000 was $7 billion. The cost the next year was $28 billion. Does anyone believe that market forces—namely, supply and demand—could account for a 400-percent increase in the cost of electricity in a year? The answer has to be no. The answer has to be that bad things were done.

So we have worked on this amendment. I sit on the Energy Committee. I have tried to pay a great deal of attention to these matters, to follow this, and I am absolutely convinced that America and the business climate of America is much better off when things are transparent, when there are records kept, when there is a regulatory authority that can say: Whoa. Something may be going haywire. Let's take a look at it. That is all we do—no more and no less than for any commodity.

I wish to say one other thing. A financial derivative is not like an energy derivative. For people to confuse this and say it affects financial derivatives is not right. Energy is a finite commodity. There is a beginning and there is an end, and it is different from a financial derivative.

Mr. President, may I ask how much time our side has remaining?

The PRESIDING OFFICER. The Senator from California has 32 minutes remaining.

Mrs. FEINSTEIN. Thank you. I retain the remainder of my time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I yield half an hour to the Senator from Idaho.

Just a moment, Mr. President. I was unaware that the Senator from Mississippi was on the floor. He was hiding behind me. So I yield 15 minutes to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, thank you very much. I thank the chairman very much for yielding me this time.

Mr. President, the Feinstein amendment suggests a significant change in the regulatory regime that exists today for energy markets.

My understanding of the Senator's amendment is that it would, for the first time, require regulation of off-exchange energy derivatives. These complex instruments, used to transfer risk among sophisticated traders, are vital tools in today's energy trading environment.

The Commodity Futures Trading Commission exempted off-exchange energy derivatives from regulation in 1993. The Congress codified this exemption, largely without change, as part of the Commodity Futures Modernization Act of 2000. The Congress considered regulating off-exchange energy derivatives when it debated the modernization act but chose not to do so because of the disruption new burdensome regulation would cause to these sophisticated traders.

Senators should remember that the distinguished Senator from California initially offered an amendment similar to the one before us today during last year's Senate debate on the Energy bill. On April 10, 2002, the Senate voted 48 to 50 not to invoke cloture on this initial version of the Feinstein amendment. Senator FEINSTEIN tried again with a new version of her amendment in June of this year, again during debate on the Energy bill. On June 11, 2003, the Senate tabled this amendment by a vote of 55 to 44. It should be noted that the second version of her amendment received four fewer votes than the first version. Now we have before us a third version of the Feinstein amendment.

Senators may remember from the debate last summer on the second version of the Feinstein amendment that I read into the RECORD a June 11, 2003, letter from the President's Working Group on Financial Markets. In that letter, Alan Greenspan, Chairman of the Federal Reserve; John Snow, Secretary of the Treasury; William Donaldson, Chairman of the Securities and Exchange Commission; and James Newsome, Chairman of the Commodity Futures Trading Commission, all expressed opposition to the Feinstein amendment.

The letter warned that the Feinstein amendment would have significant unintended consequences for this important risk management market. It also pointed out that the Commodity Futures Trading Commission has brought formal legal actions against Enron, Dynegy, and El Paso for market manipulation, wash—or round-trip—trades, false reporting of prices, and operation of illegal markets.

The Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Department of Justice have also initiated formal actions in the energy sector. Some of these actions have already resulted in substantial monetary penalties and other sanctions and make clear that wrongdoers in the energy markets are fully subject to the existing enforcement authority of Federal regulators.

To my knowledge, the President's working group has not changed its position on this latest version of the proposal of the Senator from California.

Finally, the Feinstein amendment may create regulatory uncertainty for off-exchange energy derivatives from multiple Federal agencies. On one hand, the amendment before us requires the Commodity Futures Trading Commission to regulate off-exchange energy market derivative transactions. However, the amendment also contains a provision that appears to preserve the Federal Energy Regulatory Commission's authority in this market. At a minimum, the amendment appears to muddy the regulatory water with respect to this market.

Remember, the CFTC has antifraud authority. It has brought legal actions against Enron, El Paso, Dynergy, and others regarding energy market problems. It has recovered millions of dollars in fines from these companies. It has numerous ongoing investigations in this area. And more charges are possible. The Senator from California has said that her amendment is needed to prevent wash trades. The CFTC has wash trade authority. It has specific authority under section 4 of the CEA. The CFTC has brought several wash trade actions in the last several years, and its authority to do so has been upheld recently by two U.S. appeals courts. Just this year, the Commodity Futures Trading Commission has recovered tens of millions of dollars from merchant energy traders for wash trades and false trades.

It has also been suggested by the Senator that because exempt commercial markets such as the InterContinentalExchange are exempt from regulation under the Commodity Exchange Act that they have no regulatory oversight. These markets are subject to many regulatory requirements. They are required by statute to have an electronic audit trail. They are required by statute to keep records for 5 years. They are subject to antifraud and antimanipulation authority under the CFTC's jurisdiction. They are subject to special call examinations by the commission as well.

This amendment would impose large trader reporting on exempt commercial markets. Large trader reporting works on retail futures exchanges with standardized contracts but wouldn't work on exempt commercial markets which do not have the same type of standardization. Large trader reporting on exempt commercial markets could actually lead to misleading information being provided to the public. Large trader reporting is used for market surveillance in retail futures markets.

The Commodity Futures Trading Commission's statutory authority for exempt commercial markets is after-the-fact antifraud and antimanipulation enforcement and is, therefore, inconsistent with a large trader reporting scheme.

For these reasons, which I think are very compelling, the Senate should reject this amendment.

I ask unanimous consent to print in the RECORD the text of a letter that went out to all Senators signed by myself, Senator PETE DOMENICI, Senator MIKE CRAPO, and Senator ZELL MILLER on this subject, along with enclosures which are letters addressed to Senators CRAPO and MILLER from the Department of the Treasury, Board of Governors of the Federal Reserve System,

signed by John W. Snow, Alan Greenspan, William Donaldson, and James E. Newsome, along with a Department of the Treasury letter, dated September 18, 2002, to these same two Senators, Mr. CRAPO and Mr. MILLER.

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

OPPOSE FEINSTEIN DERIVATIVES AMENDMENT TO AGRICULTURE APPROPRIATIONS BILL

DEAR COLLEAGUE: We are writing to express our opposition to the Feinstein Derivatives Amendment to the Agriculture Appropriations bill. This amendment has been defeated twice before on a motion to invoke cloture in April 2002 (48–50) and most recently on a motion to table in June 2003 (55–44).

The amendment before us today is an up or down vote. The amendment would significantly modify portions of the Commodity Futures Modernization Act of 2000 (CFMA) and re-introduce legal uncertainties into derivatives markets. It is our understanding that the amendment's goal is to provide additional regulatory oversight to the over-the-counter (OTC) energy derivatives markets in light of the California energy crisis and Enron's bankruptcy; however to date, there is no evidence that derivatives caused either crisis.

Attached please find copies of two letters from the President's Working Group. The 2002 letter discusses reasons why the derivatives amendment is not warranted and urges Congress ''to be aware of the potential unintended consequences of current legislative proposals.'' The 2003 letter discusses all the civil, criminal and enforcement actions taken by the various federal agencies against the wrongdoers in the energy markets since Enron and specifically highlights the CFTC's actions.

Finally, the Energy Policy Act of 2003 will address many of the provisions in Senator Feinstein's proposed legislation, including increased protection against fraud and manipulation, which addresses the Enron-On-Line problem, a ban on roundtrip trading, and increased penalties for violations of the Federal Power Act and Natural Gas Act. Any attempt to undermine the Energy bill by adding similar provisions to the Agriculture Appropriations legislation is unnecessary and we strongly oppose this effort.

Sincerely,

THAD COCHRAN.
MIKE CRAPO.
PETE DOMENICI.
ZELL MILLER.

Attachments.

DEPARTMENT OF THE TREASURY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, U.S. SECURITIES AND EXCHANGE COMMISSION, COMMODITY FUTURES TRADING COMMISSION,

*June 11, 2003.*

Hon. MICHAEL D. CRAPO,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*
Hon. ZELL B. MILLER,
*U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATORS CRAPO AND MILLER: Thank you for your letter of June 10, 2003, requesting the views of the President's Working Group on Financial Markets (PWG) on proposed Senate Amendment #876 to S. 14, the pending energy bill. As this amendment is similar to a proposed amendment on which you sought the views of the PWG last year, we reassert the positions expressed in the PWG's response dated September 18, 2002, a copy of which is enclosed. The proposed amendment could have significant unintended consequences for an extremely important risk management market—serving businesses, financial institutions, and investors throughout the U.S. economy. For that reason, we believe that adoption of this amendment is ill-advised.

We would also point out that, since we wrote that letter last year, various federal agencies have initiated actions against wrongdoing in the energy markets. As you note, the CFTC has brought formal actions against Enron, Dynegy, and El Paso for market manipulation, wash (or roundtrip) trades, false reporting of prices, and operation of illegal markets. The Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Department of Justice have also initiated formal actions in the energy sector. Some of these actions have already resulted in substantial monetary penalties and other sanctions. These initial actions alone make clear that wrongdoers in the energy markets are fully subject to the existing enforcement authority of federal regulators.

The Commodity Futures Modernization Act of 2000 brought important legal certainty to the risk management marketplace. Businesses, financial institutions, and investors throughout the economy rely upon derivatives to protect themselves from market volatility triggered by unexpected economic events. This ability to manage risks makes the economy more resilient and its importance cannot be underestimated. In our judgment, the ability of private counterparty surveillance to effectively regulate these markets can be undermined by inappropriate extensions of government regulation.

Yours truly,

JOHN W. SNOW,
*Secretary, Department of the Treasury.*
ALAN GREENSPAN,
*Chairman, Board of Governors of the Federal Reserve System.*
WILLIAM H. DONALDSON,
*Chairman, U.S. Securities and Exchange Commission.*
JAMES E. NEWSOME,
*Chairman, Commodity Futures Trading Commission.*

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DEPARTMENT OF THE TREASURY, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, U.S. SECURITIES AND EXCHANGE COMMISSION, COMMODITY FUTURES TRADING COMMISSION,

*September 18, 2002.*

Hon. MICHAEL D. CRAPO,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*
Hon. ZELL B. MILLER,
*U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATORS CRAPO AND MILLER: In response to your letter of September 13, we write to express our serious concerns about the legislative proposal to expand regulation of the over-the-counter (OTC) derivatives markets that has recently been proposed by Senators Harkin and Lugar.

We believe that the OTC derivatives markets in question have been a major contributor to our economy's ability to respond to the stresses and challenges of the last two years. This proposal would limit this contribution, thereby increasing the vulnerability of our economy to potential future stresses.

The proposal would subject market participants to disclosure of proprietary trading information and new capital requirements. We do not believe a public policy case exists to justify this governmental intervention. The OTC markets trade a wide variety of instruments. Many of these are idiosyncratic in nature. These customized markets generally do not serve a significant price discovery function for non-participants, nor do they permit retail investors to participate. Public disclosure of pricing data for customized OTC transactions would not improve the overall price discovery process and may lead to confusion as to the appropriate pricing for other transactions, as terms and conditions can vary by contract. The rationale for imposing capital requirements is unclear to us, and the proposal's capital requirements also could duplicate or conflict with existing regulatory capital requirements.

The trading of these instruments arbitrages away inefficiencies that exist in all financial and commodities markets. If dealers had to divulge promptly the proprietary details and pricing of these instruments, the incentive to allocate capital to developing and finding markets for these highly complex instruments would be lessened. The result would be that the inefficiencies in other markets that derivatives have arbitraged away would reappear.

It is also unclear who would benefit from the proposed disclosures and regulations other than whoever simply copied existing products and instruments for their own short-term advantage. Weakening the protection of proprietary intellectual property rights in the market arena would undercut a complex of highly innovative markets that is among this nation's most valuable assets.

While the derivatives markets may seem far removed from the interests and concerns of consumers, the efficiency gains that these markets have fostered are enormously important to consumers and to our economy. We urge Congress to protect these markets' contributions to the economy, and to be aware of the potential unintended consequences of current legislative proposals.

Yours truly,

PAUL H. O'NEILL,
*Secretary, Department of the Treasury.*
ALAN GREENSPAN,
*Chairman, Board of Governors of the Federal Reserve System.*
HARVEY L. PITT,
*Chairman, U.S. Securities and Exchange Commission.*
JAMES E. NEWSOME,
*Chairman, Commodity Futures Trading Commission.*

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. I yield a half an hour to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, I rise to address the Feinstein amendment, as the Senator from Mississippi has indicated, for the third occasion that we have debated this issue in this Congress. It is important to note that each time this amendment has been raised, it has been defeated. Each time the amendment has been raised, it has been opposed by those in the regulatory community—again as has been indicated by the Senator from Mississippi—whether it be the CFTC, the Department of the Treasury, the Board

of Governors of the Federal Reserve, or others. The fact is that consistently those who are in charge of regulating, overseeing, and managing our economy and our financial markets have been opposed to this amendment. The question that we must ask ourselves is, Why?

To do so it is important to go back over the history of this act. The Commodity Futures Modernization Act that we are debating is one with which we have had a long history of dealing in this Congress. In fact, before 2000, when President Clinton was in office, a President's working group was established which brought together experts from across the industry, not only those who were in the financial industries, but those who were regulating the financial industries, those we have already mentioned. The Secretary of the Treasury, the Commodity Futures Trading Commission, the Board of the Federal Reserve, and others were a part of this Presidential working group. Those who were involved in this Presidential working group looked at all the different commodities that we deal with, the different types of manners in which we deal with these commodities, and came up with an approach to how we should reform and modernize our law to best take advantage of the types of trading contexts or trading ideas that were utilized in the management and trading of commodities.

It is a difficult subject to talk about because it is so complicated. The bottom line is that this act was then put forward. It was brought forward on a bipartisan basis in Congress, studied extensively by congressional committees after the Presidential committee brought forward its recommendations. And in the year 2000, reforms of the act were implemented.

The amendment seeks to change the structure of regulation that this act established. The first time this challenge to the act was brought forward, we had occasion to have Mr. Greenspan before the Banking Committee. Mr. Greenspan was asked in his testimony what the proposed amendment would mean and what this concept of derivatives, that most people in America don't really get very engaged with, meant to our economy. I was the one who asked the question at that time.

Mr. Greenspan's answer is very illuminating. He said, in his opinion, increasing the regulation and changing the scheme for regulating the management and the trading in derivatives from that which had been put together by the President's working group and approved by Congress would actually increase the threat to our economy. In fact, he pointed out that a very simple way to understand derivatives is that they are a tool by which sophisticated participants in the market are able to allocate risk so that those who are better able to bear it can pick it up, and that by being an instrument or a tool through which we allocate risk in our economy, the American economy actually was able to respond more quickly, more resiliently, and more effectively to the threats that have faced it over the last few years.

Had we not had the capacity for derivatives transactions between sophisticated buyers, had that been regulated and diminished or pushed offshore because the United States chose to regulate it so aggressively, we would not have had the resilience and the response in our economy that we had.

We would have had a deeper trough and a more difficult recovery. Again, this amendment seeks to change that regulatory system Congress and the President and his working group so carefully put together.

How did that act work? Well, the act created three different categories of derivatives transactions. The first category that was fully covered and is on an exchange—regulated exchange—where the first category was the category of agricultural transactions. Those transactions are fully regulated and fully covered under the act.

The act identified certain types of transactions that should not be covered at all and should have no regulatory impact. Those were called financial derivatives. They include things such as treasury bonds, foreign exchange, or interest rates—those types of transactions that occur in the financial markets, and it was concluded they should not have any regulation. They were simply excluded from the act.

A middle category was created for all other kinds of transactions. We have, on the one hand, agricultural transactions, which are fully covered. On the other hand, we have financial transactions, which are fully excluded and, in the middle, all other types of commodities, where the energy transactions fall. It has been argued today that these energy transactions simply are not covered. In fact, the phrase that has been used is one that would imply those engaged in energy derivatives transactions simply don't have any regulatory coverage at all. The phrase ''let anything go'' has been used, or it has been said there is literally no antifraud or antimanipulation provision or protection in the law regarding these types of transactions. That simply is not the case. This middle type of transaction was not put on an exchange because these are not the kinds of transactions that general investors in the market get involved with. These are highly sophisticated transactions, detailed negotiations between very sophisticated buyers and sellers, accomplishing this result which I talked about earlier of trading and exchanging risk. It is done in such a way that it doesn't effectively work on an exchange. That is why in this middle category the exchange was not included, but regulation for price reporting, antiprice manipulation, antimarket manipulation, and antifraud protection was included. So it is simply not correct to say those engaged in energy transactions—derivatives transactions—are not subjected to antifraud, antimanipulation, or price-reporting requirements. They are, which brings to bear the question of why we need to change this system of regulation.

Again, on the floor today, as has been the case in the past each time we have debated it, the argument has been made that the Enron transaction or the Enron problem would not have been a problem had we had the aggressive kind of antifraud and antimanipulation this amendment proposes to create. Well, again, when we have had experts before us, and as has been said on the floor already by others, the Agriculture Committee and other committees have studied this very carefully. The experts have said to us there is no indication the lack of regulatory authority, if such exists, was any cause for what happened with Enron, and the lack of having regulated derivatives transactions, in terms of putting them on an exchange, or failure to have further fraud or antiprice manipulation and enforcement authority, was the cause of what happened with regard to the Enron transaction.

As a matter of fact, I asked that same question, when this issue first came up, to Alan Greenspan. He, among many others, has indicated there is no evidence the failure to have more rigorous regulatory schemes in place on derivatives transactions would have stopped Enron from doing exactly what it did.

Nobody is saying Enron did not violate the market, that Enron did not engage in price manipulation, that Enron did not engage in these wash transactions, that Enron did not engage in fraudulent behavior. The fact is, Enron did engage in these types of activities. The fact is the CFTC is currently investigating and enforcing its antifraud and antimanipulation enforcement authority against Enron and others in the market who might engage in these types of activities.

The point is, as we proceed, we must understand whether what happened in terms of the Enron circumstance was as a result of the law not being strong enough or was simply the result of the fact that Enron violated the law. The fact is Enron did violate the law, those violations are being identified, and something over $90 million in fines and penalties against Enron and other market violators have already been enforced.

Again, the point is enforcement is occurring. Why should we be concerned about adding a further regulatory scheme on top of that which is already in place? It gets back to the point Alan Greenspan made in that first hearing, where I first asked him about the issue; that is, we have a need in this country for resilience in our marketplace, in terms of allocation of risk.

Our management of derivatives is critical in terms of how well we

achieve that objective. If we want to increase the regulatory burden and increase the potential of diminishing our ability in the market to have the benefit of these very important types of transactions, then we better have a very good reason for doing so. If we want to have the benefit of a resilient marketplace, where derivatives transactions can occur between sophisticated buyers and sellers, then we want to be very careful about how we regulate it or overregulate it.

I agree with anybody who says we want to make sure there should be antiprice manipulation or antifraud provisions in place. We should have those kinds of protections in place. But we should be very careful that, as we implement this type of regulatory scheme, we don't drive offshore derivatives transactions or cause a loss of resilience in our marketplace because we overregulate these important transactions.

I note the chairman is looking to perhaps intervene here to conduct other business. I will reserve the remainder of my time.

ORDER OF PROCEDURE

Mr. BENNETT. Mr. President, I ask unanimous consent that the vote in relation to the Feinstein amendment No. 2083 occur at 2:30 today; provided that no second-degree amendments be in order to the amendment prior to the vote, with the time until then equally divided in the usual form. I further ask unanimous consent that following that vote, the Senate proceed to a vote on passage of H.R. 2622, the Fair Credit Reporting bill. I also ask as in executive session that the Senate then proceed to executive session and an immediate vote on the confirmation of calendar No. 402, Roger Titus to be U.S. District Judge for the District of Maryland; provided further, that following that vote the President be immediately notified of the Senate's action and the Senate then resume legislative session. Finally, I ask unanimous consent that there be 2 minutes equally divided for debate prior to each of the votes following the first vote.

Mr. REID. Mr. President, I wonder if my friend will modify his request to have the votes following the first vote be 10 minutes in length.

Mr. BENNETT. I am happy to have the second two votes be 10-minute votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BENNETT. Mr. President, I ask the Senator from Idaho if he has further comments.

Mr. CRAPO. I do. I will need 3 or 4 or 5 minutes.

Mr. BENNETT. I yield 5 more minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I want to conclude by once again going over the material that has already been put into the record by Senator COCHRAN from Mississippi.

As I indicated, as we have gone through this battle—now the third time—and the debate over whether we should change the manner in which we address derivatives transactions in this country, each time those who are charged with regulating and overseeing these types of concerns have weighed in in opposition to this amendment. I simply want to go through some of the points they have made from the materials. Again, they are already a part of the record.

The first time we debated this amendment, back in September, a letter was submitted by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, Paul O'Neill from the Department of Treasury, Mr. Harvey Pitt, Chairman of the U.S. Security and Exchange Commission, and James E. Newsome, Chairman of the CFTC.

In their letter at that time, they pointed out that this proposal would subject market participants to disclosure of proprietary trading information and new capital requirements.

The capital requirements, I understand, have been dropped in this amendment. But as they go forward, they explain they don't believe a case exists in public policy to justify this increased level of Government intervention.

The OTC markets, they state, trade a wide variety of instruments. Many of them are idiosyncratic in nature. They are customized markets and do not generally serve a significant price discovery function for nonparticipants, nor do they permit retail investors to participate.

Again, this is not a market in which general investors participate. Highly sophisticated investors engage in these transactions. There has been some debate they have actually created the market through wash transactions and other activity. My point is that type of manipulation, either through manipulating a price or through other activities, such as wash trades, is already regulatable and being addressed by the CFTC.

They go on to make the point: The trading of these instruments arbitrages away the inefficiencies that exist in all financial and commodities markets, and that we should not cause increased regulatory burdens on those important functions in our economy.

Then again in June, when we addressed this issue last, the same group responded again to the same proposal. They wanted to point out then that with regard to the argument there was all of this bad activity taking place and we needed to pass new laws to stop this bad activity, the same group of regulators—the Treasury, the Federal Reserve System, the Securities and Exchange Commission, and the CFTC—stated they have brought formal actions against Enron, Dynegy, and El Paso for market manipulation, wash or roundtrip trades, false reporting of prices, and operation of illegal markets, and these actions have already resulted in substantial monetary penalties and other sanctions.

Again, the point there is, as I made earlier, that we are enforcing the existing regime.

Lastly, if there is still concern that we don't have enough protection in the law, our current chairman of the Energy Committee, Senator PETE DOMENICI, and those who are working with him from the Agriculture Committee, and others are beefing up those protections in the current law.

A letter which, again, the Senator from Mississippi has already put in the RECORD, coming from Senator COCHRAN, myself, Senator DOMENICI, and Senator MILLER, explains that the Energy Policy Act, which we are now working through in conference, will contain increased protection against fraud and price manipulation which addresses the EnronOnline problems that have been raised by the Senator from California.

Even if the current situation in the law was not already satisfactory, we are increasing the antifraud and antimanipulation provisions to make certain that any concerns about this possibility occurring again are addressed as we focus the regulation without trying to do something to our derivatives markets that would cause a reduction in the resiliency of U.S. markets.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 2084

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

The Senator from California.

Mrs. FEINSTEIN. Is this meant to be an amendment to my amendment?

Mr. BENNETT. No, the unanimous consent agreement, I say to the Senator from California, is that no second-degree amendments are in order to her amendment.

Mrs. FEINSTEIN. Correct.

Mr. BENNETT. This is a freestanding amendment separate and apart. If the Senator from California prefers, I can wait until after the vote to offer this amendment. This is a housekeeping action.

Mrs. FEINSTEIN. Will the Senator be quick? I want to address some of the comments that have been made.

Mr. BENNETT. I will, indeed.

The PRESIDING OFFICER. Is there objection to the consideration of the amendment?

Without objection, the clerk will report.

The bill clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself and Mr. KOHL, proposes an amendment numbered 2084.

Mr. BENNETT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Statements made by the Chairman and/or Ranking Member of the Agriculture Appropriations Subcommittee, and colloquies engaging the Chairman and/or Ranking Member of the Agriculture Appropriations Subcommittee, given on the Senate Floor or submitted for the Record during Senate consideration of this Act shall be deemed part of Senate Committee Report 108–107 for purposes of conference with the House of Representatives.''.

Mr. BENNETT. Mr. President, this amendment provides that statements made by Senator KOHL and myself, as well as colloquies we have with our colleagues during consideration of this bill would be germane for conference with the House. I urge adoption of this amendment.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 2084) was agreed to.

Mr. KOHL. I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who yields time?

The Senator from California.

AMENDMENT NO. 2083

Mrs. FEINSTEIN. Mr. President, I would like to try to respond to some of the comments that have been made.

I believe the CFTC has antifraud and antimanipulation oversight on futures exchanges but not on over-the-counter energy trades. That is the difference here. We would cover over-the-counter energy trades and particularly those trades that are electronic.

I also want to show where existing law is inadequate. There is a case that has just been brought to my attention which I think shows that the existing law is inadequate, and this is what we are trying to fix.

Two energy traders from the energy firms Dynegy and El Paso were charged by the U.S. Government with reporting false information on a number of trades—at least 48 trades. They falsely reported the number and the prices used in trades they conducted involving natural gas in an attempt to influence the natural gas spot price indices.

The Federal indictment charged them, among other matters, with wire fraud and violation of the Commodity Exchange Act, which is what we are talking about, provisions prohibiting price manipulation and dissemination of false information about energy commodity rates.

The Federal court allowed the wire fraud charges, but it dismissed the Commodity Exchange Act charges on the ground that the wording of the act failed to prohibit persons from knowingly providing false information. While the CEA used the word ''knowingly'' in an earlier part of the provision, the court ruled that the word had to be repeated in the section prohibiting false information.

The Feinstein-Lugar-Levin amendment would clarify the wording of the CEA provision to resolve the problem identified by this Federal district court in the case of the United States of America v. Michelle Valencia, Criminal Action No. 8–03–024.

That is a pretty clear indication of where present law is not adequate. These were bogus trades. These trades never took place. There were totally bogus, and yet the wording in the Commodity Exchange Act, which we are trying to fix, was judged by the court as too vague to take any action.

Second, I want to make this point: What we are trying to do is prevent fraud and manipulation. We are trying to prevent it and deter it from happening. The soft penalties we have now don't prevent it. That should be very clear. We toughen the penalties in the Electricity Act and in the National Gas Act. Clearly, a number of these schemes that Enron practiced, whether it was Death Star, Ricochet, or Black Widow, or any of these other terrible schemes, took place. Our bill would specifically prevent them.

We are trying to prevent and deter, and the way we do that is by strengthening the law.

I am really puzzled by the administration's position. I am really puzzled because it seems to me they should be on the side of the American people, not on the side of the traders and those who want to get rich quick from this open marketplace.

Additionally, it is interesting to me that the President's working group, when it came out in 1999, specifically said:

''Due to the characteristics of markets for nonfinancial commodities with finite supplies''—that is energy—''however, the working group is unanimously recommending that the exclusion''—the exclusion from the bill—''not be extended to agreements involving such commodities.''

So beginning in the year 2000, they have done a total switch and I do not understand why, particularly after the events of 2000 and 2001, where we know fraud and manipulation was explicit. Now when the Government tries to go after two companies for bogus trades, a court finds the Commodities Exchange Act is inadequate; it is vague.

Why would people oppose what we are trying to do? I think we are on the side of the angels.

Let me quickly go over some points. Why do we need this legislation? We need it because companies are now permitted to trade large amounts of energy in virtually unregulated markets, which makes it easier for unscrupulous companies such as Enron to manipulate the price of energy. The bill would close the Enron loophole that allows this unregulated trading.

Secondly, do we have any examples of how these markets have been manipulated? FERC recently released a 1-inch thick report on how the markets for electricity and natural gas in the western United States were manipulated in 2000 and 2001. So we know it happened. The FERC found Enron and other companies lied about the prices of their trades, reported fictitious trades to drive up prices, did wash trades with each other, and engaged in rapid trading to drive prices up and then back down, reaping millions of dollars of profits in the process and costing customers billions of dollars in unjustified energy costs. That is according to FERC. That is a finding in their study. Yet people still oppose this legislation. Unbelievable.

Would this legislation have prevented these manipulations? Under current law, the CFTC is totally in the dark about what goes on in the over-the-counter markets. Under this legislation, manipulation in these markets would be a felony and the CFTC would get reports about large trades in the over-the-counter markets, so it would be able to monitor these markets, something it cannot do now. Should anybody be able to escape from ongoing monitoring of what they do in these markets, big traders? I do not think so. Yet they are in this little loophole that was created. That was the purpose of the loophole, to prevent anybody from looking; keep no records. Therefore, they are not going to be able to catch us, and there will be a weak law so it will not be sustained in court when they try to bring a case.

Another question: Enron is bankrupt. A number of traders have been fined and energy trading is back on the rise. The marketplace seems to be correcting itself. Why is this legislation needed?

It is needed to avoid more problems like we have just had. Although everything mentioned in the question I just asked may be true, there is one other significant fact. The consumers and businesses that paid higher prices have only recovered a small fraction of their losses. It is better to prevent the manipulation and the losses from happening than try to make up for them after they take place. That is the point. What our agencies have shown is there is, up to this point at least, no way for an aggrieved marketplace to recover its losses from fraud and any manipulation. Therefore, it should be our job to see the laws are accurate and in place to prevent this kind of activity from taking place in the beginning. That is where increasing the penalties comes in.

Imagine, a $2,000 penalty for doing this. That is nothing. That is not even a slap on the wrist for multibillion-dollar companies.

How does one respond to the concerns that this legislation will increase costs and uncertainty and scare off investment in the energy markets? It will not. The regulated U.S. commodities

markets are the most successful and reliable in the world. Ever since the agricultural exchanges were first regulated, we have heard dire predictions from commodities traders that regulation will drive business overseas. In fact, the opposite has happened. We have seen a flight to quality as investors seek safe and reliable markets. That is a fact. This helps the market.

Many traders and energy companies have said the actual cost of compliance with this legislation will be minimal.

The final question: Why should energy derivatives be regulated differently or more stringently than financial derivatives? Because we do not touch financial derivatives. Mr. Greenspan, please know that.

The price of energy derivatives can be manipulated by manipulating the supply of the underlying energy commodity. The price of financial derivatives is very difficult to manipulate because it is difficult to manipulate the price of financial measures underlying the instruments, which generally are not commodities but abstract financial measures such as interest rates and currency exchange rates.

Then again, in 1999, the President's working group saw this. They recommended they not put energy into the loophole. The Congress saw differently and put energy into this loophole, and the never-never land of secrecy went on. These bogus trades were enabled. These bogus trades took place.

There are cases being brought, and we are even finding that the law is inadequate because a court has said it is too vague. We correct that.

I think this is really an important amendment. I do not think I could live with myself if I did not try to do it. If we lose today, believe me, I will come back again and again, because we saw what happened. We know there was massive fraud and manipulation. We know the loophole was there. We know there is no transparency, no record, no audit trail, and no antifraud and antimanipulation oversight for any over-the-counter energy trade. That is what we are trying to do.

My colleagues have referred to futures exchanges rather than over-the-counter energy trades, and that is what we are referring to in this bill. Please, I know back here people look at the West and they say, aha, it is not us, but what I say to them is some day it could be them. Do they not want the law right? Do they not want to be protected? Do they not want a record kept so the regulatory agency can look at it? I really hope the answer is yes, and I hope this Senate will vote for this amendment.

If there are no further comments, I will yield the remainder of my time. If there are, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I understand there will be a response on this side so I would recommend to the Senator from California that she hang on to all the cards she has.

Mrs. FEINSTEIN. I thank the Senator. I will do that.

Mr. BENNETT. I yield 10 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, I would like to respond to some of the points my colleague from California has made and try to further clarify some of these issues. It appears there may be a difference of understanding between us as to just what the CFTC actually has jurisdictional authority over. My colleague from California has indicated that the antifraud and antimanipulation provisions in the Commodities Futures Modernization Act do not apply to over-the-counter trades. My understanding is very different from that. In fact, it is my understanding that the CFTC has antimanipulation authority that allows the Commission to obtain books and records from any market participant when the CFTC believes the prices are being manipulated. In fact, as I had indicated in my previous comments, enforcement authority with regard to market manipulation and price manipulation is being undertaken with regard to Enron.

The question here is whether there is a standardized set of books and records that are required of each participant. In that case, that is correct; the act does not put the full level of regulation onto those in the energy derivatives markets, only on agricultural commodities. So that might be the difference we are talking about. But the fact is, the distinction here is whether there is an exchange type of document disclosure as opposed to simply the type of document disclosure that the CFTC can ask for if it is investigating alleged price manipulation.

Second, the Senator from California indicated that she believed the penalties were too soft, and her legislation addressed that issue. I suppose there is not a lot of disagreement. I have not really talked with other Members of the Senate about it. I don't know if there is a lot of disagreement in strengthening the penalties, but that is not really all this amendment does. In fact, it is not really the focus of this amendment. What this amendment does, as I said before, is it increases and creates an entirely new regulatory regime for the management of derivatives transactions in energy.

I think this next point is a very critical point that we need to address. The Senator from California said in 1999 the working group said that energy transactions should not be excluded from the act. I am not familiar with the exact quotation or document that is being referred to there. But if the word ''excluded'' is the word the President's working group used, then that makes sense because, as I said earlier in my remarks, the act that we established after the President's working group went through its analysis created three different categories: Those that were included, those that were excluded, and those that were exempted. Why they use the word ''exempted'' as opposed to some other category, I don't know. But there is a real distinction in this law between the word ''excluded,'' which means they are not covered, and the word ''exempted,'' which means they are not required to be registered on an exchange.

Those that are in the exempted category are not excluded, which is what the 1999 working group apparently recommended for energy. Energy transactions in derivatives are not excluded, they are exempted, which means they, along with every other commodity transaction except for agricultural and financial transactions, are required to be subject to the reporting and investigatory antifraud and antimanipulation provisions of the act. That is what we are debating here.

Finally, the Senator from California mentioned a case where the court did say there was a sufficient lack of clarity in the act that it could not be enforced against knowing and willful conduct. That is correct. That case, to my knowledge, is one of the only, if not the only, case in the country where there has ever been a court ruling that did not give the CFTC the authority it needs to go after this type of conduct.

As I indicated in my earlier remarks, the Energy bill, which we are now putting together in the Energy conference, is correcting the problem that came up with that case. I actually have the language in front of me that is being changed in the law to address the concern raised by that case.

So because there is a case where the court said the language needs to be tightened up a little bit, that does not mean we then need to create a whole new regulatory regime for the management of derivatives. What it means is we need to correct that problem that the case law pointed out in the statute to be sure that the antifraud and antimanipulation language is able to be enforced as we intended it to be. That is exactly what the chairman of the Energy Committee and the others of us who submitted this letter have stated is being corrected in the Energy bill.

Then just one final comment. There was some question as to whether Mr. Greenspan or those of us on this side were making a distinction between financial derivatives or energy derivatives. I can assure those who were involved in the debate on all sides that Chairman Greenspan, as well as the rest of us, understand that we are talking about different types of derivatives when we talk about financial derivatives or energy derivatives or agricultural derivatives or other types of transactions in these commodities. The fact is, whether it is agriculture or energy or financial or other types of commodities, the manner in which we regulate them has incredible impacts on the way in which the markets operate.

I will conclude my remarks at this time by asking unanimous consent to have printed in the RECORD a letter which was delivered to me today, again by Alan Greenspan, responding this third time to the issue, and discussing the reasons our market needs to retain its resilience as we deal with the management of different types of very sophisticated transactions like these derivatives transactions.

I ask unanimous consent this letter be printed in the RECORD.

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

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
*Washington, DC, November 5, 2003.*

Hon. MICHAEL D. CRAPO,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR: You have asked me for my views on Senator Feinstein's latest proposal for additional regulation of energy derivatives. By imposing large trader reporting requirements on bilateral transactions in energy commodities, the proposal would take the first steps toward introduction of an ex ante prophylactic regulatory regime for the OTC energy derivatives markets. Such a regime would undermine market discipline to the extent that market participants come to depend on the Commodity Futures Trading Commission (CFTC) to protect their interests and therefore fail to do more to protect themselves. Reliance on market discipline rather than government regulation has allowed derivatives markets to allocate risks very flexibly and effectively, which has contributed importantly to the resiliency of our financial system and our economy.

In my view, concerns about market manipulation in the energy derivatives markets would be addressed more effectively by a combination of: (1) enhanced market discipline on the processes through which price data are gathered and price indexes are constructed, and (2) more vigorous exercise of the CFTC's existing ex post enforcement authority with respect to market manipulation. Some clarification of the CFTC's enforcement authority would be desirable, but it is not at all clear that the provisions in the proposed amendment are the best way to accomplish that goal.

Sincerely,

ALAN GREENSPAN.

Mr. CRAPO. With that, I withhold my further remarks. I suspect we may need to get into a little bit of debate on these issues, and that may help us to bring focus on what the differences and concerns we have are. But I withhold further remarks at this time.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from California.

Mrs. FEINSTEIN. Madam President, I would like to respond to the Senator. I think this discussion is constructive and I am pleased to partake in this exchange with my good friend from Idaho.

This is a report entitled ''The Over-the-Counter Derivatives Market in the Commodity Exchange Act'' which was written by the President's working group on financial markets in 1999.

On page 16 of that report, it goes on to say—and I want to read it in its context:

Due to the characteristics of markets for nonfinancial commodities with finite supplies—

Which energy would be one—

the working group is unanimously recommending that the exclusion—

In other words, the loophole—

not be extended to agreements involving such commodities. For example, in the case of agricultural commodities, production is seasonal and volatile and the underlying commodity is perishable, factors that make the markets for these products susceptible to supply and pricing distortions and to manipulation. There have also been several well known efforts to manipulate the prices of certain metals by attempting to corner the cash or futures markets. Moreover, the cash market for many nonfinancial commodities is dependent on the futures market for price discovery. The CFTC, however, should retain its authority to grant exemptions for derivatives involving nonfinancial commodities as it did in 1993 for energy products, where exemptions are in the public interest and otherwise consistent with the Commodities Exchange Act.

Then the loophole was promulgated. The section of the Commodities Exchange Act which contains that loophole is section 2(g) and is titled, ''Excluded Swap Transactions.''

The section reads, No provision of this Act (other than section 5a (to the extent provided in sections 5a(g)), 5b, 5d, or 12(e)(2) shall apply to or govern any agreement, contract or transaction in a commodity other than an agricultural commodity if agreement, contract or transaction is . . .

And then it goes on.

This section in the Commodities Exchange Act is what creates the loophole, and that is the problem that we are trying to correct in this legislation. I believe we do correct it.

Again, it is very hard for me—and this might have something to do with the fact we went thorough it the west—to understand why we would not want to deter this activity and strengthen the rules to prohibit such manipulation from happening in the future.

We want to be very certain that with all of this kind of trading, including over the counter trades and electronic trades, that the records are kept and there is an audit trail clearly exists and there is an opportunity for the Commodity Futures Trading Commission to note something may be wrong and hold the proper investigation. This is no more and no less than what exists on the exchange today.

Why should this secret world of trading be allowed to exist? I know people get rich through it. This secret trading world allows people to get rich by engaging in fraudulent trades, as was seen during the Western energy crisis. It is this type of manipulative behavior that we are trying to stop.

I can't understand why the administration would not want to support this. When Mr. Greenspan came in and talked to me a few years ago when we first proposed this legislation, his main concern was financial derivatives. This is why we made certain, as I have said in my comments, that this legislation does not concern financial derivatives. He may well have expanded his view to all kinds of over-the-counter trades since then, but at the time I sat down and met with him, that was not his position.

Regardless, we are talking about public policy. We are talking about protecting the people of America. We are talking about strengthening the law so that what happened on the west coast can never happen in the Midwest or on the east coast or any part of the nation.

I mentioned what the attorney general of the State of New York—the attorney general, not a deputy—Mr. Spitzer, has written. Once again, let me read what he said. He is the one who prosecutes many of these cases and I really think his views in this area should make a difference.

He says:

I urge your amendment's adoption. In addition to providing wholesale electricity markets, the transparency vital to effective competition, the amendment closes loopholes used to manipulate energy markets. It improves the ability to detect fraud and other manipulation, and it deters manipulation by establishing substantive penalties.

This is the attorney general of the State of New York who is going to be prosecuting many of these cases. He says it is a wise thing to do, it is a prudent thing to do, and you should do it.

He also says that this amendment makes a major contribution to competitive energy markets by initiating an electronic information system to be operated through the Federal Energy Regulatory Commission. I have already talked about this. Earlier, I said how this legislation will provide open access to comprehensive, timely, and reliable wholesale electricity and transmission prices. The attorney general repeats that. He says:

The reliability of market information would be markedly improved by the amendment's—

Don't we want that? I think so—

general prohibition on manipulation of the purchase or sale of electricity, or the transmission services needed to deliver electricity and by the specific prohibition of the round trip trading manipulation used so effectively to inflate electricity prices to the public's injury.

This is the prosecutor in one of the main States that would have this kind of litigation.

Then he goes on to say:

Enforcement of the law and regulation safeguarding our energy markets would be greatly aided by other reforms the amendment provides. The amendment would repeal the so-called Enron exemption which shields large energy traders from oversight.

Once again, I want to iterate that this is the attorney general of New York speaking.

In addition, the amendment would apply to anti-manipulation and anti-fraud provisions of the Commodity Exchange Act—

I just read to this provision to you. Clearly this section of the Act is inadequate by anybody's reading to effectively regulate all energy transactions—

Our legislation would improve the Federal Energy Regulatory Commission's ability to

address complaints, and it would lift the restriction on the Federal Energy Regulatory Commission's authority to order refunds. These reforms will make accountable parties, which are currently beyond the law's reach accountable for their actions and will increase recovery of overcharges.

Once again, I ask, don't we want to do this? Do we really want to protect these people who are willing to do such harmful things to the American people?

I am shocked at the administration's letter. I thought they were there to protect the public.

I thank the Chair. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, I yield an additional 10 minutes to the Senator from Idaho and allow him to yield back whatever time he might decide not to use.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAPO. Thank you very much, Madam President. I will try to be brief.

I wish to respond to what really has become the one focal point in the discussion we have been having over the last few minutes; that is, whether the Commodity Futures Trading Act applies and provides tools to protect against over-the-counter trades and derivatives. There isn't any difference between us in regard to that.

The Senator from California said: Would we want to protect people who would do all of these bad things? She indicated from the letter she read from the attorney general of New York that we were shielding large over-the-counter trades from oversight. I will simply say again that this is not the way the laws have been interpreted by the authorities of the government who administer this act, and it is not the way the law has been interpreted by those who were involved in writing the act. Frankly, with the exception of one case of a word change correction in the energy conference bill to address the issue—with the exception of that one case, to my knowledge, there is no indication that the CFTC does not have authority to regulate these trades.

Let me go on. I will go back to the letter of June 11. This is a letter from the Department of the Treasury, the Board of Governors of the Federal Reserve System, the U.S. Securities and Exchange Commission, and the Commodity Futures Trading Commission in which they state they were aware that one of the arguments was they do not have the authority or that adequate regulation is not taking place.

This is a letter written to me and to Senator ZELL MILLER, whom I commend for his efforts in this matter. They state in the letter:

> As you know, the Commodity Futures Trading Commission has brought formal actions against Enron, Dynegy, and El Paso for market manipulation, wash—roundtrip—trades, false reporting of prices, and operation of illegal markets.

If they don't have the authority under the act to regulate price manipulation or other market manipulations, then how could they have brought formal actions to enforce it? Not only do they bring formal actions but the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Department of Justice have also initiated formal actions in the energy sector.

At the time of this letter, which was last June, they indicated:

> Some of these actions have already resulted in substantial monetary penalties and other sanctions. These initial actions alone make clear that wrongdoers in the energy markets are fully subject to the existing enforcement authority of Federal regulators.

We can debate about whether we should increase the penalties or add more regulations on top of this, but the fact is that under the Commodity Futures Trading Act, anti-price-manipulation and other antifraud provisions are enforceable.

I wish to go back also to one other comment the Senator from California made. She read to us out of the 1999 report of the President's working group. I listened very carefully to the words she was reading because it is important to understand the usage of words by the President's working group.

I will go back again to when the President's working group recommended how to create this statutory system. When Congress adopted that recommendation and made it law, we created three categories—included, exempted, and excluded. What this working group language which was read to us said was that due to the characteristics of nonfinancial commodities, exclusion was not intended or not recommended.

That is exactly, in fact, what we did in the law. We did not exclude the energy sector. We put it in the middle category, which is exactly where their working report said it should go. It said they should have authority to be exempted. It was put in the ''exempted'' category which, again, although that exempted word makes it sound as if they are excluded, is not the way the wording of the statute works. The exempted category is fully subject to antifraud and antiprice manipulation protections and to record-reporting requirements imposed by the CFTC.

Again, we may have a difference of opinion on where the reach of the law is, but the bottom line is the agencies involved in administering these and other laws are fully enforcing the law.

I conclude by reading one further letter sent to the Honorable BILL FRIST and TOM DASCHLE yesterday by a number of associations. I will read the names of the associations. These are not just energy companies but companies, associations, and groups involved with the management of our economy from many different perspectives. They point out that the President's working group's approach, which we have been debating today, has been applied and that enforcement actions are taking place. In their words:

These actions make it clear that wrongdoers in the energy markets are fully subject to the significant authority of federal and state authorities.

Again, in their words:

> Led by the CFTC, federal and state authorities are currently investigating 32 companies and since last year the Commission has entered into six settlements collecting a total of $96 million in civil penalties from energy companies and power merchants for attempting to manipulate energy prices.

Again, if they do not have the authority to regulate, they are certainly doing a good job of regulating. They have collected over $96 million in civil penalties and continue to enforce the act.

Signers of this letter are: the American Bankers Association, the ABA Securities Association, the Association for Financial Professionals, the Bond Market Association, EMTA, the Financial Services Roundtable, the Foreign Exchange Committee, the Futures Industry Association, the International Swap and Derivatives Association, the Managed Funds Association, the National Mining Association, and the Securities Industry Association.

I bring that up simply to point out that not only are those agencies in our Government—such as the Department of the Treasury and the CFTC and the Federal Reserve and others—concerned about this, but those in the industry, those operating in our financial industries are concerned about what this will do to our economy and the resilience of our ability to manage risk in our economy.

One of the factors that gives us the ability to have the strongest economy in the world is our ability to utilize these types of transactional authorities to allocate risk in a way that gives us the resiliency to defend against the kinds of threats against our economy we faced over the last few years.

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BENNETT. Madam President, what is the time situation?

The PRESIDING OFFICER. The Senator from Utah has 3 minutes 16 seconds and the Senator from California has 2 minutes 15 seconds.

Mr. KOHL. Madam President, I would like to make a brief statement on this amendment. This is a complicated issue.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. I would be very happy to yield my 2 minutes to the ranking member if I might have 3 minutes to conclude.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KOHL. This is a very complicated issue. This is an issue on which the Senator from California has spent a lot of time. I believe she knows it thoroughly. Her proposal would bring more transparency to the derivatives market, something we should all support. With above-board transparent

markets, derivatives trading will never be taken seriously and investors will always be at risk of being taken advantage of. I will be supporting the Feinstein amendment. I urge fellow Senators to do the same.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN. Madam President, there really is a difference of opinion. I would like to have the time to read part of the transcript in a hearing on the Committee on Agriculture on July 10. A question that Senator CRAPO asks to Mr. Newsome of the CFTC.

Senator CRAPO: I know we have been over this before but I want to be sure that I have it right. As I listened to the testimony of both of you it seems to me that there is actually a lot more agreement than disagreement with respect to what we ought to be doing and where we ought to be. The disagreement, as I understand it, is over whether 2G excludes from the fraud and manipulation provision swap transactions.

Now, swap transactions are the dominant majority of what goes over the over-the-counter market.

I am correct about that. Would the two of you agree that is the core of the disagreement between your testimony?

Mr. Newsome: 2G certainly does exclude swap transactions.

That is my point. And he is testifying to it in this committee that this is not covered by the CFTC.

It goes on.

Senator CRAPO: It excludes them from fraud and manipulation protections.

Mr. Newsome: 2G excludes them from jurisdictions of the CFTC.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, I yield 2 minutes to the Senator from Wyoming.

Mr. ENZI. Madam President, I rise to oppose this issue.

I ask unanimous consent that an article from the Wall Street Journal that explains how small firms are potentially affected by this amendment, a way that small firms have had for hedging so they could stay in business in markets that fluctuate dramatically so they could keep a level price for consumers and still make a profit, be printed in the RECORD.

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

[From the Wall Street Journal, Nov. 3, 2003]

SMALL FIRMS ARE TURNING TO FINANCIAL FUTURES FOR FUEL

(By Russell Gold)

DALLAS.—Deregulated energy markets have taken their fair share of criticism in recent years. But that hasn't scared off some of the nation's small-business owners, who are betting that the wild and woolly world of the financial-futures markets will provide more price stability than the stodgy regulated utilities.

That's a big departure. Typically, small businesses have relied on the regulated utilities for their energy needs. But in the past three years, natural-gas prices have surged and the regulated utilities have been slow to find ways to put a lid on the trend. That's opened the doors to marketers that can use financial derivatives and fixed-rate contracts to offer stable pricing for customers.

By the end of this year, an estimated 550,000 commercial clients nationwide will have purchased fixed-price, natural-gas contracts through energy marketing middlemen, according to Kema, a consulting firm in Fairfax, Va., that researches retail-energy markets. That represents a 10% increase from two years ago. ''We are seeing slow and steady growth'' in small businesses switching from utilities to deregulated energy marketers for fuel supplies, says Kema's natural-gas research director, Gerry Yurkevicz.

LOCKING INTO FIXED PRICES

In the past, only large industrial companies would take such risks. But an increasing number of small and midsize businesses, including property managers, hospitals and fast-food franchises, are locking in a fixed price rather than watching their energy bills gyrate from month to month. If they're lucky, they will save money on fuel. But if a warm winter causes prices to collapse, they may end up spending more on natural gas than what utilities would charge.

But for most small businesses, natural-gas marketers have something to offer besides the possibility of lower prices: They can offer near-term price stability. This allows businesses to set their energy budgets for the year and not worry.

Mark Beffort, president of a real-estate-management concern in Oklahoma City recently made the switch. Instead of buying natural gas from the local utility for a 22-story suburban office tower he manages, he works with natural-gas marketer Clearwater Enterprises LLC. This past fall, Mr. Beffort called Clearwater and chewed over whether to but natural gas for the winter or wait. ''Do we want to lock or do we want to gamble?'' he asked. Last month, a government report on levels of natural gas stored in reservoirs for winter use sent natural-gas prices down. At the urging of Clearwater, Mr. Beffort bought on the drop. He orally agreed to take enough natural gas to heat the office tower at a fixed price. Clearwater then locked in supply using a combination of futures contracts and fixed-price deals with producers.

''Customers can fix their energy budgets at the beginning of the year,'' Mr. Yurkevicz says. ''They can set it and forget it.'' By contrast, regulators set up rules that discourage utilities from hedging, making retail prices almost as volatile as natural-gas prices.

For most of the 1990s, natural-gas prices, as measured by tradable futures contracts on the New York Mercantile Exchange, held stable at about $2.50 per million British thermal units. Since 2000, however, the price has whipsawed, and the average cost so far this year has exceeded $5 per million BTUs.

Many marketing firms are targeting smaller and smaller commercial customers. Peoples Energy Services, a unit of Chicago-based Peoples Energy Corp., reported it number of commercial clients jumped 20% to 13,073 for the year ended Sept. 30. Meanwhile, the company's average customer usage decreased by 9% to 3.2 million cubic feet, as the energy marketer takes on more smaller customers.

UGI Energy Services, a subsidiary of suburban Philadelphia-based UGI Corp., has more than quadrupled its number of customers since 1999. Over the same span, its average customer usage has dropped 13%, to 23 million cubic feet. ''We view ourselves as risk managers,'' says UGI Energy Services President Bradley Hall. ''What most people are looking for its stability.''

SWITCH TO PROPANE

That's what attracted customer Jeff Uhlenburg. His family-owned industrial furnace in Philadelphia had spent more than six months of its energy budget by mid-March, and high natural-gas prices forced him to switch to propane. ''I got burned,'' he says. This summer, he switched to UGI, which buys natural-gas futures and supplies Mr. Uhlenburg natural gas at a fixed price.

Rather than fighting the trend, some regulated utilities are encouraging their customers to switch. The utilities continue to profit from transporting the natural gas. And often, the utility and energy marketer share a common corporate parent.

Oklahoma Natural Gas Co., a regulated utility owned by Oneok Inc., gained approval from the state earlier this year to permit even smaller customers than previously allowed to switch to third-party marketer. The 97-year old utility last month began asking commercial clients as small as dry cleaners for permission to send their contact information to marketers. Oneok is hoping that commercial customers will choose to sign up with its unregulated subsidiary, Oneok Energy Marketing Co., to provide their natural gas.

Mr. ENZI. I know this is a glaze-the-eyes-over issue. It is hard for me to understand. It is probably hard for me to be able to spell derivatives, let alone understand paragraphs A, B, C, D, G, or whatever they were.

This amendment has come up twice before. We voted it down twice before. There have been some changes to pick up a little bit more of a majority. As the letter read by the Senator from Idaho pointed out, the industries that were excluded in this have not bit into it yet. They understand it is a slippery slope and they will come back up and pick them up.

The SEC has brought action against these companies. If Sarbanes-Oxley had been in place a year before the time that it was, we would not have had any problem. There are protections out there. So let's not take this advantage away from the small businesses.

The proponents of the amendment believe that the trading of derivatives, especially in the energy area, were the cause of the energy problems faced by western States in recent years. Specifically, the proponents believe that energy trading of derivatives by Enron contributed significantly to the energy problems.

Unfortunately, the problems that caused Enron to fail were based upon failures in corporate governance and outright fraud. Ironically, we are addressing this amendment after we celebrated the 1-year anniversary of the passage of the Sarbanes-Oxley act in July. If that act had been in place earlier, the problems of Enron, and companies like Enron, would have been discovered by the independent directors and effective auditors required by the law.

Proponents of the amendment also would have us believe that Federal regulators do not have enough power and authority to seek out and punish the wrong doers. That is simply not true. Three Federal agencies have brought enforcement actions as a result of the activities of Enron and companies like Enron and the Department of Justice has instituted investigations into the matter.

Two weeks after we defeated the amendment in June, the Federal Energy Regulatory Commission issued two ''broad show cause'' orders to over 60 power trading companies that are alleged to have engaged in manipulative practices that disrupted the western energy markets in 2000 and 2001.

In addition, the Commodities Futures Trading Commission documented administrative and criminal actions of the energy trading industry in the agency's, ''Report on Energy Investigations'' that was released on April 9 of this year.

Finally, in late July, the Securities and Exchange Commission settled enforcement proceedings in the amount of $255 million against two investment banks that conspired with Enron to commit fraud. This is not the first action by the Securities and Exchange Commission in this area. In total, the Securities and Exchange Commission has brought six separate actions in connection with the Enron matter.

In addition, the Federal agencies are not sitting idle. In particular, the Federal Energy Regulatory Commission has regulatory initiatives to provide greater clarity and transparency to the energy markets.

It is abundantly clear that the Federal agencies are acting where appropriate and are using their full authority to pursue those who commit fraud on the energy and securities markets.

During the debates on the June 11 amendment, the President's working group, which is comprised of the Chairman of the Board of Governors of the Federal Reserve, the Secretary of the Department of the Treasury, the Chairman of the SEC, and the Chairman of the CFTC, sent a letter to opposed the amendment. In the letter, the working group stated that the June 11 amendment ''could have significant unintended consequences for an extremely important risk management market—serving businesses, financial institutions, and investors throughout the U.S. economy.''

On July 16, Chairman Greenspan testified before the Senate Banking Committee on the state of monetary policy. In response to question posed at the hearing, he reiterated his opposition to the amendment.

As I stated on June 11, as we debated this amendment before, I believe that the amendment is overly broad and if adopted will likely decrease market liquidity because of increased legal and transactional uncertainties. In addition, I am suspect of this amendment as it includes a carve-out for the metals industries. Congress should be very cautious about carve-outs as it may start out to be a slippery slope where the initial carve-out is for the metals industry. The next move will be to exempt other industries until there are enough votes to pass an amendment—then the process well reverse to pick up the exemptions.

Instead of cutting the throats of particularly small companies, this will be the death by a thousand small slices. Derivatives are protecting hedging for small companies and it works. Evidence of small business use of energy financial products on energy issues can be seen in the November 3 article of the Wall Street Journal entitled, ''Small Firms are turning to Financial Futures for Fuel.'' I also would like to acknowledge the financial services industries opposition to this amendment.

For every reaction Congress tends to have an overreaction. I believe that this is the case here. The Commodities Futures Trading Commission already oversees market manipulation concerns with the energy trading markets. The pursuit of a new broad-based regulatory scheme for the oversight of energy trading may be an unnecessary addition to the market.

Accordingly, I urge my colleagues to vote against this particular amendment as they have voted it down twice before.

Mr. BENNETT. Madam President, as I have listened to this debate, it has reminded me once again of why I am glad I did not go to law school. The details of the legislation are best left to the lawyers who have argued it.

I simply share with my colleagues a conversation I had when the question of derivatives arose with respect to the bankruptcy of Orange County in California. There was an attempt at that point to say we must regulate these derivatives. Derivatives are terrible. Derivatives are responsible for all of our troubles. Chairman Greenspan was asked pointblank if derivatives were responsible for the bankruptcy in California. He said no, all derivatives did was make the stupid actions of the treasurer of Orange County be carried out more effectively than would have been the case without them.

We must remember that derivatives are neutral. They are tools to be used by managers to hedge risks and to make things move more efficiently in the marketplace. We sometimes move away from that understanding and think they are inherently evil in and of themselves.

I accept the assurances that the trading in this area is appropriately managed by the regulatory agencies that have been set up and I intend to oppose the amendment. I urge my fellow Senators to do the same.

Mrs. FEINSTEIN. I ask unanimous consent for 1 minute to permit Senator CANTWELL to speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington.

Ms. CANTWELL. Thank you, Madam President.

Madam President, I come to the floor to support the Feinstein amendment. I think Senator FEINSTEIN has done an outstanding job of trying to communicate what is essential for markets to operate efficiently. For markets to operate efficiently, they need transparency. That is what the underlying amendment does.

It says, let's make these commodities have the same transparency as other products on the market that are sold as futures, have the ability to look at the books, and make sure that manipulation has not happened.

I urge my colleagues to support the Feinstein amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, I move to table the amendment and ask for the yeas and nays.

Mr. LEVIN. Will the Senator withhold for a unanimous consent request?

Mr. BENNETT. I will withhold.

Mrs. FEINSTEIN. Madam President, I have a copy of a colloquy between the leaders that we would have an up-or-down vote on the amendment.

Mr. LEVIN. Madam President, while that is being considered, I ask unanimous consent that a statement of the American Public Gas Association, supporting the amendment; a statement of Attorney General Eliot Spitzer, supporting the amendment; a statement of the North American Securities Administrators Association, supporting the amendment; a statement from the Consumers Union, Consumer Federation of America, U.S. Public Interest Research Group, and Public Citizen, supporting the amendment; and a statement from the Derivatives Study Center be printed in the RECORD.

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

AMERICAN PUBLIC
GAS ASSOCIATION,
*Fairfax, VA, October 8, 2003.*

Re protecting electricity markets and consumers.

Hon. RICHARD LUGAR,
*Hart Senate Office Building,*
*U.S. Senate, Washington, DC.*

DEAR SENATOR LUGAR: The American Public Gas Association (APGA) is very pleased that you and Senators Levin and Feinstein are leading a bipartisan effort to ensure that energy prices are determined in a competitive and informed marketplace. The provisions in your ''Energy Market Oversight Amendment'' are significant steps toward closing the gaps that impede effective federal oversight of the energy marketplace. We strongly support the changes you propose to the Commodity Exchange Act (CEA) and the Federal Power Act (FPA). We also urge that you amend the Natural Gas Act (NGA) in the same manner as the FPA so natural gas markets and consumers are provided the same level of protection you propose for electricity markets and consumers.

APGA represents the interests of municipally-owned gas utilities. There are over 950 public gas systems across the country in 36 states serving more than five million residential and commercial customers. APGA represents over 600 of these public gas systems. Our members are not-for-profit utilities, and their boards are composed of locally elected and appointed officials. No other trade association in the gas industry is closer to the customers they serve than APGA members. And, on behalf of APGA, we strongly support your amendment because it will improve market transparency and provide the essential regulatory oversight to detect and prevent manipulation and improve the efficiency of energy markets. Greater

transparency and effective oversight are the basic steps necessary to restore confidence in the energy markets and promote the investments needed to provide reliable energy at fair prices to consumers and businesses.

We applaud your efforts and your goals: to improve transparency, strengthen enforcement, and preclude manipulation in energy markets. Fundamental to achieving these goals is to undo the special exclusions and exemptions granted in the closing hours of the 106th Congress. The amendments to the CEA you now propose are focused specifically on energy markets and will provide a basic level of protection for all energy consumers because the provisions clearly establish anti-fraud and anti-manipulation authority in the over-the-counter derivatives contracts for energy commodities.

However, we urge you to include changes to the NGA that are consistent with your changes to the FPA. Unless such changes are made in tandem, there will be even further disparity between the consumer protection provisions in these two important acts. We hope that such disparate treatment will not be tolerated.

Again, public gas utilities and the hundreds of communities we serve commend you for your thoughtful and deliberate leadership on this very important issue. While there may be some who will oppose this amendment, one need not look far to see whether the opposition is looking out for the best interests of Wall Street or Main Street. We pledge to work with you in any way we can to pass this much-needed amendment. Please let me know how I can assist you.

Sincerely,

BOB CAVE,
*President.*

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STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL,
*New York, NY, October 15, 2003.*

Hon. TED STEVENS,
*Chairman, Appropriations Committee, U.S. Senate, Washington, DC.*
Hon. ROBERT C. BYRD,
*Ranking Member, Appropriations Committee, U.S. Senate, Washington, DC.*
Hon. ROBERT BENNETT,
*Chairman, Subcommittee on Agriculture, Rural Development, and Related Services, Appropriations Committee, U.S. Senate, Washington, DC.*
Hon. HERB KOHL,
*Ranking Member, Subcommittee on Agriculture, Rural Development, and Related Services, Appropriations Committee, U.S. Senate, Washington, DC.*

DEAR SENATORS: I firmly support your efforts to make our energy markets competitive and to protect those markets from fraud and manipulation. The Energy Market Oversight Amendment, sponsored by Senators Feinstein, Levin and Lugar and under consideration as an amendment to the pending 2004 Agriculture, Rural Development, and Related Services Appropriations legislation, is a major step toward both goals. I urge its swift adoption. In addition to providing wholesale electricity markets the transparency vital to effective competition, the amendment closes loopholes used to manipulate energy markets, improves the ability to detect fraud and other manipulation, and deters manipulation by establishing substantive penalties.

The amendment makes a major contribution to competitive energy markets by initiating an electronic information system to be operated through the Federal Energy Regulatory Commission (''FERC''). This system will provide open access to comprehensive, timely and reliable wholesale electricity and transmission price and supply data, greatly expanding the choices of both buyers and sellers. In addition, the reliability of market information would be markedly improved by the amendment's general prohibition on manipulation of the purchase or sale of electricity or the transmission services needed to deliver electricity, and by the specific prohibition of the ''round trip trading'' manipulation used so effectively to inflate electricity prices to the public's injury.

Enforcement of the laws and regulations safeguarding our energy markets would be greatly aided by other reforms the amendment provides. The amendment would repeal the so-called ''Enron exemption,'' which shields large energy traders from oversight. In addition, the amendment would apply the anti-manipulation and anti-fraud provisions of the Commodity Exchange Act to energy transactions, would improve FERC's ability to address complaints, and would lift a restriction on FERC's authority to order refunds. These reforms will make accountable parties now beyond the law's reach and will increase the recovery of overcharges.

Finally,the amendment would give effect to the deterrents against energy market abuses. These reforms make FERC penalties more than just a ''cost of doing business.''

The events of the past three years teach that we need better and stronger laws to protect our energy markets. The Energy Market Oversight Amendment would significantly improve our laws and strengthen crucial deterrents against the fraud and other energy market manipulations that have cost our citizens and our economy billions. The national interest would be served by the amendment becoming law as soon as possible.

Sincerely,

ELIOT SPITZER,
*Attorney General.*

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NORTH AMERICAN SECURITIES
ADMINISTRATORS ASSOCIATION, INC.,
*Washington, DC, October 27, 2003.*

Hon. TED STEVENS,
*Chairman, Appropriations Committee, Washington, DC.*
Hon. ROBERT C. BYRD,
*Ranking Member, Appropriations Committee, Washington, DC.*
Hon. ROBERT BENNETT,
*Chairman, Subcommittee on Agriculture, Rural Development and Related Services, Washington, DC.*
Hon. HERB KOHL,
*Ranking Member, Subcommittee on Agriculture, Rural Development and Related Services, Washington, DC.*

DEAR SENATORS: The North American Securities Administrators Association is writing to express its support for the Energy Market Oversight Amendment, sponsored by Senators Feinstein, Levin and Lugar. It is our understanding that this amendment will be considered as part of the Agriculture Appropriations bill.

The collapse of Enron, continued reports of fraud, manipulation in the energy markets, and the lack of transparency in over-the-counter (OTC) energy trading underscore the need for this amendment. The Energy Market Oversight Amendment would provide the transparency and regulatory tools necessary to detect and prevent manipulation and improve the efficiency of these markets. Its disclosure requirements will make the energy marketplace more open for all producers and consumers, and the result will be a more sound and efficient market. During this period of market unrest, now is the time to strengthen the oversight of the energy markets.

NASAA supports the Feinstein-Levin-Lugar amendment because it would provide more transparency to the wholesale electricity markets, supply the CFTC with the authority to detect fraud and manipulation, and help to deter wrongdoing by significantly increasing the penalties for violations of the Federal Power Act.

The events of the past three years should be a wake-up call that we need stronger laws to protect the users of our energy markets. This amendment would improve our laws and help to ensure that problems associated with Enron, the Western electricity crisis, and the recent Northeast blackout do not recur. Thank you for your consideration of these 693Y85X views. Please do not hesitate to contact Deborah Fischione House, NASAA's Director of Policy at 202–737–0900, if we may be of assistance to you.

Sincerely,

RALPH A. LAMBIASE,
*NASAA President,*
*Director of Connecticut Securities.*

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OCTOBER 16, 2003.

DEAR SENATOR: We are writing to urge you to support the bipartisan Energy Market Oversight Amendment, which will be offered during consideration of the Fiscal Year 2004 Agriculture Appropriations bill. This amendment, being offered by Senators Feinstein, Lugar, Levin and others, would go a long way towards addressing the serious problems plaguing the nation's energy markets.

Unfortunately, we have been bombarded with a steady stream of news reports about how electricity traders have unscrupulously manipulated the market to unfairly inflate their profits, costing consumers billions of dollars. More than one trader has admitted to engaging in ''round trip trading'' to artificially inflate prices. Some created transmission congestion in order to be paid to relieve that congestion. Supplies were withheld to drive prices up, resulting in a series of rolling blackouts in California. We are still learning the full extent of the misconduct, and only now are we coming to understand the nature of these schemes.

Today, the loss of trust and confidence in the integrity and creditworthiness of energy and energy derivatives markets has left trading in oil, gas and electricity suffering from a lack of liquidity. If markets are going to be the terrain for setting the price for our key energy products, then it is crucial that they be orderly and efficient. Towards that end this amendment seeks to put an end to this plague of fraud and market manipulation. It will help improve market oversight and surveillance. It will enable the Commodity Futures Trading Commission (CFTC) to detect and deter manipulation. Its disclosure rules will make the marketplace more transparent for all producers and consumers, and the result will be a more sound and efficient market.

Given all this, we believe that it would be irresponsible to weaken consumer protections and cut federal oversight of the electric industry, as both the Senate and House-passed versions of the energy bill would do. That is why the Energy Market Oversight Amendment is so timely. This amendment would:

Improve price transparency in wholesale electricity markets by directing the Federal Energy Regulatory Commission (FERC) to establish an electronic system to provide information about the price and availability of wholesale electricity to buyers, sellers and the general public;

Prohibit round trip trading;

Increase penalties for violations of the Federal Power Act and the Natural Gas Act from $5,000 to $1,000,000;

Prohibit manipulation of the electricity markets, including giving FERC the authority to revoke market-based rates for companies that are found to have engaged in market manipulation;

Repeal the ''Enron exemption'' in the Commodities Future Modernization Act for large traders in energy commodities and apply the anti-fraud provisions of the Commodity Exchange Act to all over the counter trades in energy derivatives; and

Provide the CFTC tools to monitor energy markets, including requiring traders to keep records and report large trades to the CFTC, focusing on transactions that perform a significant price discovery function, while limiting the CFTC to seeking only information necessary to detect and prevent price manipulation in the futures and over the counter markets for energy.

In addition, the amendment would have no effect on futures markets, financial derivatives, metals, swaps or electronic trading of non-energy commodities.

Energy production is a major sector of the economy, but energy's importance is greater than that measured by its size. One of the hard learned lessons from the Western electricity meltdown of 2000 and 2001 is that when energy companies manipulate the electricity markets, devastating consequences result. Billions of dollars were lost and millions of lives were adversely affected. The toll on businesses both large and small was enormous. The impact of the Northeast-Midwest blackout was also immense. Congress should do everything within its power to ensure that such devastation never occurs again, and, if it does, that those responsible are punished severely.

Please protect the nation's electricity markets from further Enron-style manipulations—support the Energy Market Oversight Amendment.

Thank you.

Sincerely,

Adam J. Goldberg, Policy Analyst, Consumers Union.

Mark N. Cooper, Director of Research, Consumer Federation of America.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

Michelle Boyd, Legislative Representative, Public Citizen.

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FINANCIAL POLICY FORUM,
DERIVATIVES STUDY CENTER,
*Washington, DC, October 22, 2003.*

DEAR SENATOR LEVIN: I am writing regarding the Energy Market Oversight legislation being offered as an amendment to the FY 2004 Agricultural Appropriations bill. This important legislation will assume that over-the-counter derivatives markets in ''exempt'' commodities such as energy will be covered by federal prohibitions on fraud and manipulation. It will also help to create energy derivatives markets that are more transparent and thus more efficient. In doing so, this legislation will bring OTC energy derivatives out of the shadows and into the same light of financial disclosure. It will subject these derivatives to some of the same regulations that apply to securities, banking, exchange-traded futures and options and other sectors of U.S. financial markets.

This regulatory assistance comes at a critical time. According to the Federal Energy Regulatory Commission's Director of the Office of Market Oversight, ''energy markets are in severe financial distress.'' Along with the decline in credit quality in these markets, the loss of confidence and trust has led to a ruin in the liquidity and depth of these markets. This legislation will go a long way to address this problem.

Derivatives are highly leveraged financial transactions, allowing investors to potentially take a large position in the market without committing an equivalent amount of capital. Moreover, derivatives traded in over-the-counter markets are devoid of the transparency that characterizes exchange-traded derivatives such as futures, and this lack of transparency introduces a greater potential for abuse through fraud and manipulation.

Derivatives are often combined into highly complex structured transactions that are difficult—even for seasoned securities traders and finance professionals—to understand and price in the market. Enron used such over-the-counter derivatives extensively in order to hide the nature of their activities from investors. The failure of Enron and the demise of other energy derivatives dealers has had a devastating impact on the level of trust in energy markets.

This legislation would help ensure that over-the-counter derivatives markets operate with proper federal oversight which will make the markets more stable and transparent. It is appropriate to place this oversight authority with the Commodity Futures Trading Commission, which, as the principal federal regulator of derivatives transactions since its founding in 1975, will provide oversight, surveillance and enforcement of anti-fraud and anti-manipulation laws. The CFTC has the experience to handle these complex financial transactions and to develop the best rules to implement these protections.

At a time when these energy markets are deeply distressed and the investing public looks skeptically at derivatives trading and firms engaged in derivatives trading, we should take decisive steps to ensure that the public is protected from Enron-like abuses and that derivatives are properly regulated so as to make energy markets more efficient. This amendment is just such a step, and the authors of the legislation deserve appreciation for their work in the public interest.

Thank you for introducing this important legislation.

Sincerely,

RANDALL DODD,
*Director.*

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STATE OF MICHIGAN
OFFICE OF THE GOVERNOR,
*Lansing, MI, October 2, 2003.*

Hon. CARL LEVIN,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR LEVIN: I am writing to express my strong support for passage of the Feinstein-Lugar-Levin amendment to the Fiscal Year 2004 agriculture appropriation bill.

In the aftermath of the massive electricity blackout six weeks ago that affected at least six million Michiganians, I believe all necessary steps should be taken to bolster business and consumer confidence in the nation's energy markets and promote additional investment in reliable energy delivery at a fair price. Your amendment would improve electricity price transparency in wholesale electricity markets, greatly increase criminal and civil penalties for trading violations, prohibit market manipulation and fraud in all energy market sectors, and strengthen day-to-day energy market oversight including over-the-counter market transactions that significant affect energy prices.

By directing the Federal Energy Regulatory Commission (FERC) to establish an electronic price and supply monitoring system and crack down on manipulation in wholesale electricity markets. Congress would be providing new authorities consistent with my testimony before the House Energy and Commerce Committee last month that urged Congress to sharpen the teeth of federal regulators and hold electricity market participants accountable to assure energy reliability.

I appreciate your efforts in the Senate to strengthen federal oversight of energy markets and promote reliable and fairly priced energy that will protect consumers and fuel economic growth.

Sincerely,

JENNIFER M. GRANHOLM,
*Governor.*

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NATIONAL ASSOCIATION OF
STATE UTILITY CONSUMER ADVOCATES,
*October 27, 2003.*

DEAR SENATOR: The National Association of State Utility Consumer Advocates strongly support the bipartisan Energy Market Oversight Amendment, which will be offered during consideration of the FY 2004 Agriculture Appropriations bill.

The proposal, offered by Senators Feinstein, Lugar, Levin, and others will help fix broken energy markets and give regulators the tools needed to protect consumers from market manipulators.

The amendment improves price transparency, prohibits round trip trading, and increases penalties for Federal Power Act and Natural Gas Act violations. The amendment also prohibits manipulation of the energy market and repeals the ''Enron exemption.''

The nation's consumer advocates urge you to support this important consumer protection amendment.

Sincerely,

CHARLES A. ACQUARD,
*Executive Director.*

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, as I understand the colloquy, it was either a vote on the amendment or in relation to the amendment, and that a motion to table is determined as being in relation to the amendment.

Now, out of courtesy to the Senator from California, I will not make the motion to table. But I want to make it clear, I am reserving the right to make a motion to table in future situations similar to this. I do not want to be discourteous to her for her understanding, but it is my understanding that I do, indeed, have the right to make that motion.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Madam President, the extraordinary courtesy of the Senator is appreciated because he is actually correct. It did say ''in relation to.'' But I quickly accept his offer to have an up-or-down vote.

Mr. REID. Madam President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to amendment No. 2083.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER (Mr. ENSIGN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 41, nays 56, as follows:

[Rollcall Vote No. 436 Leg.]

YEAS—41

| | | |
|---|---|---|
| Akaka | Durbin | Levin |
| Baucus | Feingold | Lugar |
| Biden | Feinstein | McCain |
| Bingaman | Fitzgerald | Mikulski |
| Boxer | Graham (FL) | Murray |
| Byrd | Harkin | Nelson (FL) |
| Cantwell | Hollings | Reed |
| Clinton | Inouye | Reid |
| Conrad | Jeffords | Rockefeller |
| Corzine | Johnson | Sarbanes |
| Daschle | Kennedy | Schumer |
| Dayton | Kohl | Stabenow |
| Dodd | Lautenberg | Wyden |
| Dorgan | Leahy | |

NAYS—56

| | | |
|---|---|---|
| Alexander | Crapo | Miller |
| Allard | DeWine | Murkowski |
| Allen | Dole | Nelson (NE) |
| Bayh | Domenici | Nickles |
| Bennett | Ensign | Pryor |
| Bond | Enzi | Roberts |
| Breaux | Frist | Santorum |
| Brownback | Graham (SC) | Sessions |
| Bunning | Grassley | Shelby |
| Burns | Gregg | Smith |
| Campbell | Hagel | Snowe |
| Carper | Hatch | Specter |
| Chafee | Hutchison | Stevens |
| Chambliss | Inhofe | Sununu |
| Cochran | Kyl | Talent |
| Coleman | Landrieu | Thomas |
| Collins | Lincoln | Voinovich |
| Cornyn | Lott | Warner |
| Craig | McConnell | |

NOT VOTING—3

| | | |
|---|---|---|
| Edwards | Kerry | Lieberman |

The amendment (No. 2083) was rejected.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## NATIONAL CONSUMER CREDIT REPORTING SYSTEM IMPROVEMENT ACT OF 2003—Resumed

The PRESIDING OFFICER. Under the previous order, the clerk will read S. 1753 for the third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the Banking Committee is discharged from further consideration of H.R. 2622, and the clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2622) to amend the Fair Credit Reporting Act in order to prevent identity theft, to improve the use of and consumer access to consumer reports, to enhance the accuracy of consumer reports, to limit the sharing of certain consumer information, to improve financial education and literacy, and for other purposes.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause is stricken and the text of S. 1753, as amended, is inserted in lieu thereof.

The clerk will read the bill for the third time.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time.

Mrs. FEINSTEIN. Mr. President, I have decided to vote against the National Consumer Credit Reporting System Improvement Act because, bottom line, this bill reduces the privacy rights of 36 million Californians.

These rights were obtained through the passage of landmark legislation sponsored by Senator Jackie Speier earlier this year in California, which gave consumers the right to tell financial institutions that they don't want their most sensitive personal information shared with hundreds or even thousands of affiliated companies.

This practice—affiliate sharing—can include your most sensitive information—the stocks you own, the certificates of deposit you hold, or the amount of money in your checking account.

Importantly, California's financial industry signed off on Senator Speier's bill, rather than face a ballot initiative, which likely would have succeeded.

Industry executives said at the time that the California bill ''encompasses all aspects of the workability needed to ensure protection of customers' privacy'' and that it is ''a workable, reasonable compromise.'' In fact, the only major reservation expressed about that provision was that the bill did not represent a national standard. But now, given the opportunity to set such a national standard, these same companies worked to wipe out such protections—and I find this conduct particularly concerning. Attached is a letter from Senator Speier that attests to the behavior of California's financial industry.

So in response to calls for a national standard and to protect the rights of Californians, Senator BOXER and I developed an amendment that would have established a strong national standard on affiliate sharing, consistent with California's law, which would have given consumers a real voice in how their personal information is used.

This amendment came up for a vote and, unfortunately, it was defeated. I think time will show that this was the wrong vote, and I have no doubt that this issue will resurface as consumers learn more about the misuse of their most sensitive personal information.

I am disappointed that we did not achieve our main goal of adopting an amendment which would allow consumers to have control over their personal data, but I am pleased that the Senate approved two amendments, which I sponsored along with Senator BOXER, to protect consumers.

The first amendment, authorized by Senator BOXER, which I cosponsored, would give consumers greater protection against unwanted marketing.

Most importantly, the amendment would allow consumers to permanently opt-out of marketing by unrelated affiliates, while the underlying bill would have only limited the opt-out to 5 years. This means that if a consumer asks a corporation not to share information with its affiliates for the purpose of marketing, the affiliate cannot solicit them—forever. Without this amendment, a consumer would have been required to go back to the corporation and reiterate his request after 5 years.

Additionally, this amendment clarified what the bill meant by a ''pre-existing business relationship'', where there was no definition before. With this amendment, a company's affiliate would only be able to market to consumers who have:

One, purchased, rented or leased the seller's goods or services or completed a financial transaction between the consumer and seller, within the 18 months immediately preceding the date of a solicitation; or

Two, inquired about or applied for a product or service offered by the seller, within the 3 months immediately preceding the marketing contact.

Without this clarification, companies might have been able to market to customers who purchased goods as many as 5 or 10 years earlier, or who made the mildest inquiry a few years ago. It is the same definition developed by the Federal Trade Commission in creating a national ''Do Not Call'' registry for telemarketers.

The Senate also adopted a second amendment, which I authored and was cosponsored by Senators BOXER and KENNEDY, that essentially provided a far more encompassing definition of medical information than is contained in current law.

Simply put, this amendment will help ensure that consumers aren't discriminated against based on their medical or health information when they apply for credit, insurance, or employment. The amendment also has the support of the American Medical Association, the American Cancer Society, and the California Medical Association.

The Feinstein amendment would broadly expand the definition of ''medical information'' to read:

Information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(1) The past, present or future physical, mental or behavioral health or condition of an individual;

(2) The provision of health care to an individual; or

(3) Payment for the provision of health care to an individual.

This is the same definition of medical information established by the National Association of Insurance Commissioners in 2002. This definition has been implemented in a vast majority of our states.

Even with these modest amendments, however, I cannot support the reauthorization of the Fair Credit Reporting Act.

The Boxer-Feinstein marketing amendment will help prevent consumers from receiving unwanted solicitation, but it will do nothing to limit

the ability of companies to share information with their affiliates.

Affiliates, therefore, will continue to be able to use personal information to profile consumers in a way that leads to unfair increases in premiums or interest rates, to giving certain consumers inferior service, or to outrightly deny them credit cards, insurance policies, or other products.

Furthermore, the bill will do nothing to stop the creation of ''internal credit reports'' by large financial institutions. Unlike with traditional credit reports, consumers will continue to have no ability to access or correct errors in these documents.

Most Americans consider their personal information their private property. Yet, this bill will continue to deprive ordinary American consumers from having any choice over how their information is shared in the business world. This is the fundamental issue.

To give you a sense of the deep support for privacy, I would point to a survey of California voters completed on February 7 of this year.

The statewide survey found that by a 91-to-7 percent margin, California voters would favor a ballot proposition that ''would require a bank, a credit card company, insurance company, or other financial institution to notify a customer and receive a customer's permission before selling any financial information to any separate financial or non-financial company.''

This means that 9 out of 10 Californians support even stronger protections—where companies would have to gain your prior consent—opt-in—to share your financial data—than the amendment which Senator BOXER and I offered. And polls across the country reflected similar levels of support by Americans for stronger privacy laws.

This only underscores the need for strong federal standards. Clearly, businesses should be able to manage customer information in order to enhance services. But there must be strong rules that protect consumers. That is why Congress should have given consumers a choice—allowing them to tall companies that they don't want their most personal information shared.

So despite the fact that I support efforts in this legislation to combat identity theft and improve consumer access to credit report information, I believe that the bill doesn't do enough to protect consumer's privacy, and that is why I am voting against it.

Mr. President, I ask unanimous consent that a letter from Senator Jackie Speier be printed in the RECORD.

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

CALIFORNIA STATE SENATE,
*Sacramento, CA, October 24, 2003.*

Hon. DIANNE FEINSTEIN,
*U.S. Senator, California,*
*Hart Senate Office Building, Washington, DC.*
Hon. BARBARA BOXER,
*U.S. Senator, California,*
*Hart Senate Office Building, Washington, DC.*

DEAR SENATORS FEINSTEIN AND BOXER: I wish to thank you for your efforts on behalf of consumer privacy rights, and urge you continue to do all that is possible to protect California's hard-fought consumer privacy gains.

It has recently come to my attention that the financial services industry has been criticizing the contents of your amendment to S. 1753, substituting the newly-enacted and stronger California privacy standard on affiliate sharing in the ''corporate family of companies,'' as unworkable and unreasonable. This same industry recently called my California bill ''workable and reasonable,'' specifically removing their opposition to my measure and lavishing praise on it, even helping to gather votes. Industry made it clear that my bill met their workability concerns, progress made with their active participation. If my bill was workable for industry in California, then why shouldn't it be the national standard? A transcript of their August 14, 2003, public comments bear this out and is attached.

One industry representative stood with me on that day and said my bill ''encompasses all aspects of the workability needed to ensure protection of customers' privacy,'' while another called it ''a balanced measure that will provide meaningful privacy protections to consumers while also addressing the workability concerns'' that industry had. Now the story is different, as industry sees a political opportunity to preempt California's standard on affiliate sharing with a weaker one.

The financial services industry appears to be acting in bad faith—it seems willing to say and do anything to erode California's recent progress on behalf of consumers, first to avoid a costly initiative battle and local ordinances limiting third-party sharing, now to pull the wool over Congress' eyes. Does the financial services industry really believe that millions of American consumers don't deserve a choice over what happens when their personal financial information, their financial DNA, is shared with thousands of affiliated companies? The industry's position is flawed public policy, weaker than their own standards abroad, and the kind of business practice that erodes consumer confidence.

I urge you to continue your efforts in making California's privacy standards those of the nation. California's affiliate standard was good enough for the financial industry two months ago; it certainly is acceptable now. Thank you again for your efforts; I stand ready to help you in any way possible.

All the best,

JACKIE SPEIER,
*California State Senator.*

Mr. DODD. Mr. President, I rise today to urge my strong support for S. 1753, the National Consumer Credit Reporting System Improvement Act of 2003. I would like to commend both Chairman SHELBY and Ranking Member SARBANES on this legislation and the thoroughness of the hearings which preceded this legislation. I applaud their deep commitment and thank them for their strong leadership on this issue.

This legislation is not perfect. It is not the bill that I would have written. Nor do I believe that this legislation represents a perfect bill from the perspective of the chairman or ranking member. However, I believe that it is a bipartisan bill that does a lot of very good things, and was put together in a very balanced manner.

The Banking Committee, both during the hearing process and the mark-up of this legislation examined the numerous issues surrounding the Fair Credit Reporting Act: accuracy, privacy, security, financial literacy, among others.

We learned some critical information during this process. I believe that the hearing process shed significant light on the positives of the Fair Credit Reporting Act and gave us insight on how to enhance its effectiveness. The consumer credit system is critically important to our nation's economy, and this legislation attempts to balance the greater access to credit for consumers, more efficiency in the credit granting process and the needs of consumers to have greater accuracy and privacy protections.

Numerous witnesses testified to the need to improve accuracy in the credit reporting process. Concerns were raised that currently the critical information that is used in the credit granting process is not as timely and accurate as is necessary. Accurate credit reporting is essential to the proper functioning of our credit system and to the financial security of American consumers. Also, consumers must have a clearly articulated remedy for correcting errors when they do occur.

Additionally, consumers must be given greater knowledge and control over their personal financial information. The hearing on affiliate sharing shed light on current practices and the positives and negatives associated with those practices.

The committee heard from numerous witnesses that consumers were not provided with the tools necessary to fully understand the credit reporting process and become adept to using it to their maximum advantage. Financial literacy is not a one time event—it is a long process—educating more and more Americans as they become consumers.

Of special concern, we learned about the epidemic of identity theft. Identity theft is a growing problem affecting millions of Americans and that we must devote our full attention to increasing the security of financial information. We heard from a witness named John Harrison, a retired Army Captain from Connecticut who was the victim of identity theft. His credit reports clearly contained false information—misinformation that was planted there by a criminal—but Captain Harrison has had—and continues to have—enormous difficulty restoring his credit worthiness.

These are just some of the lessons regarding the current operation of the Fair Credit Reporting Act.

This legislation addresses many, if not all, of the concerns raised throughout the six hearings conducted by the committee.

This legislation strengthens consumers' ability to control both their personal financial and medical information. I have long supported the need to improve the privacy rights of consumers with respect to genetic, medical, and financial information. I am a cosponsor of legislation which would

provide greater choices for consumers to prevent sharing of information between affiliates and unaffiliated third parties. While this legislation does not go far enough to completely protect consumers, I believe it is an important step in the right direction.

This legislation provides consumers with the ability to prohibit affiliates from using their personal financial information for solicitations and other marketing purposes. In addition, an important amendment was adopted on the floor to provide consumers with additional protections against the misuse of sensitive medical information. It also contains important provisions that will significantly enhance consumer protections against the growing problem of identify theft.

Additionally, it grants consumers with access to one free credit report per year from the credit reporting bureaus. This access will allow consumers to monitor the accuracy of the information contained in their credit files and ensure that information resulting from identity theft does not end up destroying their financial reputation.

And by providing consumers with a free credit report, and access to the information used by creditors to judge their creditworthiness, this bill equips consumers with the tools to competitively shop for sources of financing and will lead consumers to make better informed and more judicious, credit-related decisions.

I believe that we can do more to give consumers better control over their personal information and how financial institutions share their information with their affiliates, for marketing as well as other purposes. This legislation is an important step in the right direction.

Irrespective of any changes that I, or others, may wish to raise with regard to S. 1753, there is no doubt that this legislation significantly improves the current privacy and accuracy standards of our consumer credit reporting system.

Again, I would like to thank Senators SARBANES and SHELBY and their staffs for their hard work on this legislation. I urge my colleagues to support S. 1753.

Mr. BAUCUS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time? There is 1 minute remaining on each side.

Mr. SHELBY. Mr. President, I yield myself 1 minute or less. We are getting ready to vote on the Fair Credit Reporting Act. We were able yesterday to move it to where we are today. We believe we have put together a bipartisan bill. We expect a heavy vote on both sides of the aisle. It is a complicated piece of legislation.

I commend Senator SARBANES, my colleague and the ranking Democrat, for his leadership in helping us to get where we are today.

I yield back the remainder of my time.

Mr. SARBANES. Mr. President, this is the legislation we spent all day yesterday on. We worked through the issues, I think, in a reasonable and collegial fashion and the measure is now before us for final passage. I thank the chairman of the committee for his many courtesies.

I yield back the remainder of my time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''aye.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 2, as follows:

[Rollcall Vote No. 437 Leg.]

YEAS—95

| | | |
|---|---|---|
| Akaka | Dodd | Lugar |
| Alexander | Dole | McCain |
| Allard | Domenici | McConnell |
| Allen | Dorgan | Mikulski |
| Baucus | Durbin | Miller |
| Bayh | Ensign | Murkowski |
| Bennett | Enzi | Murray |
| Biden | Feingold | Nelson (FL) |
| Bingaman | Fitzgerald | Nelson (NE) |
| Bond | Frist | Nickles |
| Breaux | Graham (FL) | Pryor |
| Brownback | Graham (SC) | Reed |
| Bunning | Grassley | Reid |
| Burns | Gregg | Roberts |
| Byrd | Hagel | Rockefeller |
| Campbell | Harkin | Santorum |
| Cantwell | Hatch | Sarbanes |
| Carper | Hollings | Schumer |
| Chafee | Hutchison | Sessions |
| Chambliss | Inhofe | Shelby |
| Clinton | Inouye | Smith |
| Cochran | Jeffords | Snowe |
| Coleman | Johnson | Specter |
| Collins | Kennedy | Stabenow |
| Conrad | Kohl | Stevens |
| Cornyn | Kyl | Sununu |
| Corzine | Landrieu | Talent |
| Craig | Lautenberg | Thomas |
| Crapo | Leahy | Voinovich |
| Daschle | Levin | Warner |
| Dayton | Lincoln | Wyden |
| DeWine | Lott | |

NAYS—2

| | |
|---|---|
| Boxer | Feinstein |

NOT VOTING—3

| | | |
|---|---|---|
| Edwards | Kerry | Lieberman |

The bill (H.R. 2622), as amended, was passed, as follows:

H.R. 2622

*Resolved*, That the bill from the House of Representatives (H.R. 2622) entitled ''An Act to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

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

(a) SHORT TITLE.—This Act may be cited as the ''National Consumer Credit Reporting System Improvement Act of 2003''.

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

## TITLE I—IDENTITY THEFT PREVENTION AND CREDIT HISTORY RESTORATION

### Subtitle A—Identity Theft Prevention

**SEC. 111. DEFINITIONS.**

Section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a) is amended by adding at the end the following:

''(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

''(1) ACTIVE DUTY MILITARY CONSUMER.—The term 'active duty military consumer' means a consumer in military service who—

''(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

''(B) is assigned to service away from the usual duty station of the consumer.

''(2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms 'fraud alert' and 'active duty alert' mean a statement in the file of a consumer that—

''(A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable;

''(B) provides to all prospective users of a consumer report relating to the consumer, a telephone number or other reasonable contact method designated by the consumer for the user to obtain authorization from the consumer before establishing new credit (including providing any increase in a credit limit with respect to an existing credit account) in the name of the consumer; and

''(C) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) or (B) by any person requesting such consumer report.

''(r) CREDIT CARD.—The term 'credit card' has the same meaning as in section 103 of the Truth in Lending Act.

''(s) DEBIT CARD.—The term 'debit card' means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.

''(t) ACCOUNT AND ELECTRONIC FUND TRANSFER.—The terms 'account' and 'electronic fund transfer' have the same meanings as in section 903 of the Electronic Fund Transfer Act.

''(u) CREDIT AND CREDITOR—The terms 'credit' and 'creditor' have the same meanings as in section 702 of the Equal Credit Opportunity Act.

''(v) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(w) FINANCIAL INSTITUTION.—The term 'financial institution' means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds an account belonging to a consumer.

''(x) RESELLER.—The term 'reseller' means a consumer reporting agency that—

''(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

''(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

''(y) DEFINITIONS RELATING TO CREDIT SCORES.—

''(1) CREDIT SCORE AND KEY FACTORS.—When used in connection with an application for an extension of credit for a consumer purpose that is to be secured by a dwelling—

''(A) the term 'credit score'—

''(i) means a numerical value or categorization derived from a statistical tool or modeling system used to predict the likelihood of certain credit behaviors, including default; and

''(ii) does not include—

''(I) any mortgage score or rating of an automated underwriting system that considers 1 or more factors in addition to credit information, including the loan-to-value ratio, the amount of down payment, or the financial assets of a consumer; or

''(II) other elements of the underwriting process or underwriting decision; and

''(B) the term 'key factors' means all relevant elements or reasons affecting the credit score for a consumer, listed in the order of their importance, based on their respective effects on the credit score.

''(2) DWELLING.—The term 'dwelling' has the same meaning as in section 103 of the Truth in Lending Act.

''(z) IDENTITY THEFT REPORT.—The term 'identity theft report' means a report—

''(1) that alleges an identity theft;

''(2) that is filed by a consumer with an appropriate Federal, State, or local government agency, including the United States Postal Inspection Service and any law enforcement agency; and

''(3) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.''.

**SEC. 112. FRAUD ALERTS AND ACTIVE DUTY ALERTS.**

The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 605 the following:

**''§ 605A. Identity theft prevention; fraud alerts and active duty alerts**

''(a) ONE-CALL FRAUD ALERTS.—

''(1) INITIAL ALERTS.—Upon the request of a consumer who asserts in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, a consumer reporting agency described in section 603(p) that maintains a file on the consumer and has received appropriate proof of the identity of the requester shall—

''(A) include a fraud alert in the file of that consumer for a period of not less than 90 days, beginning on the date of such request, unless the consumer requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose; and

''(B) refer the information regarding the fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

''(2) ACCESS TO FREE REPORTS.—In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall—

''(A) disclose to the consumer that the consumer may request a free copy of the file of the consumer pursuant to section 612(d); and

''(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

''(b) EXTENDED ALERTS.—

''(1) IN GENERAL.—Upon the request of a consumer who submits an identity theft report to a consumer reporting agency described in section 603(p) that maintains a file on the consumer, if the agency has received appropriate proof of the identity of the requester, the agency shall—

''(A) include a fraud alert in the file of that consumer during the 7-year period beginning on the date of such request, unless the consumer requests that such fraud alert be removed before the end of such period and the agency has received appropriate proof of the identity of the requester for such purpose;

''(B) during the 7-year period beginning on the date of such request, exclude the consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer requests that such exclusion be rescinded before the end of such period; and

''(C) refer the information regarding the extended fraud alert under this paragraph to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

''(2) VERIFICATION OF IDENTITY THEFT CLAIM.—For purposes of paragraph (1), a consumer reporting agency shall accept as proof of a claim of identity theft, in lieu of an identity theft report—

''(A) a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(B) any affidavit of fact that is acceptable to the consumer reporting agency for that purpose.

''(3) ACCESS TO FREE REPORTS.—In any case in which a consumer reporting agency includes a fraud alert in the file of a consumer pursuant to this subsection, the consumer reporting agency shall—

''(A) disclose to the consumer that the consumer may request 2 free copies of the file of the consumer pursuant to section 612(d) during the 12-month period beginning on the date on which the fraud alert was included in the file; and

''(B) provide to the consumer all disclosures required to be made under section 609, without charge to the consumer, not later than 3 business days after any request described in subparagraph (A).

''(c) ACTIVE DUTY ALERTS.—Upon the request of an active duty military consumer, a consumer reporting agency described in section 603(p) that maintains a file on the active duty military consumer and has received appropriate proof of the identity of the requester shall—

''(1) include an active duty alert in the file of that active duty military consumer during a period of not less than 12 months, beginning on the date of the request, unless the active duty military consumer requests that such fraud alert be removed before the end of such period, and the agency has received appropriate proof of the identity of the requester for such purpose;

''(2) during the 12-month period beginning on the date of such request, exclude the active duty military consumer from any list of consumers prepared by the consumer reporting agency and provided to any third party to offer credit or insurance to the consumer as part of a transaction that was not initiated by the consumer, unless the consumer

requests that such exclusion be rescinded before the end of such period; and

''(3) refer the information regarding the active duty alert to each of the other consumer reporting agencies described in section 603(p), in accordance with procedures developed under section 621(f).

''(d) PROCEDURES.—Each consumer reporting agency described in section 603(p) shall establish policies and procedures to comply with this section, including procedures that allow consumers and active duty military consumers to request temporary, extended, or active duty alerts (as applicable) in a simple and easy manner, including by telephone.

''(e) REFERRALS OF FRAUD ALERTS.—Each consumer reporting agency described in section 603(p) that receives a referral of a fraud alert or active duty alert from another consumer reporting agency pursuant to this section shall, as though the agency received the request from the consumer directly, follow the procedures required under—

''(1) paragraphs (1)(A) and (2) of subsection (a), in the case of a referral under subsection (a)(1)(B);

''(2) paragraphs (1)(A), (1)(B), and (3) of subsection (b), in the case of a referral under subsection (b)(1)(C); and

''(3) paragraphs (1) and (2) of subsection (c), in the case of a referral under subsection (c)(3).

''(f) DUTY OF RESELLER TO RECONVEY ALERT.—A reseller shall include in its report any fraud alert or active duty alert placed in the file of a consumer pursuant to this section by another consumer reporting agency.

''(g) DUTY OF OTHER CONSUMER REPORTING AGENCIES TO PROVIDE CONTACT INFORMATION.—If a consumer contacts any consumer reporting agency that is not described in section 603(p) to communicate a suspicion that the consumer has been or is about to become a victim of fraud or related crime, including identity theft, the agency shall provide information to the consumer on how to contact the Federal Trade Commission and the consumer reporting agencies described in section 603(p) to obtain more detailed information and request alerts under this section.''.

**SEC. 113. TRUNCATION OF CREDIT CARD AND DEBIT CARD ACCOUNT NUMBERS.**

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c) is amended by adding at the end the following:

''(g) TRUNCATION OF CREDIT CARD AND DEBIT CARD NUMBERS.—

''(1) IN GENERAL.—Except as otherwise specifically provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card account number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

''(2) LIMITATION.—This subsection applies only to receipts that are electronically printed, and does not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

''(3) EFFECTIVE DATE.—This subsection shall become effective—

''(A) 3 years after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

''(B) 1 year after the date of enactment of this subsection, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.''.

**SEC. 114. ESTABLISHMENT OF PROCEDURES FOR THE IDENTIFICATION OF POSSIBLE INSTANCES OF IDENTITY THEFT.**

(a) IN GENERAL.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended—

(1) by striking ''(e)'' at the end; and

(2) by adding at the end the following:

''(e) RED FLAG GUIDELINES AND REGULATIONS REQUIRED.—

''(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2)—

''(A) establish and maintain guidelines for use by each financial institution and each other person that is a creditor or other user of a consumer report regarding identity theft with respect to account holders at, or customers of, such entities, and update such guidelines as often as necessary;

''(B) prescribe regulations requiring each financial institution and each other person that is a creditor or other user of a consumer report to establish reasonable policies and procedures for implementing the guidelines established pursuant to paragraph (1), to identify possible risks to account holders or to the safety and soundness of the institution or customers; and

''(C) prescribe regulations requiring each financial institution and each other person that is a creditor or other user of a consumer report to notify the Federal Trade Commission (and any other agency or person that such rulemaking agency determines appropriate) in any case in which there has been, or is reasonably believed to have been unauthorized access to computerized or physical records which compromises the security, confidentiality, or integrity of consumer information maintained by or on behalf of that entity, except that such regulations shall not apply to a good faith acquisition of information by an employee or agent of such entity for a business purpose of that entity, if the information is not subject to further unauthorized access.

''(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

''(3) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft.

''(4) CONSISTENCY WITH VERIFICATION REQUIREMENTS.—Policies and procedures established pursuant to paragraph (1) shall not be inconsistent with, or duplicative of, the policies and procedures required under section 5318(*l*) of title 31, United States Code.

''(f) INVESTIGATION OF CHANGES OF ADDRESS.—

''(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission, in carrying out the responsibilities of such agencies under subsection (e) shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2), prescribe regulations applicable to card issuers to ensure that, if any such card issuer receives a request for an additional or replacement card for an existing account not later than 30 days after the card issuer has received notification of a change of address for the same account, the card issuer will follow reasonable policies and procedures that prohibit, as appropriate, the card issuer from issuing the additional or replacement card, unless the card issuer—

''(A) notifies the cardholder of the request at the former address of the cardholder and provides to the cardholder a means of promptly reporting incorrect address changes;

''(B) notifies the cardholder of the request by such other means of communication as the cardholder and the card issuer previously agreed to; or

''(C) uses other means of assessing the validity of the change of address, in accordance with reasonable policies and procedures established by the card issuer in accordance with the regulations prescribed under subsection (e).

''(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

''(3) DEFINITION OF CARD ISSUER.—For purposes of this subsection, the term 'card issuer' means—

''(A) any person who issues a credit card, or the agent of such person with respect to such card; and

''(B) any person who issues a debit card.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 1 year after the date of enactment of this Act.

**SEC. 115. AMENDMENTS TO EXISTING IDENTITY THEFT PROHIBITION.**

Section 1028 of title 18, United States Code, is amended—

(1) in subsection (a)(7)—

(A) by striking ''transfers'' and inserting ''transfers, possesses,''; and

(B) by striking ''abet,'' and inserting ''abet, or in connection with,'';

(2) in subsection (b)(1)(D), by striking ''transfer'' and inserting ''transfer, possession,''; and

(3) in subsection (b)(2), by striking ''three years'' and inserting ''5 years''.

**SEC. 116. AUTHORITY TO TRUNCATE SOCIAL SECURITY NUMBERS.**

Section 609(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)(1)) is amended by striking ''except that nothing'' and inserting the following: ''except that—

''(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

''(B) nothing''.

## Subtitle B—Protection and Restoration of Identity Theft Victim Credit History

**SEC. 151. SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.**

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following:

''(d) SUMMARY OF RIGHTS OF IDENTITY THEFT VICTIMS.—

''(1) IN GENERAL.—The Federal Trade Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall prescribe the form and content of a summary of the rights of consumers under this title with respect to the procedures for remedying the effects of fraud or identity theft involving credit, electronic fund transfers, or accounts or transactions at or with a financial institution.

''(2) SUMMARY OF RIGHTS AND CONTACT INFORMATION.—If any consumer contacts a consumer reporting agency and expresses a belief that the consumer is a victim of fraud or identity theft involving credit, an electronic fund transfer, or an account or transaction at or with a financial institution, the consumer reporting agency shall, in addition to any other action that the agency may take, provide the consumer with the model summary of rights prepared by the Federal Trade Commission under paragraph (1) and information on how to contact the Commission to obtain more detailed information.

''(e) INFORMATION AVAILABLE TO VICTIMS.—

''(1) IN GENERAL.—For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 20 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to—

''(A) the victim;

''(B) any Federal, State, or local governing law enforcement agency or officer specified by the victim in such a request; or

''(C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.

''(2) VERIFICATION OF IDENTITY AND CLAIM.—Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, is otherwise able to verify the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity—

''(A) as proof of positive identification of the victim, at the election of the business entity—

''(i) the presentation of a government-issued identification card;

''(ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or

''(iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and

''(B) as proof of a claim of identity theft, at the election of the business entity—

''(i) a copy of a police report evidencing the claim of the victim of identity theft; and

''(ii) a properly completed—

''(I) copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission; or

''(II) an affidavit of fact that is acceptable to the business entity for that purpose.

''(3) PROCEDURES.—The request of a victim under paragraph (1) shall—

''(A) be in writing; and

''(B) be mailed to an address specified by the business entity, if any.

''(4) NO CHARGE TO VICTIM.—Information required to be provided under paragraph (1) shall be so provided without charge.

''(5) AUTHORITY TO DECLINE TO PROVIDE INFORMATION.—A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that—

''(A) this subsection does not require disclosure of the information;

''(B) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or

''(C) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.

''(6) LIMITATION ON LIABILITY.—Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.

''(7) NO NEW RECORDKEEPING OBLIGATION.—Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.

''(8) RULE OF CONSTRUCTION.—

''(A) IN GENERAL.—No provision of Federal or State law (except a law involving the nondisclosure of information related to a pending Federal criminal investigation) prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.

''(B) LIMITATION.—Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.

''(9) AFFIRMATIVE DEFENSE.—In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that—

''(A) the business entity has made a reasonably diligent search of its available business records; and

''(B) the records requested under this subsection do not exist or are not available.

''(10) DEFINITION OF VICTIM.—For purposes of this subsection, the term 'victim' means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, identity theft or any other violation of law.''.

(b) PUBLIC CAMPAIGN TO PREVENT IDENTITY THEFT.—Not later than 2 years after the date of enactment of this Act, the Federal Trade Commission shall establish and implement a media and distribution campaign to teach the public how to prevent identity theft. Such campaign shall include existing Federal Trade Commission education materials, as well as radio, television, and print public service announcements, video cassettes, interactive digital video discs (DVD's) or compact audio discs (CD's), and Internet resources.

(c) CONFORMING AMENDMENT.—Section 624(b)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(3), regarding relation to State laws) is amended by striking ''section 609(c)'' and inserting ''subsection (c) or (d) of section 609''.

**SEC. 152. BLOCKING OF INFORMATION RESULTING FROM IDENTITY THEFT.**

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after section 605A, as added by this Act, the following:

**''§ 605B. Block of information resulting from identity theft**

''(a) BLOCK.—Except as otherwise provided in this section, a consumer reporting agency shall block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft, not later than 3 business days after the date of receipt by such agency of—

''(1) appropriate proof of the identity of the consumer;

''(2) a copy of an identity theft report; and

''(3) the identification of such information by the consumer.

''(b) NOTIFICATION.—A consumer reporting agency shall promptly notify the furnisher of information identified by the consumer under subsection (a)—

''(1) that the information may be a result of identity theft;

''(2) that an identity theft report has been filed;

''(3) that a block has been requested under this section; and

''(4) of the effective dates of the block.

''(c) AUTHORITY TO DECLINE OR RESCIND.—

''(1) IN GENERAL.—A consumer reporting agency may decline to block, or may rescind any block, of information relating to a consumer under this section, if the consumer reporting agency reasonably determines that—

''(A) the information was blocked in error or a block was requested by the consumer in error;

''(B) the information was blocked, or a block was requested by the consumer, on the basis of a material misrepresentation of fact relevant to the request to block; or

''(C) the consumer obtained possession of goods, services, or money as a result of the blocked transaction or transactions.

''(2) NOTIFICATION TO CONSUMER.—If a block of information is declined or rescinded under this subsection, the affected consumer shall be notified promptly, in the same manner as consumers are notified of the reinsertion of information under section 611(a)(5)(B).

''(3) SIGNIFICANCE OF BLOCK.—For purposes of this subsection, if a consumer reporting agency rescinds a block, the presence of information in the file of a consumer prior to the blocking of such information is not evidence of whether the consumer knew or should have known that the consumer obtained possession of any goods, services, or money as a result of the block.

''(d) EXCEPTION FOR RESELLERS.—

''(1) NO RESELLER FILE.—This section shall not apply to a consumer reporting agency, if the consumer reporting agency—

''(A) is a reseller;

''(B) is not, at the time of the request of the consumer under subsection (a), otherwise furnishing or reselling a consumer report concerning the information identified by the consumer; and

''(C) informs the consumer, by any means, that the consumer may report the identity theft to the Federal Trade Commission to obtain consumer information regarding identity theft.

''(2) RESELLER WITH FILE.—The sole obligation of the consumer reporting agency under this section, with regard to any request of a consumer under this section, shall be to block the consumer report maintained by the consumer reporting agency from any subsequent use, if—

''(A) the consumer, in accordance with the provisions of subsection (a), identifies, to a consumer reporting agency, information in the file of the consumer that resulted from identity theft; and

''(B) the consumer reporting agency is a reseller of the identified information.

''(3) NOTICE.—In carrying out its obligation under paragraph (2), the reseller shall

promptly provide a notice to the consumer of the decision to block the file. Such notice shall contain the name, address, and telephone number of each consumer reporting agency from which the consumer information was obtained for resale.

''(e) EXCEPTION FOR VERIFICATION COMPANIES.—The provisions of this section do not apply to a check services company, acting as such, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments, except that, beginning 3 business days after receipt of information described in paragraphs (1) through (3) of subsection (a), a check services company shall not report to a national consumer reporting agency described in section 603(p), any information identified in the subject identity theft report as resulting from identity theft.

''(f) ACCESS TO BLOCKED INFORMATION BY LAW ENFORCEMENT AGENCIES.—No provision of this section shall be construed as requiring a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing blocked information in a consumer file to which the agency could otherwise obtain access under this title.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by inserting after the item relating to section 605 the following new items:

''605A. Identity theft prevention; fraud alerts and active duty alerts.
''605B. Block of information resulting from identity theft.''.

**SEC. 153. COORDINATION OF IDENTITY THEFT COMPLAINT INVESTIGATIONS.**

Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s) is amended by adding at the end the following:

''(f) COORDINATION OF CONSUMER COMPLAINT INVESTIGATIONS.—

''(1) IN GENERAL.—Each consumer reporting agency described in section 603(p) shall develop and maintain procedures for the referral to each other such agency of any consumer complaint received by the agency alleging identity theft, or requesting a fraud alert under section 605A or a block under section 605B.

''(2) MODEL FORM AND PROCEDURE FOR REPORTING IDENTITY THEFT.—The Federal Trade Commission, in consultation with the Federal banking agencies and the National Credit Union Administration, shall develop a model form and model procedures to be used by consumers who are victims of identity theft for contacting and informing creditors and consumer reporting agencies of the fraud.

''(3) ANNUAL SUMMARY REPORTS.—Each consumer reporting agency described in section 603(p) shall submit an annual summary report to the Federal Trade Commission on consumer complaints received by the agency on identity theft or fraud alerts.''.

**SEC. 154. PREVENTION OF REPOLLUTION OF CONSUMER REPORTS.**

(a) PREVENTION OF REINSERTION OF ERRONEOUS INFORMATION.—

(1) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED DISPUTES.—Section 623(b) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)) is amended—

(A) by redesignating paragraph (2) as paragraph (3);

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

''(2) DUTIES OF FURNISHERS UPON NOTICE OF IDENTITY THEFT-RELATED DISPUTES.—A person that furnishes information to any consumer reporting agency shall—

''(A) have in place reasonable procedures to respond to any notification that it receives from a consumer reporting agency under section 605B relating to information resulting from identity theft, to prevent that person from refurnishing such blocked information; and

''(B) take the actions described in subparagraphs (A) through (D) of paragraph (1), if such person receives directly from a consumer, an identity theft report or a properly completed copy of a standardized affidavit of identity theft developed and made available by the Federal Trade Commission.''; and

(C) in paragraph (3), as redesignated, by striking ''paragraph (1)'' and inserting ''this subsection''.

(2) CONFORMING AMENDMENTS RELATING TO NOTICE OF IDENTITY THEFT DIRECTLY FROM CONSUMERS.—Section 623(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)(1)) is amended—

(A) in the matter preceding subparagraph (A), by inserting ''or as described in paragraph (2)(B),'' after ''agency,'';

(B) subparagraph (B), by inserting before the semicolon the following: '', and by the consumer, and other documentation reasonably available to the person that is necessary to conduct a reasonable investigation''; and

(C) in subparagraph (C), by inserting before the semicolon at the end the following: '', and to the consumer, if notice of the dispute was received directly from the consumer, as described in paragraph (2)(B)''.

(b) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

''(g) PROHIBITION ON SALE OR TRANSFER OF DEBT CAUSED BY IDENTITY THEFT.—

''(1) IN GENERAL.—No person shall sell, transfer for consideration, or place for collection a debt that such person has been notified under section 605B has resulted from identity theft.

''(2) APPLICABILITY.—The prohibitions of this subsection shall apply to all persons collecting a debt described in paragraph (1) after the date of a notification under paragraph (1).

''(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prohibit—

''(A) the repurchase of a debt in any case in which the assignee of the debt requires such repurchase because the debt has resulted from identity theft;

''(B) the securitization of a debt; or

''(C) the transfer of debt as a result of a merger, acquisition, purchase and assumption transaction, or transfer of substantially all of the assets of an entity.''.

**SEC. 155. NOTICE BY DEBT COLLECTORS WITH RESPECT TO FRAUDULENT INFORMATION.**

Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

''(h) DEBT COLLECTOR COMMUNICATIONS CONCERNING IDENTITY THEFT.—If a person acting as a debt collector (as that term is defined in title VIII) on behalf of a third party that is a creditor or other user of a consumer report is notified that any information relating to a debt that the person is attempting to collect may be fraudulent or may be the result of identity theft, that person shall—

''(1) notify the third party that the information may be fraudulent or may be the result of identity theft; and

''(2) upon request of the consumer to whom the debt purportedly relates, provide to the consumer all information to which the consumer would otherwise be entitled if the consumer were not a victim of identity theft, but wished to dispute the debt under provisions of law applicable to that person.''.

**SEC. 156. STATUTE OF LIMITATIONS.**

Section 618 of the Fair Credit Reporting Act (15 U.S.C. 1681p) is amended to read as follows:

**''§ 618. Jurisdiction of courts; limitation of actions**

''An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

''(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

''(2) 5 years after the date on which the violation that is the basis for such liability occurs.''.

**TITLE II—IMPROVEMENTS IN USE OF AND CONSUMER ACCESS TO CREDIT INFORMATION**

**SEC. 211. FREE CREDIT REPORTS.**

(a) IN GENERAL.—Section 612 of the Fair Credit Reporting Act (15 U.S.C. 1681j) is amended—

(1) by redesignating subsection (a) as subsection (f), and transferring it to the end of the section;

(2) by inserting before subsection (b) the following:

''(a) FREE ANNUAL DISCLOSURE.—

''(1) IN GENERAL.—A consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 once during any 12-month period upon request of the consumer and without charge to the consumer, only if the request is made by mail or through an Internet website using the centralized system and the standardized form established for such requests in accordance with section 211(c) of the National Consumer Credit Reporting System Improvement Act of 2003.

''(2) TIMING.—A consumer reporting agency shall provide a consumer report under paragraph (1) not later than 15 days after the date on which the request is received under paragraph (1).

''(3) REINVESTIGATIONS.—Notwithstanding the time periods specified in section 611(a)(1), a reinvestigation under that section by a consumer reporting agency upon a request of a consumer that is made after receiving a consumer report under this subsection shall be completed not later than 45 days after the date on which the request is received.'';

(3) by redesignating subsection (d) as subsection (e);

(4) by inserting before subsection (e), as redesignated, the following:

''(d) FREE DISCLOSURES IN CONNECTION WITH FRAUD ALERTS.—Upon the request of a consumer, a consumer reporting agency described in section 603(p) shall make all disclosures pursuant to section 609 without charge to the consumer, as provided in subsections (a)(2) and (b)(3) of section 605A, as applicable.'';

(5) in subsection (e), as redesignated, by striking ''subsection (a)'' and inserting ''subsection (f)''; and

(6) in subsection (f), as redesignated, by striking ''Except as provided in subsections (b), (c), and (d), a'' and inserting ''In the case of a request from a consumer other than a request that is covered by any of subsections (a) through (d), a''.

(b) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.—Section 609(c) of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended to read as follows:

''(c) SUMMARY OF RIGHTS TO OBTAIN AND DISPUTE INFORMATION IN CONSUMER REPORTS AND TO OBTAIN CREDIT SCORES.—

''(1) COMMISSION SUMMARY OF RIGHTS REQUIRED.—

''(A) IN GENERAL.—The Federal Trade Commission shall prepare a model summary of the rights of consumers under this title.

''(B) CONTENT OF SUMMARY.—The summary of rights prepared under subparagraph (A) shall include a description of—

''(i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;

''(ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 612;

''(iii) the right of a consumer to dispute information in the file of the consumer under section 611;

''(iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score; and

''(v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Federal Trade Commission prescribed under section 211(c) of the National Consumer Credit Reporting System Improvement Act of 2003.

''(C) AVAILABILITY OF SUMMARY OF RIGHTS.—The Federal Trade Commission shall—

''(i) actively publicize the availability of the summary of rights prepared under this paragraph;

''(ii) conspicuously post on its Internet website the availability of such summary of rights; and

''(iii) promptly make such summary of rights available to consumers, on request.

''(2) SUMMARY OF RIGHTS REQUIRED TO BE INCLUDED WITH AGENCY DISCLOSURES.—A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section—

''(A) the summary of rights prepared by the Federal Trade Commission under paragraph (1);

''(B) in the case of a consumer reporting agency described in section 603(p), a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours;

''(C) a list of all Federal agencies responsible for enforcing any provision of this title, and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

''(D) a statement that the consumer may have additional rights under State law, and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general (or the equivalent thereof) to learn of those rights; and

''(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from the file of a consumer, unless the information is outdated under section 605 or cannot be verified.''.

(c) RULEMAKING REQUIRED.—

(1) IN GENERAL.—The Federal Trade Commission shall prescribe regulations applicable to consumer reporting agencies described in section 603(p) of the Fair Credit Reporting Act to require the establishment of—

(A) a centralized source, through which consumers may obtain a consumer report from each consumer reporting agency described in that section 603(p) using a single request and without charge to the consumer, as provided in section 612(a) of the Fair Credit Reporting Act (as amended by this Act);

(B) a standardized form for a consumer to make such a request for a consumer report by mail or through an Internet website; and

(C) streamlined methods by which such a consumer reporting agency shall provide such consumer reports, after consideration of—

(i) the significant demands that may be placed on consumer reporting agencies in providing such consumer reports;

(ii) appropriate means to ensure that consumer reporting agencies can satisfactorily meet those demands, including the efficacy of a system of staggering the availability to consumers of such consumer reports using a quarterly method based on the birth month of the consumer; and

(iii) the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.

(2) TIMING.—Regulations required by this subsection shall—

(A) be issued in final form not later than 6 months after the date of enactment of this Act; and

(B) become effective not later than 6 months after the date on which they are issued in final form.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall become effective on the effective date of the regulations prescribed by the Federal Trade Commission in accordance with subsection (c).

**SEC. 212. CREDIT SCORES.**

(a) DUTIES OF CONSUMER REPORTING AGENCIES TO DISCLOSE CREDIT SCORES.—

(1) IN GENERAL.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended by adding at the end the following:

''(6) In connection with an application for an extension of credit for a consumer purpose that is to be secured by a dwelling—

''(A) the current, or most recent, credit score of the consumer that was previously calculated by the agency;

''(B) the range of possible credit scores under the model used;

''(C) the key factors, if any, not to exceed 4, that adversely affected the credit score of the consumer in the model used;

''(D) the date on which the credit score was created; and

''(E) the name of the person or entity that provided the credit score or the credit file on the basis of which the credit score was created.''.

(2) LIMITATIONS ON REQUIRED PROVISION OF CREDIT SCORE.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

''(f) LIMITATIONS ON REQUIRED PROVISION OF CREDIT SCORE.—

''(1) IN GENERAL.—Subsection (a)(6) may not be construed—

''(A) to compel a consumer reporting agency to develop or disclose a credit score if the agency does not, in the ordinary course of its business—

''(i) distribute scores that are used in connection with extensions of credit secured by residential real property; or

''(ii) develop credit scores that assist creditors in understanding the general credit behavior of the consumer and predicting future credit behavior;

''(B) to require a consumer reporting agency that distributes credit scores developed by another person or entity to provide a further explanation of those scores, or to process a dispute arising pursuant to section 611(a), except that the consumer reporting agency shall be required to provide to the consumer the name and information for contacting the person or entity that developed the score;

''(C) to require a consumer reporting agency to maintain credit scores in its files; or

''(D) to compel disclosure of a credit score, except upon specific request of the consumer, except that if a consumer requests the credit file and not the credit score, then the consumer shall be provided with the credit file and a statement that the consumer may request and obtain a credit score.

''(2) PROVISION OF SCORING MODEL.—In complying with subsection (a)(6) and this subsection, a consumer reporting agency shall supply to the consumer—

''(A) a credit score that is derived from a credit scoring model that is widely distributed to users of credit scores by that consumer reporting agency in connection with any extension of credit secured by a dwelling; or

''(B) a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about future credit behavior.''.

(3) CONFORMING AMENDMENT.—Section 609(a)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)(1)(B)), as so designated by section 116, is amended by inserting before the period '', other than as provided in paragraph (6)''.

(b) DUTIES OF USERS OF CREDIT SCORES.—

(1) IN GENERAL.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

''(i) DUTIES OF USERS OF CREDIT SCORES.—

''(1) DISCLOSURES.—Any person that makes or arranges extensions of credit for consumer purposes that are to be secured by a dwelling and that uses credit scores for that purpose, shall be required to provide to the consumer to whom the credit score relates, as soon as is reasonably practicable after such use—

''(A) a copy of the information described in section 609(a)(6) that was obtained from a consumer reporting agency or that was developed and used by that user of the credit score information; or

''(B) if the user of the credit score information obtained such information from a third party that developed such information (other than a consumer reporting agency or the user itself), only—

''(i) a copy of the information described in section 609(a)(6) provided to the user by the person or entity that developed the credit score; and

''(ii) a notice that generally describes credit scores, their use, and the sources and kinds of data used to generate credit scores.

''(2) RULE OF CONSTRUCTION.—This subsection may not be construed to require the user of a credit score described in paragraph (1)—

''(A) to explain to the consumer the information provided pursuant to section 609(a)(6), unless that information was developed by the user;

''(B) to disclose any information other than a credit score or the key factors required to be disclosed under section 609(a)(6)(C);

''(C) to disclose any credit score or related information obtained by the user after a transaction occurs; or

''(D) to provide more than 1 disclosure under this subsection to any 1 consumer per credit transaction.

''(3) LIMITATION.—Except as otherwise provided in this subsection, the obligation of a user of a credit score under this subsection shall be limited solely to providing a copy of the information that was received from the consumer reporting agency or other person. A user of a credit score has no liability under this subsection for the content of credit score information received from a consumer reporting agency or for the omission of any

information within the report provided by the consumer reporting agency.''.

(2) CONFORMING AMENDMENT.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended in the section heading, by adding at the end the following: ''**and credit scores**''.

(c) CONTRACTUAL LIABILITY.—Section 616 of the Fair Credit Reporting Act (15 U.S.C. 1681n) is amended by adding at the end the following:

''(d) USE OF CREDIT SCORES.—Any provision of any contract that prohibits the disclosure of a credit score by a consumer reporting agency or a person who makes or arranges extensions of credit to the consumer to whom the credit score relates is void. A user of a credit score shall not have liability under any such contractual provision for disclosure of a credit score.''.

(d) RELATION TO STATE LAWS.—Section 624(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1), regarding relation to State laws) is amended—

(1) in subparagraph (E), by striking ''or'' at the end; and

(2) by adding at the end the following:

''(G) subsections (a)(6) and (f) of section 609, relating to the disclosure of credit scores by consumer reporting agencies in connection with an application for an extension of credit that is to be secured by a dwelling;

''(H) section 615(i), relating to the duties of users of credit scores to disclose credit score information to consumers in connection with an application for an extension of credit that is to be secured by a dwelling; or''.

(e) EFFECTIVE DATE.—The amendments made by this section shall become effective 180 days after the date of enactment of this Act.

**SEC. 213. ENHANCED DISCLOSURE OF THE MEANS AVAILABLE TO OPT OUT OF PRESCREENED LISTS.**

(a) NOTICE AND RESPONSE FORMAT FOR USERS OF REPORTS.—Section 615(d)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681m(d)(2)) is amended to read as follows:

''(2) DISCLOSURE OF ADDRESS AND TELEPHONE NUMBER; FORMAT.—A statement under paragraph (1) shall—

''(A) include the address and toll-free telephone number of the appropriate notification system established under section 604(e); and

''(B) be presented in such format and in such type size and manner as is established by the Federal Trade Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration.''.

(b) RULEMAKING SCHEDULE.—Regulations required by section 615(d)(2) of the Fair Credit Reporting Act, as amended by this section, shall be issued in final form not later than 1 year after the date of enactment of this Act.

(c) DURATION OF ELECTIONS.—Section 604(e) of the Fair Credit Reporting Act (15 U.S.C. 1681b(e)) is amended in each of paragraphs (3)(A) and (4)(B)(i)), by striking ''2-year period'' each place that term appears and inserting ''7-year period''.

(d) PUBLIC AWARENESS CAMPAIGN.—The Federal Trade Commission shall actively publicize and conspicuously post on its website any address and the toll-free telephone number established as part of a notification system for opting out of prescreening under section 604(e), and otherwise take measures to increase public awareness regarding the availability of the right to opt out of prescreening.

**SEC. 214. AFFILIATE SHARING.**

(a) LIMITATION.—The Fair Credit Reporting Act (15 U.S.C. 1601 et seq.) is amended—

(1) by redesignating section 624 (regarding relation to State laws), as so designated by section 2413(b) of the Consumer Credit Reporting Reform Act of 1996 (110 Stat. 3009–447), as section 625;

(2) by redesignating section 624 (regarding disclosures to FBI for counterintelligence purposes), as added by section 601(a) of the Intelligence Authorization Act for Fiscal Year 1996 (Public Law 104–93; 109 Stat. 974) (15 U.S.C. 1681u)), as section 626; and

(3) by inserting after section 623 the following:

**''SEC. 624. AFFILIATE SHARING.**

''(a) SPECIAL RULE FOR SOLICITATION FOR PURPOSES OF MARKETING.—

''(1) NOTICE.—Any person that receives from another person related to it by common ownership or affiliated by corporate control a communication of information that would be a consumer report, except for clauses (i) through (iii) of section 603(d)(2)(A), may not use the information to make a solicitation for marketing purposes to a consumer about its products or services, unless—

''(A) it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons for purposes of making such solicitations to the consumer; and

''(B) the consumer is provided an opportunity and a simple method to prohibit the making of such solicitations to the consumer by such person.

''(2) CONSUMER CHOICE.—

''(A) IN GENERAL.—The notice required under paragraph (1) shall allow the consumer the opportunity to prohibit all such solicitations, and may allow the consumer to choose from different options when electing to prohibit the sending of such solicitations, including options regarding the types of entities and information covered, and which methods of delivering solicitations the consumer elects to prohibit.

''(B) FORMAT.—Notwithstanding subparagraph (A), the notice required under paragraph (1) must be clear, conspicuous, and concise, and any method provided under paragraph (1)(B) must be simple. The regulations prescribed to implement this section shall provide specific guidance regarding how to comply with such standards.

''(3) DURATION.—The election of a consumer pursuant to paragraph (1)(B) to prohibit the sending of solicitations shall be effective permanently, beginning on the date on which the person receives the election of the consumer, unless the consumer requests that such election be revoked.

''(4) DEFINITION.—For purposes of this section, the term 'pre-existing business relationship' means a relationship between a person and a consumer, based on—

''(A) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction between the consumer and that person during the 18-month period immediately preceding the date on which the consumer receives the notice required under this section; or

''(B) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer receives the notice required under this section.

''(5) SCOPE.—This section shall not apply to a person—

''(A) using information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship;

''(B) using information to perform services on behalf of another person related by common ownership or affiliated by corporate control, except that this subparagraph shall not permit a person to send solicitations on behalf of another person if such other person would not be permitted to send the solicitation on its own behalf as a result of the election of the consumer to prohibit solicitations under paragraph (1)(B);

''(C) using information in direct response to a communication initiated by the consumer in which the consumer has requested information about a product or service; or

''(D) using information to directly respond to solicitations authorized or requested by the consumer.

''(b) NOTICE FOR OTHER PURPOSES PERMISSIBLE.—A notice or other disclosure that is equivalent to the notice required by subsection (a), and that is provided by a person described in subsection (a) to a consumer together with disclosures required by any other provision of law shall satisfy the requirements of subsection (a).''.

(b) RULEMAKING REQUIRED.—

(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621 of the Fair Credit Reporting Act, and in coordination as described in paragraph (2), prescribe regulations to implement section 624 of the Fair Credit Reporting Act, as added by this section.

(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

(3) CONSIDERATIONS.—In promulgating regulations under this subsection, the Federal Trade Commission shall—

(A) ensure that affiliate sharing notification methods provide a simple means for consumers to make determinations and choices under section 624 of the Fair Credit Reporting Act, as added by this section; and

(B) consider the affiliate sharing notification practices employed on the date of enactment of this Act by persons that will be subject to that section 624.

(4) TIMING.—Regulations required by this subsection shall—

(A) be issued in final form not later than 6 months after the date of enactment of this Act; and

(B) become effective not later than 3 months after the date on which they are issued in final form.

(c) CONFORMING AMENDMENT.—Section 603(d)(2)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)) is amended by inserting ''subject to section 624,'' after ''(A)''.

(d) CLERICAL AMENDMENT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended in the table of sections, by striking the items following the item relating to section 623 and inserting the following:

''624. Affiliate sharing.
''625. Relation to State laws.
''626. Disclosures to FBI for counterintelligence purposes.''.

(e) STUDIES OF INFORMATION SHARING PRACTICES.—

(1) IN GENERAL.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall jointly conduct regular studies of the consumer information sharing practices by financial institutions and other persons that are creditors or users of consumer reports with their affiliates.

(2) MATTERS FOR STUDY.—In conducting the studies required by paragraph (1), the agencies described in paragraph (1) shall—

(A) identify—

(i) the purposes for which financial institutions and other creditors and users of consumer reports share consumer information;

(ii) the types of information shared by such entities with their affiliates;

(iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to and manner in which consumers exercise such choices, if at all; and

(iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes—

(I) that are related to employment or hiring, including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or

(II) of general publication of such information; and

(B) specifically examine the information sharing practices that financial institutions and other creditors and users of consumer reports and their affiliates employ for the purpose of making underwriting decisions or credit evaluations of consumers.

(3) REPORTS.—

(A) INITIAL REPORT.—Not later than 3 years after the date of enactment of this Act, the Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall jointly submit a report to the Congress on the results of the initial study conducted in accordance with this subsection, together with any recommendations for legislative or regulatory action.

(B) FOLLOWUP REPORTS.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, not less frequently than once every 3 years following the date of submission of the initial report under subparagraph (A), jointly submit a report to the Congress that, together with any recommendations for legislative or regulatory action—

(i) documents any changes in the areas of study referred to in paragraph (2)(A) occurring since the date of submission of the previous report;

(ii) identifies any changes in the practices of financial institutions and other creditors and users of consumer reports in sharing consumer information with their affiliates for the purpose of making underwriting decisions or credit evaluations of consumers occurring since the date of submission of the previous report; and

(iii) examines the effects that changes described in clause (ii) have had, if any, on the degree to which such affiliate sharing practices reduce the need for financial institutions, creditors, and other users of consumer reports to rely on credit reports for such decisions.

(f) DEFINITIONS.—As used in this section—

(1) the terms ''consumer'', ''consumer report'', ''consumer reporting agency'', ''creditor'', ''Federal banking agencies'', and ''financial institution'', have the same meanings as in section 603 of the Fair Credit Reporting Act, as amended by this Act; and

(2) the term ''affiliates'' means persons that are related by common ownership or affiliated by corporate control.

**SEC. 215. STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS.**

(a) DEFINED TERM.—As used in this section, the term ''credit score'' means a numerical value or a categorization derived from a statistical tool or modeling system used to predict the likelihood of certain credit or insurance behaviors, including default.

(b) STUDY REQUIRED.—The Federal Trade Commission shall conduct a study of—

(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

(2) the degree of correlation between the factors considered by credit score systems and the quantifiable risks and actual losses experienced by businesses, including the extent to which each of the factors considered or otherwise taken into account by such systems correlated to risk or loss;

(3) the extent to which the use of credit scoring models, credit scores and credit-based insurance scores benefit or negatively impact persons based on geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed; and

(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

(c) PUBLIC PARTICIPATION.—The Federal Trade Commission shall seek public input about the prescribed methodology and research design of the study required by subsection (b).

(d) REPORT.—

(1) IN GENERAL.—Before the end of the 18-month period beginning on the date of enactment of this Act, the Federal Trade Commission shall submit a detailed report on the study conducted under this section to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

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

(A) the findings and conclusions of the Commission;

(B) recommendations to address specific areas of concern that were identified in the study; and

(C) recommendations for legislative or administrative action that the Commission may determine to be necessary to ensure that credit and credit-based insurances score are used appropriately and fairly.

**SEC. 216. DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS.**

(a) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by adding at the end the following:

**''§ 627. Disposal of records**

''(a) REGULATIONS.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Federal Trade Commission shall issue final regulations requiring any person that maintains or otherwise possesses consumer information or any compilation of consumer information derived from consumer reports for a business purpose to properly dispose of any such information or compilation.

''(2) EXEMPTION AUTHORITY.—In issuing regulations under this section, the Federal Trade Commission may exempt any person or class of persons from application of those regulations, as the Commission deems appropriate to carry out the purpose of this section.

''(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed to alter or affect any requirement imposed under any other provision of law to maintain any record.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as amended by this Act, is amended by adding at the end the following:

''627. Disposal of records.''.

## TITLE III—ENHANCING THE ACCURACY OF CONSUMER REPORT INFORMATION

**SEC. 311. RISK-BASED PRICING NOTICE.**

(a) DUTIES OF USERS.—Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m), as amended by this Act, is amended by adding at the end the following:

''(j) DUTIES OF USERS IN CERTAIN CREDIT TRANSACTIONS.—

''(1) IN GENERAL.—Subject to rules prescribed as provided in paragraph (5), if any person uses a consumer report in connection with a grant, extension, or other provision of credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that person, based in whole or in part on a consumer report, the person shall provide a notice to the consumer in the form and manner required by regulations prescribed in accordance with this subsection.

''(2) EXCEPTIONS.—No notice shall be required from a person under this subsection if—

''(A) the consumer applied for specific material terms and was granted those terms, unless those terms were initially specified by the person after the transaction was initiated by the consumer and after the person obtained a consumer report; or

''(B) the person has provided or will provide a notice to the consumer under subsection (a) in connection with the transaction.

''(3) OTHER NOTICE NOT SUFFICIENT.—A person that is required to provide a notice under subsection (a) cannot meet that requirement by providing a notice under this subsection.

''(4) CONTENT AND DELIVERY OF NOTICE.—A notice under this subsection shall include, at a minimum—

''(A) a statement informing the consumer that the terms offered to the consumer were set based on information from a consumer report;

''(B) identification of the consumer reporting agency that furnished that report;

''(C) a statement informing the consumer that the consumer may obtain a copy of a consumer report from that consumer reporting agency without charge; and

''(D) the contact information specified by that consumer reporting agency for obtaining such consumer reports (including a toll-free telephone number established by the agency in the case of a consumer reporting agency described in section 603(p)).

''(5) RULEMAKING.—

''(A) RULES REQUIRED.—The Federal Trade Commission and the Board of Governors of the Federal Reserve System shall jointly prescribe rules, in accordance with section 553 of title 5, United States Code, to carry out this subsection.

''(B) CONTENT.—Rules required by subparagraph (A) shall address, but are not limited to—

''(i) the form, content, time, and manner of delivery of any notice under this subsection;

''(ii) clarification of the meaning of terms used in this subsection, including what credit terms are material, and when credit terms are materially less favorable;

''(iii) exceptions to the notice requirement under this subsection for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers; and

''(iv) a model notice that may be used to comply with this subsection.''.

(b) RELATION TO STATE LAWS.—Section 625(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681t(b)(1), regarding relation to State laws), as so designated and amended by this Act, is amended by adding at the end the following:

''(I) section 615(j), relating to the duties of users of consumer reports to provide notice with respect to terms in certain credit transactions;''.

**SEC. 312. PROCEDURES TO ENHANCE THE ACCURACY AND COMPLETENESS OF INFORMATION FURNISHED TO CONSUMER REPORTING AGENCIES.**

(a) ACCURACY GUIDELINES AND REGULATIONS.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 15 U.S.C. 1681s–2) is amended by adding at the end the following:

''(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

''(1) GUIDELINES.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in paragraph (2)—

''(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and completeness of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

''(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

''(2) COORDINATION.—Each agency required to prescribe regulations under paragraph (1) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

''(3) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the agencies described in paragraph (1) shall—

''(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and completeness of information furnished to consumer reporting agencies;

''(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

''(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to provide complete and accurate information to consumer reporting agencies; and

''(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.''.

(b) FURNISHER LIABILITY EXCEPTION.—Section 623(a)(5) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)(5)) is amended—

(1) by striking ''A person'' and inserting the following:

''(A) IN GENERAL.—A person'';

(2) by inserting ''date of delinquency on the account, which shall be the'' before ''month'';

(3) by inserting ''on the account'' before ''that immediately preceded''; and

(4) by adding at the end the following:

''(B) RULE OF CONSTRUCTION.—For purposes of this paragraph only, and provided that the consumer does not dispute the information, a person that furnishes information on a delinquent account that is placed for collection, charged for profit or loss, or subjected to any similar action, complies with this paragraph, if—

''(i) the person reports the same date of delinquency as that provided by the creditor to which the account was owed at the time at which the commencement of the delinquency occurred, if the creditor previously reported that date of delinquency to a consumer reporting agency;

''(ii) the creditor did not previously report the date of delinquency to a consumer reporting agency, and the person establishes and follows reasonable procedures to obtain the date of delinquency from the creditor or another reliable source and reports that date as the date of delinquency; or

''(iii) the creditor did not previously report the date of delinquency to a consumer reporting agency and the date of delinquency cannot be reasonably obtained as provided in clause (ii), the person establishes and follows reasonable procedures to ensure the date reported as the date of delinquency precedes the date on which the account is placed for collection, charged to profit or loss, or subjected to any similar action, and reports such date to the credit reporting agency.''.

(c) LIABILITY AND ENFORCEMENT.—

(1) CIVIL LIABILITY.—Section 623 of the Fair Credit Reporting Act (15 U.S.C. 1681s–2) is amended by striking subsections (c) and (d) and inserting the following:

''(c) LIMITATION ON LIABILITY.—Except as provided in section 621(c)(1)(B), sections 616 and 617 do not apply to any violation of—

''(1) subsection (a) of this section;

''(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 616 or 617, as applicable, for violations of subsection (b) of this section;

''(3) subsection (e) or (f) of section 615; or

''(4) subparagraph (A) of subsection (b)(2) of this section that is based on the development of procedures required by that subparagraph, except that refurnishing information otherwise in violation of subsection (b) shall be subject to liability under sections 616 and 617, as applicable, to the same extent as such a refurnishing violation was subject to such liability on the day before the date of enactment of the National Consumer Credit Reporting System Improvement Act of 2003.

''(d) LIMITATION ON ENFORCEMENT.—The provisions of law described in paragraphs (1) through (4) of subsection (c) (other than with respect to the exceptions described in paragraphs (2) and (4) of subsection (c)) shall be enforced exclusively as provided under section 621 by the Federal agencies and officials and the State officials identified in section 621.''.

(2) STATE ACTIONS.—Section 621(c) of the Fair Credit Reporting Act (15 U.S.C. 1681s(c)) is amended—

(A) in paragraph (1)(B)(ii), by striking ''of section 623(a)'' and inserting ''described in any of paragraphs (1) through (4) of section 623(c) (other than with respect to the exception described in paragraph (4) of section 623(c))''; and

(B) in paragraph (5)—

(i) in each of subparagraphs (A) and (B), by inserting after ''section 623(a)(1)'' each place that term appears the following: ''or a violation described in any of paragraphs (2) through (4) of section 623(c) (other than with respect to the exception described in paragraph (4) of section 623(c))''; and

(ii) by amending the paragraph heading to read as follows:

''(5) LIMITATIONS ON STATE ACTIONS FOR CERTAIN VIOLATIONS.—''.

(d) RULE OF CONSTRUCTION.—Nothing in this section, the amendments made by this section, or any other provision of this Act shall be construed to affect any liability under section 616 or 617 of the Fair Credit Reporting Act (15 U.S.C. 1681n, 1681o) that existed on the day before the date of enactment of this Act.

**SEC. 313. FEDERAL TRADE COMMISSION AND CONSUMER REPORTING AGENCY ACTION CONCERNING COMPLAINTS.**

Section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by adding at the end the following:

''(e) TREATMENT OF COMPLAINTS AND REPORT TO CONGRESS.—

''(1) IN GENERAL.—The Federal Trade Commission shall—

''(A) compile all complaints that it receives that a file of a consumer that is maintained by a consumer reporting agency described in section 603(p) contains incomplete or inaccurate information, with respect to which, the consumer appears to have disputed the completeness or accuracy with the consumer reporting agency or otherwise utilized the procedures provided by subsection (a); and

''(B) transmit each such complaint to each consumer reporting agency involved.

''(2) EXCLUSION.—Complaints received or obtained by the Federal Trade Commission pursuant to its investigative authority under the Federal Trade Commission Act shall not be subject to this paragraph (1).

''(3) AGENCY RESPONSIBILITIES.—Each consumer reporting agency described in section 603(p) that receives a complaint transmitted by the Federal Trade Commission pursuant to paragraph (1) shall—

''(A) review each such complaint to determine whether all legal obligations imposed on the consumer reporting agency under this title (including any obligation imposed by an applicable court or administrative order) have been met with respect to the subject matter of the complaint;

''(B) provide reports on a regular basis to the Commission regarding the determinations of and actions taken by the consumer reporting agency, if any, in connection with its review of such complaints; and

''(C) maintain, for a reasonable time period, records regarding the disposition of each such complaint that is sufficient to demonstrate compliance with this subsection.

''(4) RULEMAKING AUTHORITY.—The Federal Trade Commission may prescribe regulations in accordance with the requirements of section 553 of title 5, United States Code, as appropriate to implement this subsection.

''(5) ANNUAL REPORT.—The Federal Trade Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report regarding information gathered by the Commission under this subsection.''.

**SEC. 314. ONGOING AUDITS OF THE ACCURACY OF CONSUMER REPORTS.**

(a) AUDITS REQUIRED.—The Board of Governors of the Federal Reserve System (in this section referred to as ''the Board'') shall conduct ongoing audits of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies. The Board shall independently verify the accuracy and completeness of information contained in consumer reports by evaluating information and data provided by consumer reporting agencies (as defined in section 603 of the Fair Credit Reporting Act).

(b) SUBJECT MATTERS.—In conducting audits under this section, the Board shall examine—

(1) the accuracy and completeness of information contained in consumer reports, including an analysis of the type of inaccurate or incomplete information, if any, that may have the most significant impact on the availability and terms of various credit products offered to borrowers; and

(2) the impact, if any, of incomplete and inaccurate information on the credit and credit-based insurance scores that are most widely used to determine borrower credit worthiness and to make insurance underwriting and rating decisions, including an analysis of how, if at all, changes to credit scores resulting from inaccurate or incomplete credit reporting information affect the availability and terms of various credit products offered to borrowers.

(c) BIENNIAL REPORTS REQUIRED.—

(1) IN GENERAL.—The Board shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at the end of the 2-year period beginning on the date of enactment of this Act. Thereafter, the Board shall conduct additional audits and submit additional reports once every 2 years.

(2) CONTENTS.—Each report submitted under this subsection shall contain a detailed summary of the findings and conclusions of the Board with respect to the audits required by this section, and such recommendations for legislative and administrative action as the Board may determine to be appropriate.

(d) PROVISION OF REPORTS TO THE BOARD FOR PURPOSES OF ANALYSIS.—Section 604(d) of the Fair Credit Reporting Act (12 U.S.C. 1681b(d)) is amended to read as follows:

''(d) FURNISHING CONSUMER REPORTS FOR ACCURACY OR COMPLIANCE AUDITS.—A consumer reporting agency shall provide consumer reports to the Board of Governors of the Federal Reserve System, upon request, for the purpose of conducting an accuracy or compliance audit in accordance with section 314 of the National Consumer Credit Reporting System Improvement Act of 2003.''.

**SEC. 315. IMPROVED DISCLOSURE OF THE RESULTS OF REINVESTIGATION.**

(a) IN GENERAL.—Section 611(a)(5)(A) of the Fair Credit Reporting Act (15 U.S.C. 1681i) is amended by striking ''shall'' and all that follows through the end of the subparagraph, and inserting the following: ''shall—

''(i) promptly delete that item of information from the file of the consumer, or modify that item of information, as appropriate, based on the results of the reinvestigation; and

''(ii) promptly notify the furnisher of that information that the information has been modified or deleted from the file of the consumer.''.

(b) FURNISHER REQUIREMENTS RELATING TO INACCURATE, INCOMPLETE, OR UNVERIFIABLE INFORMATION.—Section 623(b)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(b)(1)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end; and

(2) in subparagraph (D), by striking the period at the end and inserting the following: ''; and

''(E) if an item of any information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), promptly delete that item of information from the furnisher's records or modify that item of information, as appropriate, based on the results of the reinvestigation.''.

**SEC. 316. RECONCILING ADDRESSES.**

Section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c), as amended by this Act, is amended by adding at the end the following:

''(h) NOTICE OF DISCREPANCY IN ADDRESS.—

''(1) IN GENERAL.—If a person has requested a consumer report relating to a consumer from a consumer reporting agency described in section 603(p), the request includes an address for the consumer that substantially differs from the addresses in the file of the consumer, and the agency provides a consumer report in response to the request, the consumer reporting agency shall notify the requester of the existence of the discrepancy.

''(2) REGULATIONS.—

''(A) REGULATIONS REQUIRED.—The Federal banking agencies, the National Credit Union Administration, and the Federal Trade Commission shall, with respect to the entities that are subject to their respective enforcement authority under section 621, and in coordination as described in subparagraph (B), prescribe regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when such user has received a notice of discrepancy under paragraph (1).

''(B) COORDINATION.—Each agency required to prescribe regulations under subparagraph (A) shall consult and coordinate with each other such agency so that, to the extent possible, the regulations prescribed by each such entity are consistent and comparable with the regulations prescribed by each other such agency.

''(C) POLICIES AND PROCEDURES TO BE INCLUDED.—The regulations prescribed under subparagraph (A) shall describe reasonable policies and procedures for use by a user of a consumer report—

''(i) to form a reasonable belief that the user knows the identity of the person to whom the consumer report pertains; and

''(ii) if the user establishes a continuing relationship with the consumer, and the user regularly and in the ordinary course of business furnishes information to the consumer reporting agency from which the notice of discrepancy pertaining to the consumer was obtained, to reconcile the address of the consumer with the consumer reporting agency by furnishing such address to such consumer reporting agency as part of information regularly furnished by the user for the period in which the relationship is established.''.

**SEC. 317. FTC STUDY OF ISSUES RELATING TO THE FAIR CREDIT REPORTING ACT.**

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Federal Trade Commission shall conduct a study on ways to improve the operation of the Fair Credit Reporting Act.

(2) AREAS FOR STUDY.—In conducting the study under paragraph (1), the Federal Trade Commission shall review—

(A) the efficacy of increasing the number of points of identifying information that a credit reporting agency is required to match to ensure that a consumer is the correct individual to whom a consumer report relates before releasing a consumer report to a user, including—

(i) the extent to which requiring additional points of such identifying information to match would—

(I) enhance the accuracy of credit reports; and

(II) combat the provision of incorrect consumer reports to users;

(ii) the extent to which requiring an exact match of the first and last name, social security number, and address and ZIP Code of the consumer would enhance the likelihood of increasing credit report accuracy; and

(iii) the effects of allowing consumer reporting agencies to use partial matches of social security numbers and name recognition software on the accuracy of credit reports;

(B) requiring notification to consumers when negative information has been added to their credit reports, including—

(i) the potential impact of such notification on the ability of consumers to identify errors on their credit reports; and

(ii) the potential impact of such notification on the ability of consumers to remove fraudulent information from their credit reports;

(C) the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, including—

(i) the extent to which providing such reports to consumers would increase the ability of consumers to identify errors in their credit reports; and

(ii) the extent to which providing such reports to consumers would increase the ability of consumers to remove fraudulent information from their credit reports;

(D) any common financial transactions that are not generally reported to the consumer reporting agencies, but would provide useful information in determining the credit worthiness of consumers; and

(E) any actions that might be taken within a voluntary reporting system to encourage the reporting of the types of transactions described in subparagraph (D).

(3) COSTS AND BENEFITS.—With respect to each area of study described in paragraph (2), the Federal Trade Commission shall consider the extent to which such requirements would benefit consumers, balanced against the cost of implementing such provisions.

(b) REPORT REQUIRED.—Not later than 270 days after the date of enactment of this Act, the chairman of the Federal Trade Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study under this section, together with such recommendations for legislative or administrative actions as may be appropriate.

## TITLE IV—LIMITING THE USE AND SHARING OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM

**SEC. 411. PROTECTION OF MEDICAL INFORMATION IN THE FINANCIAL SYSTEM.**

(a) IN GENERAL.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)) is amended to read as follows:

''(g) PROTECTION OF MEDICAL INFORMATION.—

''(1) LIMITATION ON CONSUMER REPORTING AGENCIES.—A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information about a consumer, unless—

''(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

''(B) if furnished for employment purposes or in connection with a credit transaction—

''(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

''(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

''(C) such information is restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer, unless the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance, other than property and casualty insurance.

''(2) LIMITATION ON CREDITORS.—Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information pertaining to a consumer in

connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

''(3) ACTIONS AUTHORIZED BY FEDERAL LAW, INSURANCE ACTIVITIES AND REGULATORY DETERMINATIONS.—Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed—

''(A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);

''(B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106–102; or

''(C) as otherwise determined to be necessary and appropriate, by regulation or order and subject to paragraph (6), by the Federal Trade Commission, any Federal banking agency or the National Credit Union Administration (with respect to any financial institution subject to the jurisdiction of such agency or Administration under paragraph (1), (2), or (3) of section 621(b), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

''(4) LIMITATION ON REDISCLOSURE OF MEDICAL INFORMATION.—Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

''(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

''(A) REGULATIONS REQUIRED.—Each Federal banking agency and the National Credit Union Administration shall, subject to paragraph (6) and after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs, consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

''(B) FINAL REGULATIONS REQUIRED.—The Federal banking agencies and the National Credit Union Administration shall issue the regulations required under subparagraph (A) in final form before the end of the 6-month period beginning on the date of enactment of the National Consumer Credit Reporting System Improvement Act of 2003.

''(6) COORDINATION WITH OTHER LAWS.—No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.''.

(b) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)) is amended—

(1) in paragraph (2), by striking ''The term'' and inserting ''Except as provided in paragraph (3), the term''; and

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

''(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is medical information, including information that is an individualized list or description based on the payment transactions of the consumer for medical products or services, or an aggregate list of identified consumers based on payment transactions for medical products or services.

(c) DEFINITION.—Section 603(i) of the Fair Credit Reporting Act (15 U.S.C. 1681a(i)) is amended to read as follows:

''(i) MEDICAL INFORMATION.—The term 'medical information' means information or data, other than age or gender, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

''(1) the past, present, or future physical, mental, or behavioral health or condition of an individual;

''(2) the provision of health care to an individual; or

''(3) the payment for the provision of health care to an individual.''.

(d) EFFECTIVE DATES.—This section shall take effect at the end of the 180-day period beginning on the date of enactment of this Act, except that paragraph (2) of section 604(g) of the Fair Credit Reporting Act (as amended by subsection (a)) shall take effect on the later of—

(1) the end of the 90-day period beginning on the date on which the regulations required under paragraph (5)(B) of such section 604(g) (as added by subsection (a) of this section) are issued in final form; or

(2) the date specified in the regulations referred to in paragraph (1).

**SEC. 412. CONFIDENTIALITY OF MEDICAL CONTACT INFORMATION IN CONSUMER REPORTS.**

(a) DUTIES OF MEDICAL INFORMATION FURNISHERS.—Section 623(a) of the Fair Credit Reporting Act (15 U.S.C. 1681s–2(a)) is amended by adding at the end the following:

''(6) DUTY TO PROVIDE NOTICE OF STATUS AS MEDICAL INFORMATION FURNISHER.—A person whose primary business is providing medical services, products, or devices, or the person's agent or assignee, who furnishes information to a consumer reporting agency on a consumer shall be considered a medical information furnisher for purposes of this title, and shall notify the agency of such status.''.

(b) RESTRICTION OF DISSEMINATION OF MEDICAL CONTACT INFORMATION.—Section 605(a) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)) is amended by adding at the end the following:

''(6) The name, address, and telephone number of any medical information furnisher that has notified the agency of its status, unless—

''(A) such name, address, and telephone number are restricted or reported using codes that do not identify, or provide information sufficient to infer, the specific provider or the nature of such services, products, or devices to a person other than the consumer; or

''(B) the report is being provided to an insurance company for a purpose relating to engaging in the business of insurance other than property and casualty insurance.''.

(c) NO EXCEPTIONS ALLOWED FOR DOLLAR AMOUNTS.—Section 605(b) of the Fair Credit Reporting Act (15 U.S.C. 1681c(b)) is amended by striking ''The provisions of subsection (a)'' and inserting ''The provisions of paragraphs (1) through (5) of subsection (a)''.

(d) COORDINATION WITH OTHER LAWS.—No provision of any amendment made by this section shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

(e) FTC REGULATION OF CODING OF TRADE NAMES.—Section 621 of the Fair Credit Reporting Act (15 U.S.C. 1681s), as amended by this Act, is amended by adding at the end the following:

''(g) FTC REGULATION OF CODING OF TRADE NAMES.—If the Federal Trade Commission determines that a person described in paragraph (6) of section 623(a) has not met the requirements of such paragraph, the Commission shall take action to ensure the person's compliance with such paragraph, which may include issuing model guidance or prescribing reasonable policies and procedures as necessary to ensure that such person complies with such paragraph.''.

(f) TECHNICAL AND CONFORMING AMENDMENTS.—Section 604(g) of the Fair Credit Reporting Act (15 U.S.C. 1681b(g)), as amended by section 411 of this Act, is amended—

(1) in paragraph (1), by inserting ''(other than medical contact information treated in the manner required under section 605(a)(6))'' after ''a consumer report that contains medical information''; and

(2) in paragraph (2), by inserting ''(other than medical information treated in the manner required under section 605(a)(6))'' after ''a creditor shall not obtain or use medical information''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 15-month period beginning on the date of enactment of this Act.

## TITLE V—FINANCIAL LITERACY AND EDUCATION IMPROVEMENT

**SEC. 511. SHORT TITLE.**

This title may be cited as the ''Financial Literacy and Education Improvement Act''.

**SEC. 512. DEFINITIONS.**

As used in this title—

(1) the term ''Chairperson'' means the Chairperson of the Financial Literacy and Education Commission; and

(2) the term ''Commission'' means the Financial Literacy and Education Commission established under section 513.

**SEC. 513. ESTABLISHMENT OF FINANCIAL LITERACY AND EDUCATION COMMISSION.**

(a) IN GENERAL.—There is established a commission to be known as the ''Financial Literacy and Education Commission''.

(b) PURPOSE.—The Commission shall serve to improve the financial literacy and education of persons in the United States.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of—

(A) the Secretary of the Treasury;

(B) the respective head of each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, the Securities and Exchange Commission, each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs, the Federal Trade Commission, the General Services Administration, the Small Business Administration, the Social Security Administration, the Commodity Futures Trading Commission, and the Office of Personnel Management; and

(C) at the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

(2) ALTERNATES.—Each member of the Commission may designate an alternate if the member is unable to attend a meeting of the Commission. Such alternate shall be an

individual who exercises significant decision-making authority.

(d) CHAIRPERSON.—The Secretary of the Treasury shall serve as the Chairperson.

(e) MEETINGS.—The Commission shall hold, at the call of the Chairperson, at least 1 meeting every 4 months. All such meetings shall be open to the public. The Commission may hold, at the call of the Chairperson, such other meetings as the Chairperson sees fit to carry out this title.

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

(g) INITIAL MEETING.—The Commission shall hold its first meeting not later than 60 days after the date of enactment of this Act.

**SEC. 514. DUTIES OF THE COMMISSION.**

(a) DUTIES.—

(1) IN GENERAL.—The Commission, through the authority of the members referred to in section 513(c), shall take such actions as it deems necessary to streamline, improve, or augment the financial literacy and education programs, grants, and materials of the Federal Government, including curricula for all Americans.

(2) AREAS OF EMPHASIS.—To improve financial literacy and education, the Commission shall emphasize, among other elements, basic personal income and household money management and planning skills, including how to—

(A) create household budgets, initiate savings plans, and make strategic investment decisions for education, retirement, home ownership, wealth building, or other savings goals;

(B) manage spending, credit, and debt, including credit card debt, effectively;

(C) increase awareness of the availability and significance of credit reports and credit scores in obtaining credit, the importance of their accuracy (and how to correct inaccuracies), their effect on credit terms, and the effect common financial decisions may have on credit scores;

(D) ascertain fair and favorable credit terms;

(E) avoid abusive, predatory, or deceptive credit offers and financial products;

(F) understand, evaluate, and compare financial products, services, and opportunities;

(G) understand resources that ought to be easily accessible and affordable, and that inform and educate investors as to their rights and avenues of recourse when an investor believes his or her rights have been violated by unprofessional conduct of market intermediaries; and

(H) improve financial literacy and education through all other related skills.

(b) WEBSITE.—

(1) IN GENERAL.—The Commission shall establish and maintain a website, such as the domain name ''FinancialLiteracy.gov'', or a similar domain name.

(2) PURPOSES.—The website established under paragraph (1) shall—

(A) serve as a clearinghouse of information about Federal financial literacy and education programs;

(B) provide a coordinated entry point for accessing information about all Federal publications, grants, and materials promoting enhanced financial literacy and education;

(C) offer information on all Federal grants to promote financial literacy and education, and on how to target, apply for, and receive a grant that is most appropriate under the circumstances;

(D) as the Commission considers appropriate, feature website links to efforts that have no commercial content and that feature information about financial literacy and education programs, materials, or campaigns; and

(E) offer such other information as the Commission finds appropriate to share with the public in the fulfillment of its purpose.

(c) TOLL-FREE HOTLINE.—The Commission shall establish a toll-free telephone number that shall be made available to members of the public seeking information about issues pertaining to financial literacy and education.

(d) DEVELOPMENT AND DISSEMINATION OF MATERIALS.—The Commission shall—

(1) develop materials to promote financial literacy and education; and

(2) disseminate such materials to the general public.

(e) COORDINATION OF EFFORTS.—The Commission shall take such steps as are necessary to coordinate and promote financial literacy and education efforts at the State and local level, including promoting partnerships among Federal, State, and local governments, nonprofit organizations, and private enterprises.

(f) NATIONAL STRATEGY.—

(1) IN GENERAL.—The Commission shall—

(A) not later than 18 months after the date of enactment of this Act, develop a national strategy to promote basic financial literacy and education among all American consumers; and

(B) coordinate Federal efforts to implement the strategy developed under subparagraph (A).

(2) STRATEGY.—The strategy to promote basic financial literacy and education required to be developed under paragraph (1) shall provide for—

(A) participation by State and local governments and private, nonprofit, and public institutions in the creation and implementation of such strategy;

(B) the development of methods—

(i) to increase the general financial education level of current and future consumers of financial services and products; and

(ii) to enhance the general understanding of financial services and products;

(C) review of Federal activities designed to promote financial literacy and education, and development of a plan to improve coordination of such activities; and

(D) the identification of areas of overlap and duplication among Federal financial literacy and education activities and proposed means of eliminating any such overlap and duplication.

(3) NATIONAL STRATEGY REVIEW.—The Commission shall, not less than annually, review the national strategy developed under this subsection and make such changes and recommendations as it deems necessary.

(g) CONSULTATION.—The Commission shall actively consult with a variety of representatives from private and nonprofit organizations and State and local agencies, as determined appropriate by the Commission.

(h) REPORTS.—

(1) IN GENERAL.—Not later than 18 months after the date of the first meeting of the Commission, and annually thereafter, the Commission shall issue a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the progress of the Commission in carrying out this title.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) information concerning the implementation of the duties of the Commission under subsections (a) through (g);

(B) an assessment of the success of the Commission in implementing the national strategy developed under subsection (f);

(C) an assessment of the availability, utilization, and impact of Federal financial literacy and education materials;

(D) information concerning the content and public use of—

(i) the website established under subsection (b); and

(ii) the toll-free telephone number established under subsection (c);

(E) a brief survey of the financial literacy and education materials developed under subsection (d), and data regarding the dissemination and impact of such materials, as measured by improved financial decision making;

(F) a brief summary of any hearings conducted by the Commission, including a list of witnesses who testified at such hearings;

(G) information about the activities of the Commission planned for the next fiscal year;

(H) a summary of all Federal financial literacy and education activities targeted to communities that have historically lacked access to financial literacy materials and education, and have been underserved by the mainstream financial systems; and

(I) such other materials relating to the duties of the Commission as the Commission deems appropriate.

(3) INITIAL REPORT.—The initial report under paragraph (1) shall include information regarding all Federal programs, materials, and grants which seek to improve financial literacy, and assess the effectiveness of such programs.

(i) TESTIMONY.—The Commission shall provide, upon request, testimony by the Chairperson to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

**SEC. 515. POWERS OF THE COMMISSION.**

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this title. Upon request of the Chairperson, the head of such department or agency shall furnish such information to the Commission.

(c) PERIODIC STUDIES.—The Commission may conduct periodic studies regarding the state of financial literacy and education in the United States, as the Commission determines appropriate.

**SEC. 516. COMMISSION PERSONNEL MATTERS.**

(a) COMPENSATION OF MEMBERS.—Each member of the Commission shall serve without compensation in addition to that received for their service as an officer or employee of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) ASSISTANCE.—

(1) IN GENERAL.—The Director of the Office of Financial Education of the Department of the Treasury shall provide assistance to the Commission, upon request of the Commission, without reimbursement.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

**SEC. 517. STUDY BY THE COMPTROLLER GENERAL.**

Not later than 3 years after the date of enactment of this Act, the Comptroller General

of the United States shall submit a report to Congress assessing the effectiveness of the Commission in promoting financial literacy and education.

**SEC. 518. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this title, including administrative expenses of the Commission.

**TITLE VI—RELATION TO STATE LAW**

**SEC. 611. RELATION TO STATE LAW.**

Section 625(d) of the Fair Credit Reporting Act (15 U.S.C. 1681t(d), regarding relation to State laws), as so designated by section 214 of this Act, is amended—

(1) by striking paragraph (2);

(2) by striking ''(c)—'' and all that follows through ''do not affect'' and inserting ''(c) do not affect''; and

(3) by striking ''1996; and'' and inserting ''1996.''.

**TITLE VII—MISCELLANEOUS**

**SEC. 711. CLERICAL AMENDMENTS.**

(a) SHORT TITLE.—Section 601 of the Fair Credit Reporting Act (15 U.S.C. 1601 note) is amended by striking ''the Fair Credit Reporting Act.'' and inserting ''the 'Fair Credit Reporting Act'.''.

(b) SECTION 604.—Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended in paragraphs (1) through (5), other than subparagraphs (E) and (F) of paragraph (3), by moving each margin 2 ems to the right.

(c) SECTION 605.—

(1) Section 605(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681c(a)(1)) is amended by striking ''(1) cases'' and inserting ''(1) Cases''.

(2)(A) Section 5(1) of Public Law 105–347 (112 Stat. 3211) is amended by striking ''Judgments which'' and inserting ''judgments which''.

(B) The amendment made by subparagraph (A) shall be deemed to have the same effective date as section 5(1) of Public Law 105–347 (112 Stat. 3211).

(d) SECTION 609.—Section 609(a) of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)) is amended—

(1) in paragraph (2), by moving the margin 2 ems to the right; and

(2) in paragraph (3)(C), by moving the margins 2 ems to the left.

(e) SECTION 617.—Section 617(a)(1) of the Fair Credit Reporting Act (15 U.S.C. 1681o(a)(1)) is amended by adding ''and'' at the end.

(f) SECTION 621.—Section 621(b)(1)(B) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)(1)(B)) is amended by striking ''25(a)'' and inserting ''25A''.

(g) TITLE 31.—Section 5318 of title 31, United States Code, is amended by redesignating the second item designated as subsection (l) (relating to applicability of rules) as subsection (m).

(h) CONFORMING AMENDMENT.—Section 2411(c) of Public Law 104–208 (110 Stat. 3009–445) is repealed.

Mr. SHELBY. Mr. President, I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendments, requests a conference with the House on the disagreeing votes of the two Houses, and the Chair is authorized to appoint the following conferees:

The Presiding Officer appointed Mr. SHELBY, Mr. BENNETT, Mr. ALLARD, Mr. ENZI, Mr. SARBANES, Mr. DODD, and Mr. JOHNSON, conferees on the part of the Senate.

The PRESIDING OFFICER. Under the previous order, S. 1753 is returned to the calendar.

## EXECUTIVE SESSION

### NOMINATION OF ROGER W. TITUS, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session for the consideration of Executive Calendar item No. 402, which the clerk will report.

The legislative clerk read the nomination of Roger W. Titus, to be United States District Judge for the District of Maryland.

The PRESIDING OFFICER. There are 2 minutes evenly divided on the nomination.

Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, I compliment the Republican leadership for finally agreeing to move to the nomination of Roger Titus, who has been cleared on this side for some time.

The nominee has won universal acclaim as a member of the Maryland bar. In fact, it was suggested that he was going to be nominated to the U.S. Court of Appeals for the Fourth Circuit. It would have been a consensus where both Republicans and Democrats would have agreed. I wish the administration had done that. Instead, they have moved him to fill this seat. It is not a confrontational one for the circuit. In any event, he should be supported. He will make the 168th judicial nominee of President Bush's to be confirmed, which sets an all-time record for this time in a President's term in office, surpassing even that of President Reagan, when we had a Republican majority.

Mr. Titus has been an active litigator in Maryland for over 37 years, and has litigated hundreds of cases, both civil and criminal. He has been a partner at the Venable law firm and is a former president of the Maryland Bar Association. He has also served as an adjunct professor at the Georgetown University Law Center. Mr. Titus earned a unanimous ''well-qualified'' rating from the ABA, and an AV rating from Martindale-Hubbell.

In 2001, Mr. Titus was honored with The Baltimore Daily Record's first Leadership in the Law Award, which recognizes members of the legal community for their devotion to the betterment of the profession and their communities. In 1999, Mr. Titus received the Century of Service Award from the Montgomery County Bar Association for his outstanding contributions to the legal profession and community during the 20th century.

According to an article in The Baltimore Sun, Mr. Titus was apparently in the running to be nominated for a seat on the U.S. Court of Appeals for the Fourth Circuit. In light of his stellar qualifications, deep roots in his legal community and ability to garner the bipartisan support of his elected officials he would have been a consensus choice for this important appellate seat. It is unfortunate that the President felt the need to nominate someone without any local ties to that Maryland vacancy.

There are reportedly 30,000 practicing attorneys in the State of Maryland. Instead of nominating a well-qualified Marylander like Mr. Titus to Judge Murnahan's vacant seat on the Fourth Circuit, the President selected a younger, more controversial nominee with very little litigation experience. Not surprisingly, that nominee, Claude Allen, received a partial ''not qualified'' rating by the American Bar Association and his selection for this prestigious lifetime appointment has garnered a significant amount of opposition from concerned citizens groups.

It is regrettable that this President has again chosen the course of confrontation and conflict for his appellate court nominations. Mr. Titus, with his many years of litigation experience and his well-deserved reputation as a leader among lawyers in Maryland, is the type of person who should have been chosen for Judge Murnahan's vacant seat on the Fourth Circuit. His nomination stands in sharp contrast to the inexperienced and divisive candidates chosen by the White House for too many appellate judgeships in what appear to be an effort to pack the court with ideological nominees and tilt these courts.

There is no doubt that Mr. Titus is a Republican, yet he has the support of both of his home-State Senators and has earned the unanimous support of the Members of the Judiciary Committee. I am happy to support his nomination today and I congratulate Mr. Titus and his family on his confirmation. I commend Senators SARBANES and MIKULSKI for their efforts to identify outstanding Maryland lawyers to maintain the high standards of the Federal bench in Maryland.

In less than 3 years' time, President George W. Bush exceeded the number of judicial nominees confirmed for President Reagan in all 4 years of his first term in office. Senate Democrats have cooperated so that this President already surpassed the record of the President Republicans acknowledge to be the ''all time champ'' at appointing Federal judges. Since July, 2001, despite the fact that the Senate majority has shifted twice, with today's vote, a total of 168 judicial nominations have been confirmed, including 29 circuit court appointments. One hundred judges were confirmed in the 17 months of the Democratic Senate majority and with Mr. Titus' nomination we will have confirmed 68 during the comparative time of the Republican majority.

One would think that the White House and the Republicans in the Senate would be heralding this landmark. One would think they would be congratulating themselves for putting more lifetime appointed judges on the Federal bench than President Reagan did in his entire first term and doing it in three-quarters the time. But Republicans have a different partisan message and this truth is not consistent with their efforts to mislead the American people into thinking that Democrats have obstructed judicial nominations. That is why the President chose to criticize the Senate from the Rose Garden again last week rather than work with us and recognize what we can accomplish together.

Not only has this President been accorded more Senate confirmations than President Reagan achieved during his entire first term, but he has also achieved more confirmations this year than in any of the 6 years that Republicans controlled the Senate when President Clinton was in office. Not once was President Clinton allowed 68 confirmations in a year when Republicans controlled the pace of confirmations. Despite the high numbers of vacancies and availability of highly qualified nominees, Republicans never cooperated with President Clinton to the extent Senate Democrats have. President Bush has appointed more lifetime circuit and district court judges in 10 months this year than President Clinton was allowed in 1995, 1996, 1997, 1998, 1999, or 2000.

Last year alone, the Democratic majority in the Senate proceeded to confirm 72 of President Bush's judicial nominees and was savagely attacked nonetheless. Likewise in 1992, the last previous full year in which a Democratic Senate majority considered the nominees of a Republican President, 66 circuit and district court judges were confirmed.

Historically, in the last year of an administration, consideration of nominations slows, the ''Thurmond rule'' is invoked and vacancies are left to the winner of the upcoming Presidential election. In 1992, Democrats proceeded to confirm 66 of former President Bush's judicial nominees even though it was a Presidential election year. By contrast, in 1996, when Republicans controlled the pace for consideration of President Clinton's judicial nominees only 17 judges were confirmed and not a single one of them was to a circuit court.

In fact, President Bush has now already appointed more judges in his third year in office than in the third year of the last five Presidential terms, including the most recent term when Republicans controlled the Senate and President Clinton was leading the country to historic economic achievements. That year, in 1999, Republicans allowed only 34 judicial nominees of President Clinton's to be confirmed all year, including only 7 circuit court nominees. Those are close to the average totals for the 6 years 1995–2000 when a Republican Senate majority was determining how quickly to consider the judicial nominees of a Democratic President. By contrast, with today's confirmation, the Senate this year will have confirmed 68 judicial nominees, including 12 circuit court nominees, almost double the totals for 1999.

We have worked hard to balance the need to fill judicial vacancies with the imperative that Federal judges need to be fair. In so doing, we have reduced the number of judicial vacancies today to 40. More than 95 percent of the federal judgeships are filled. After inheriting 110 vacancies when the Senate Judiciary Committee reorganized under Democratic control in 2001, I helped move through and confirm 100 of the President's judicial nominees in just 17 months. With today's 68th confirmation this year, we have reached the lowest number of vacancies in 13 years. There are more Federal judges on the bench today than at any time in American history. These facts stand in stark contrast to the false partisan rhetoric that demonize the Senate for having blocked all of this President's judicial nominations. The reality is that the Senate is proceeding at a record pace and achieving record numbers.

I congratulate Mr. Titus and his family on his confirmation today.

Mr. HATCH. Mr. President, I am especially pleased today to speak in support of our nominee to the United States District Court for the District of Maryland, Roger Titus.

When the White House nominated Mr. Titus last June, Judge Peter Messitte of the district of Maryland, who happens to be an old high school classmate of Mr. Titus, called him a ''first-class appointment and just a great guy. He is really one of the finest lawyers around.'' I agree wholeheartedly.

Not only is Mr. Titus a ''great guy'' and ''one of the finest lawyers around,'' he is extremely well qualified—and well-deserving of the ABA's unanimous Well Qualified rating. His credentials are impeccable.

Mr. Titus earned a B.A. from Johns Hopkins and a J.D. from Georgetown University Law Center. Following his graduation from law school in 1966, Mr. Titus entered public service. He was first appointed as an assistant city attorney for Rockville, Maryland. He served in that capacity until 1970, at which time he was appointed city attorney.

While serving as a committed public servant, Mr. Titus established a private and prestigious law practice specializing in complex civil and appellate litigation. And in between serving in public office and operating a successful law practice, he found the time to teach at his alma mater, Georgetown University Law Center.

In 1988, Mr. Titus and his law partner merged their practice into Venable, Baetjer and Howard, LLP, where he is currently a partner. His clients include the Board of Education of Montgomery County, the Montgomery County government, the Howard Hughes Medical Institute, Igen International, Inc., and Circuit City Stores, Inc.

Fellow members of the Maryland bar have recognized Mr. Titus's outstanding legal skills. He has received numerous accolades, among them fellowships in notable organizations such as the American Bar Foundation, the American College of Trial Lawyers, the American Academy of Appellate Lawyers, and the Maryland Bar Foundation. In 1989, he was appointed to the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland. In 1999, he was one of seventeen living attorneys to be awarded the Century of Service Award by the Bar Association of Montgomery County. And in 2001, he was awarded the Leadership in Law Award of The Daily Record.

Mr. Titus brings sterling credentials, legal acumen, and nearly 40 years of experience to the Federal bench. He will undoubtedly be an excellent addition to the bench and I urge my colleagues to join me in supporting his confirmation.

Ms. MIKULSKI. Mr. President, I rise today to express my enthusiastic support for Roger Titus, a dedicated and well-qualified Maryland lawyer, to be a Federal district court judge for the District of Maryland.

When I review nominees for our Federal courts, I consider three criteria. They must have the utmost legal competence, the highest integrity and have a staunch dedication to protecting core constitutional values and guarantees. Mr. Titus meets all of these standards. I believe he will represent Maryland well on the District Court.

Mr. Titus is recognized as one of the best lawyers in Maryland. He has been awarded Century of Service Award by the Bar Association of Montgomery County and has been recognized for his leadership in the legal community with the Leadership on Law Award from The Baltimore Daily Record.

He is committed to serving the community and his profession. For over 16 years he served city attorney's office of Rockville, rising to position of city attorney. He is also a member of Board of Trustees of Suburban Hospital and pro bono counsel to Mobil Medical Care, Inc., a nonprofit dedicated to bringing health care services to Maryland's homeless population.

The position that Mr. Titus is nominated for is important to protecting the rights of all Marylanders. Mr. Titus will join two other distinguished nominees that the Senate confirmed earlier this year, whom I strongly supported, Judges Bennett and Quarles.

These nominees represent the types of lawyers that we should be putting on our Federal courts. They have strong bipartisan support, distinguished legal careers in the state from which they are selected and they are in the mainstream of legal thought.

One of the things that impresses me about Mr. Titus is his strong ties to the community. Mr. Titus was raised in Maryland, attended Bethesda/Chevy Chase high school and went to college at Johns Hopkins University. He was the first in his family to go to law school. In fact, he was an electrical engineering major and had not really had any exposure to lawyers until he eloped with the daughter of a lawyer in college. From there the rest is history. He is now one of many in a family of lawyers.

As a young lawyer, he worked as assistant city attorney in Rockville defending and representing the city. In 1972, he was appointed to be the city attorney of Rockville were he continued to represent the city in matters of complex municipal law. He also served as adjunct law professor at Georgetown Law School and then went on to establish his own successful law firm.

In 1988, his firm merged with one of the top law firms in the United States, based right here in Washington DC—the firm of Venable, Baetjer and Howard, LLP. Mr. Titus is a leader in the firm as the partner in charge of the Montgomery County office and as a member of firm's Management Board.

Roger Titus has had a distinguished legal career both working in the public sector as the advocate for the city of Rockville before the courts, and then in the private sector where he is known for his expertise in complex civil litigation. It is because of his service to the bar and his outstanding legal skills and intellect that Mr. Titus has received a ''well qualified'' rating from the American Bar Association.

Mr. Titus' dedication to the law is also seen in his work as a volunteer counsel for Mobile Medical Care, Inc. This is an organization that provides free medical services to poor and homeless persons. Some of the most vulnerable citizens in our society. As their legal counsel, he helped them resolve legal hurdles which enabled them to set up a headquarters in Bethesda, MD. His commitment to the law is also reflected in his service to the bar. As a member of the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland, he worked to secure guidelines for legal representation of minors in proceedings terminating parental rights.

I mentioned before the awards that Mr. Titus has received. These accolades from his colleagues are proof of the respect he has in the legal community and his intellect and ability. They demonstrate his service to bar and community and how much he has accomplished in career.

I do not know how Mr. Titus will vote on every issue that comes before him. I know he has been nominated by a Republican President, and it is likely that my beliefs and Mr. Titus' beliefs on certain issues will differ. But I am confident that he will use his expertise and legal experience to guide him as he makes important decisions affecting Marylanders. I am also confident that his legal background and respect for the law will be his foundation as he serves on the Federal District Court in Maryland.

I am impressed with Mr. Titus' commitment, expressed during his hearing before the Judiciary Committee, to adhering to the law. His dedication to following precedent and a statute's requirements, even where it is inconsistent with his own personal beliefs or is unpopular. It is the ability to put the law first, to know that personal views are irrelevant, that will serve him and Maryland well when he is a Federal district judge

I am proud to support this distinguished Maryland lawyer for a seat on the prestigious Federal court in Maryland. It is well qualified, distinguished members of the bar, who are respected in their legal community and who are in the mainstream of legal thought, like Mr. Titus, that this administration should be nominating. These are nominees who have excelled in their profession and who are looked up to by Republicans and Democrats alike. Like Judges Quarles and Bennett, Mr. Titus is a nominee who both of Maryland's Senators can support. We support him because we are foremost concerned with protecting the integrity and excellence of the Maryland Federal judiciary.

That concern has lead both Senator SARBANES and myself to work with and support the choices of the administration for these District Court nominees. That concern is why I wish the administration had looked to the Maryland legal community when it nominated someone to fill the vacancy left by the death of Judge Francis Murnaghan, an esteemed jurist who served on the Fourth Circuit for over 20 years.

Today, as I rise to enthusiastically support the nomination of Mr. Titus and as I have risen to support the other nominees for the district court, I believe these individuals are a model of the types of lawyers that should be nominated to fill Judge Murnaghan's seat on the Fourth Circuit. These nominees show that the President could easily nominate someone from Maryland who is fit for the bench and will serve with pride and excellence. They also show that the administration would not have to look far for a qualified nominee from Maryland.

Mr. SARBANES. Mr. President, I would like to take this opportunity to express my support for the nomination of Roger W. Titus to the U.S. District Court for the District of Maryland.

I have always believed that one of the most important roles I have as a United States Senator is the responsibility to provide ''advice and consent'' with respect to nominees to the Federal judiciary, and it is with sober deliberation that I consider all nominations made by our Presidents. When considering nominees, I apply a high standard to determine whether to support them for the Federal bench. A candidate should have had a career that has provided the breadth and depth of experience necessary to be a Federal judge, have contributed to the legal profession of our State, and have been an active participant in Maryland's civic community. All of these factors taken together must have elevated the nominee to a position of respect and esteem in our State that demonstrates that the nominee is ready and worthy for the challenges of a Federal judgeship.

Applying these standards, I am pleased to speak today on behalf of Roger Titus and urge the Senate to confirm his nomination. Roger Titus clearly meets these requirements, and will make a valuable contribution on the District Court.

Roger Titus received his undergraduate degree from Johns Hopkins University and his juris doctorate from Georgetown University Law Center. His legal career has spanned more than 30 years, during which time he has held a variety of positions in the public sector; private sector, with more than 30 years in private practice at firms large and small; and the academic field, as an adjunct professor at Georgetown University Law Center.

Roger Titus' career in private practice has been broad in scope—a fact that will serve him well on the bench. Concentrating in litigation, he has significant experience in State and local government law, general litigation, constitutional litigation, complex commercial litigation, as well as appellate work. Roger Titus has also been a leader in Maryland's legal community, most notably serving as President of the Maryland State Bar Association, but also devoting his time to numerous other legal organizations on a State, local and national level including the Bar Association of Montgomery County, American Bar Association, Maryland Municipal Attorneys Association, and the National Conference of Bar Presidents, among others. During this busy career, he has been active in the Maryland community, devoting substantial time to the Maryland Bar Foundation and as Chairman and member of the Board of Trustees for Suburban Hospital.

Given this record, it is no surprise that the American Bar Association gave Roger Titus a unanimous ''well qualified'' rating in its evaluation of his nomination. He has also received a number of prestigious awards for his career and record of service, including the Daily Record's first Leadership in the Law Award, which recognizes members of the legal community for their devotion to the betterment of the profession and their communities, and the Century of Service Award from the Montgomery County Bar Association, for his outstanding contributions to the legal profession and community during the twentieth century.

I am pleased to have the opportunity to speak today on behalf of Roger Titus' nomination to the Federal

bench, and I would like to congratulate him and his family on his confirmation. It is truly indicative of the exemplary career he has had in the legal profession, his commitment to our State, and the esteem with which Marylanders view his accomplishments.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time for the majority?

Mr. MCCAIN. I yield back the time.

The PRESIDING OFFICER. Is all time yielded back? Without objection, all time is yielded back.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Roger W. Titus, of Maryland, to be United States District Judge for the District of Maryland?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 438 Leg.]

YEAS—97

| | | |
|---|---|---|
| Akaka | Dodd | Lugar |
| Alexander | Dole | McCain |
| Allard | Domenici | McConnell |
| Allen | Dorgan | Mikulski |
| Baucus | Durbin | Miller |
| Bayh | Ensign | Murkowski |
| Bennett | Enzi | Murray |
| Biden | Feingold | Nelson (FL) |
| Bingaman | Feinstein | Nelson (NE) |
| Bond | Fitzgerald | Nickles |
| Boxer | Frist | Pryor |
| Breaux | Graham (FL) | Reed |
| Brownback | Graham (SC) | Reid |
| Bunning | Grassley | Roberts |
| Burns | Gregg | Rockefeller |
| Byrd | Hagel | Santorum |
| Campbell | Harkin | Sarbanes |
| Cantwell | Hatch | Schumer |
| Carper | Hollings | Sessions |
| Chafee | Hutchison | Shelby |
| Chambliss | Inhofe | Smith |
| Clinton | Inouye | Snowe |
| Cochran | Jeffords | Specter |
| Coleman | Johnson | Stabenow |
| Collins | Kennedy | Stevens |
| Conrad | Kohl | Sununu |
| Cornyn | Kyl | Talent |
| Corzine | Landrieu | Thomas |
| Craig | Lautenberg | Voinovich |
| Crapo | Leahy | Warner |
| Daschle | Levin | Wyden |
| Dayton | Lincoln | |
| DeWine | Lott | |

NOT VOTING—3

| | | |
|---|---|---|
| Edwards | Kerry | Lieberman |

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will return to legislative session.

## AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004—Continued

Mr. BENNETT. Mr. President, it is our intention to move next to the amendment of the Senator from Hawaii, Mr. AKAKA; and, after that, to the amendment of Senator CANTWELL. However, Senator SPECTER from Pennsylvania has an amendment which he wishes to propose. The time will not be long and he has another time commitment. I ask unanimous consent that Senator SPECTER be recognized before we proceed in the manner that I have outlined.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I thank the distinguished Senator from Utah.

AMENDMENT NO. 2080

Mr. SPECTER. Mr. President, I call up amendment No. 2080, which is at the desk.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2080.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To limit the use of funds to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in a manner that does not support the price of milk at the rate prescribed by law)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. LIMITATION ON ALLOCATION OF PURCHASE PRICES FOR BUTTER AND NONFAT DRY MILK.**

None of the funds made available by this Act may be used to pay the salaries or expenses of employees of the Department of Agriculture to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in a manner does not support the price of milk in accordance with section 1501(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7981(b)).

Mr. SPECTER. Mr. President, this is an amendment which I am offering following a letter on July 8, 2003, to the Secretary of Agriculture, cosigned by some 20 Senators. This amendment provides that the Secretary must take immediate action concerning the Commodity Credit Corporation's purchase price for dairy products. The market price for individual products has fallen below the support levels, thus allowing the price of milk products to fall below the statutory level of $9.90 per hundredweight.

In the year 2000, 7 out of 12 months the price was below the $9.90 set at $8.57. In 2002, 4 out of 12 months were below the support price, and currently, in 2003, 6 out of 12 months were below the support price set at $9.11.

This amendment prohibits the expenditures in the Department of Agriculture unless they follow the clear-cut mandate of existing law, which is to have the prices set.

I had understood a few moments ago that this was cleared on both sides, but it may be that there are some objections to be lodged. It is my hope that this can be worked out in the course of the afternoon.

I thank my colleagues for yielding these few minutes. I yield the floor.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2088

Mr. AKAKA. Mr. President, I rise today to offer an amendment to H.R. 2673, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for fiscal year 2004, that will help protect the health of the American public. This amendment would prohibit the U.S. Department of Agriculture (USDA) from utilizing funds under this Act to approve downed animals for human consumption. I thank Senators LEVIN, CANTWELL, and LIEBERMAN for cosponsoring this amendment.

Downed animals are livestock such as cattle, sheep, swine, goats, horses, mules, or other equines that are too sick to stand or walk unassisted. Many of these animals are dying from infectious diseases and present a significant pathway for the spread of disease.

I commend USDA and livestock organizations for their efforts to address the issue of downed animals. However, I am deeply concerned about diseases such as BSE, Bovine Spongiform Encephalopathy, more commonly known as mad cow disease, that pose a serious risk to the United States cattle industry and human health. A food inspection study conducted in Germany in 2001 found that BSE is present in a higher percentage of downed livestock than in the general cattle population. USDA stated that downed animals are one of the most significant potential pathways that have not been addressed in previous efforts to reduce risks from BSE. Stronger legislation is needed to ensure that these animals do not enter our food chain. My amendment prevents downed animals from being approved for consumption at our dinner tables.

On January 21st of this year, USDA's Animal and Plant Health Inspection

Service (APHIS) proposed rules in the Federal Register asking for comments on reducing the risks of BSE from downed and dead livestock. In the proposed rules, USDA acknowledges that downed animals serve as a potential pathway for the spread of BSE. Currently, before slaughter, USDA's Food Safety Inspection Service (FSIS) diverts downer livestock that exhibit clinical signs associated with BSE or other types of diseases until further tests may be taken. However, this does not mean that downed livestock cannot be processed for human consumption. If downer cattle presented for slaughter pass both the pre- and post-inspection process, meat and meat by-products from such cattle can be used for human consumption. Routinely, BSE is not correctly distinguished from many other diseases and conditions that show similar symptoms. This was demonstrated by the surveillance of a similar inspection process in Europe, showing that the process is inadequate for detecting BSE. Consequently, BSE-infected cattle can be approved for human and animal consumption.

Although USDA increased the number of cattle tested for BSE from 5,200 during the year 2001 to 19,990 in the year 2002, this still represents less than one percent of the industry that is tested. Of the 5,200 cattle tested for BSE in fiscal year 2001, approximately 87 percent of the animals targeted for testing were downed. Today, USDA has increased its efforts to test approximately 10 percent of downed cattle per year for BSE. It is interesting to note, however, that Japan currently tests each of its 1.3 million beef cattle slaughtered annually for BSE. While I am not asking the industry and Federal Government to test every slaughtered cow, I am asking the Federal Government to address and reduce the real risks associated with BSE and similar diseases in the U.S.

Some individuals fear that my amendment would place an excessive financial burden on the livestock industry. I want to remind my colleagues that one single downed cow in Canada diagnosed with BSE this year shut down the world's third largest beef exporter. It is estimated that the Canadian beef industry lost over $1 billion as a result of the discovery of BSE and more than 30 countries banned Canadian cattle and beef. As the Canadian cattle industry continues to recover from its economic loss, it is prudent for the United States to be proactive in preventing BSE and other animal diseases from entering our food chain.

We must protect our livestock industry and human health from diseases such as BSE. My amendment reduces the threat of passing diseases from downed livestock to our food supply. USDA only tests a small sample of downed animals for diseases. This is not enough. My amendment ensures downed animals will not be used for human consumption. It also requires higher standards for food safety and protects human health from diseases and the livestock industry from economic distress.

I urge my colleagues to support this important amendment.

Mr. BENNETT. Mr. President, it would be my intention on this side to accept this amendment.

Mr. AKAKA. I ask my amendment be set aside momentarily and we return to it at a future time.

The PRESIDING OFFICER. The Senator has not formally sent up the amendment.

Mr. BENNETT. I assumed we would go to the amendment from the Senator from Washington.

The PRESIDING OFFICER. The Senator from Hawaii has not sent his amendment to the desk.

Without objection, the pending amendments are set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. AKAKA], for himself, and Mr. LEVIN, Mr. LIEBERMAN, and Ms. CANTWELL, proposes an amendment numbered 2088.

The amendment is as follows:

(Purpose: To restrict funding for the approval for human consumption of meat produced from downed animals)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. PROTECTION OF DOWNED ANIMALS.**

None of the funds appropriated or otherwise made available by this Act to pay the salaries or expenses of employees or agents of the Department of Agriculture may be used to approve for human consumption under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) any cattle, sheep, swine, goats, horses, mules, or other equines that are unable to stand or walk unassisted at an establishment subject to inspection at the point of examination and inspection, as required by section 3(a) of that Act (21 U.S.C. 603(a)).

Mr. BENNETT. I ask unanimous consent that this amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington.

AMENDMENT NO. 2087

Ms. CANTWELL. Mr. President, I call up my amendment and I send it to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Washington [Ms. CANTWELL] proposes an amendment numbered 2087.

Ms. CANTWELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To prohibit energy market manipulation)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. PROHIBITION OF ENERGY MARKET MANIPULATION.**

(a) PROHIBITION.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

**"SEC. 215. PROHIBITION OF MARKET MANIPULATION.**

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance''.

Ms. CANTWELL. I ask unanimous consent that Senators BINGAMAN, HOLLINGS, JEFFORDS, DORGAN, and FEINGOLD be added as cosponsors to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. CANTWELL. Mr. President, I appreciate the time to discuss this issue.

Some colleagues may wonder why we are talking about energy legislation and market manipulation on the Agriculture appropriations bill. As my colleague from California pointed out in the previous amendment on derivatives legislation and market manipulation prevention, this was part of an agreement that the Western Senators worked out when we were discussing the Energy bill prior to our August recess. The fact that we were willing to move off that debate on a variety of amendments was because we had a commitment for a chance to have further discussion on important issues that impacted the economies of Western States.

That was the agreement made at that time, and today is the moment in which Senator FEINSTEIN and I both have our opportunities to discuss what we consider very important legislation and to get the Congress on the record and make sure the Senate takes a stand against market manipulation.

Many Members know a lot has happened since the time of discussion of these issues about the energy crisis and what we should do. But we should be clear about the sequencing of things that the United States now knows and understands. The Senate knows and understands that Enron has admitted market manipulation. They have executives who have said, yes, these contracts were manipulated and prices were faulty.

We have a report by the Federal Energy Regulatory Commission so thick it is hard for me to hold in one hand that goes through a variety of issues in relation to market manipulation in which FERC found there was not only manipulation, but a demonstration for the need of explicit prohibitions on this kind of harmful and fraudulent market behavior.

That is exactly what this amendment tries to address. The amendment I have offered, and Senator BINGAMAN and others have offered, says something very basic and simple that probably many Americans, and I guarantee many Washingtonians, assumed would

already be in a Federal statute such as the Federal Power Act. The amendment simply says that manipulation or manipulated contracts under the Federal Power Act cannot be just and reasonable.

Some of my colleagues may have remembered an earlier amendment where we prescribed some solutions. This amendment has been compromised and offers no specific remedies to the legislation but is specific in saying that market manipulation, in fact, is not something that can be just and reasonable under the Federal Power Act and it is not the kind of activity that the Commission should consider as lawful activity.

Most of my colleagues would say that manipulation and fraud surely has no place in the Federal Power Act; sanctioning those activities is somehow legal. But the absence of that prohibition in the Federal Power Act is leaving some doubt in people's minds that, in fact, manipulation is unlawful.

I bring that up because Washingtonians—as Ohio, Indiana, Nevada, California, Utah—have been suffering from high energy costs related to these manipulations of Enron contracts. Not only will they be stuck with paying those Enron contracts over a long period of time, but my State, the State of Washington, had utilities as much as a 50-percent rate increase because of Enron's contracts, and we will be stuck with those contracts over 5 years.

While Ken Lay remains uncharged, or at least not paying any dues for the crime he perpetrated, and he keeps the millions of dollars of money that he has gotten from Enron, my ratepayers in Washington State for the next 5 years will end up paying the high prices of those manipulated contracts. Not only will we end up paying the high prices of those manipulated contracts, but the utilities in my State and other States—Nevada, California, Oregon, some of the other Midwest States I mentioned—have tried to basically deal with Enron. They have been basically sued by the company. So not only is my ratepayer stuck with paying those high utility bills, they are actually trying to fight the legal battle against Enron, which is turning around and suing them.

My amendment does something very simple today. It basically says in the Federal Power Act that for the prospective issue of making sure it is clear to people throughout the country that the Senate does not tolerate market manipulation.

I have to say we have done great work on this issue as it relates to the Securities and Exchange Commission, and as it relates to making sure that accounting practices have been changed. But nowhere have we been specific in saying that market manipulation is an unlawful practice and cannot be just and reasonable under the Power Act. That is simply what we are trying to say today.

Why is that needed? I have a letter I circulated to my colleagues from one of the newest nominees to the Federal Energy Regulatory Commission, a Republican nominee who spent many hours in the legislative branch working under Energy Secretary Abraham and spent time in the House Energy and Commerce Committee, to whom I posed this question as a nominee before FERC because I wanted to understand where FERC nominees were going in the future.

Mr. Kelliher responded exactly where I think the input needs to be to the Senate. He said:

I agree with much of what you have said. I agree that the markets subject to manipulation cannot operate properly and there is an urgent need to proscribe manipulation of electricity markets.

He further states:

You have correctly noted that there is no express prohibition of market manipulation in the Federal Power Act and have proposed legislation to establish that prohibition. This is a critical point. The Federal Regulatory Commission only has the tools Congress chooses to give it, and Congress has never given the Commission express authority to prohibit market manipulation. I believe the time has come for Congress to take that step.

That is an exact quote from a letter by the FERC nominee Joseph Kelliher from the administration saying, ''You want me to be a FERC commissioner? I am telling you exactly what I think about the FERC rules. And I am telling you we need the language that is in this amendment.''

I ask unanimous consent that letter be printed in the RECORD.

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

NOVEMBER 5, 2003.

Hon. MARIA CANTWELL,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR CANTWELL: I am writing at your request to explain at greater length my views on legislation to prohibit manipulation of electricity markets.

I have followed your comments on market manipulation with great interest during the two years since my nomination was announced. I agree with much of what you have said. I agree that markets subject to manipulation cannot operate properly and there is an urgent need to proscribe manipulation of electricity markets. You have correctly noted there is no express prohibition of market manipulation in the Federal Power Act and have proposed legislation to establish an express prohibition. This is a critical point. The Federal Energy Regulatory Commission only has the tools that Congress chooses to give it, and Congress has never given the Commission express authority to prohibit market manipulation. I believe the time has come for Congress to take that step.

Market manipulation is a relatively recent development in electricity markets, but it is not a new problem. Manipulation has occurred in other markets, and Congress has enacted laws to proscribe manipulation in these markets. These laws can serve as models for legislation to prohibit manipulation of electricity markets.

Securities and commodities law establish an express prohibition of market manipulation and authorize a regulatory agency to prohibit specific manipulative practices by rulemaking. That approach allows an agency to act quickly once manipulative practices are identified. These models have worked well over time and could serve as the basis for legislation to prohibit manipulation of electricity markets.

The penalties authorized by congress in the Federal Power Act are unlikely to discourage criminal behavior. For that reason, tougher penalties—both higher monetary penalties and longer prison terms—are needed. Legislation is necessary to accomplish this. I should note that I advocated tougher penalties well before the Western electricity crisis and subsequent release of the Enron marketing memoranda. In addition to higher monetary penalties and longer prison terms, I recommend Congress grant the Commission authority to impose a lifetime ban on individuals found guilty of criminal violations of market manipulation laws. That authority exists at the regulatory agencies that oversee securities and commodities markets, and I see no reason why market manipulation in electricity markets should be subject to lesser sanction.

This is not to say that the Commission cannot take steps to prevent market manipulation under its existing legal authority. For example, the Commission can revoke the authorization of a public utility to sell electricity at market-based rates if it determines the public utility engaged in market manipulation. Further, I believe the Commission could prohibit manipulative practices under section 206 of the Federal Power Act if it determined that such practices were inherently unjust, unreasonable, unduly discriminatory or preferential. Since there would likely be legal challenges to any such effort to proscribe manipulative practices, it would be helpful for Congress to give the Commission clear authority to prohibit market manipulation.

At you request, I have reviewed your marked manipulation amendment. I support the goals of your amendment and believe it would go far towards effectively prohibiting manipulation of electricity markets.

I appreciate the opportunity to share my views on this subject with you.

Sincerely,

JOSEPH T. KELLIHER.

Ms. CANTWELL. Mr. President, I think the Kelliher letter and the report we have seen by the Federal Energy Regulatory Commission on price manipulation in western markets is the evidence we need. We have all admitted this manipulation has taken place. What is not clear to the American public is if we plan to do anything about it or if we plan to prohibit it in the future.

I think we need to be clear. The language I have offered in this amendment, as I said, is very simple and straightforward. It is that way because we want to make sure the Federal Energy Regulatory Commission does not misinterpret the intent of Congress, that Congress needs to say manipulating prices cannot be just and reasonable or in the public interest, and their job is to basically protect electric ratepayers from these kinds of manipulation.

I am not going to continue to take up the time of my colleagues who have heard about this amendment and have had an opportunity to review it. I urge them, as part of our further understanding of where the Energy bill is, that it is being set aside. This is the opportunity before us to make sure we

take a stand against market manipulation and we need to make it clear to the Federal Energy Regulatory Commission, which seems to be unclear about what authority they currently have, and to make it explicit that market manipulation cannot be tolerated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, quick housekeeping.

AMENDMENT NO. 2088

Mr. President, I ask unanimous consent that we go back to the Akaka amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. I call for a vote on the Akaka amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to amendment No. 2088.

The amendment (No. 2088) was agreed to.

Mr. BENNETT. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2087

Mr. BENNETT. Mr. President, I move that we go back to the Cantwell amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. CANTWELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I am not familiar with this issue, but I have asked members of the Energy Committee about it, and they have indicated opposition to the Cantwell amendment. There are some members of that committee who are on their way here. In the meantime, I will share with my colleagues the contents of a memorandum with respect to the Cantwell amendment that has been provided to Senator DOMENICI.

In this memorandum, the following objections are raised.

First:

FERC has and is using its authority to stop fraud and manipulation. . . .

FERC has demonstrated that it will use the full extent of its authority to assure honest, fair wholesale electricity markets.

FERC has taken a number of initiatives which are listed in the memo and which I will share with Members if the appropriate members of the Energy Committee do not arrive.

The second objection to the Cantwell amendment is that it is too vague. It is suggested that:

It is written in such general terms that it will lead to greater uncertainty. A general ban on manipulation will not help companies determine what conduct amounts to manipulation and what conduct is appropriate behavior in a competitive market. . . . [A] blanket prohibition on ''manipulation,'' without defining the elements of what constitutes manipulation . . . could have a chilling effect on the market without meaningfully adding to the protections already available to electricity customers under existing law.

The third objection is that:

The Cantwell Amendment could lead to duplication and confusion among the agencies.

The enabling statutes of the Commodity and Futures Trading Commission (CFTC) and the Securities Exchange Commission (SEC) already contain broad prohibitions against conduct that is intended to manipulate markets. Adding such another broad general prohibition to the Federal Power Act would only lead to unnecessary duplication and potential conflict between various enforcement agencies.

In addition, the Federal Power Act already prohibits wholesale electricity prices that are not ''just and reasonable.'' Therefore, FERC has the authority to investigate electricity prices and to require refunds if prices are not ''just or reasonable'' or modify contracts if it is in the public interest to do so.

The House and Senate Energy bills both would enhance FERC's existing refund authority and increase civil and criminal penalties for violations of the Federal Power Act.

The memo makes the point that this issue has been addressed in the Energy bill, and that is the place for it to be done.

The next objection raised is:

The number of Federal investigations and prosecutions by a broad array of agencies demonstrates there is no need for the Cantwell Amendment.

Federal agencies have been and continue to be active in investigating criminal offenses in the energy industry.

These agencies as listed in the memorandum include the President's Corporate Fraud Task Force, the Federal Bureau of Investigation, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the United States Postal Service, and numerous U.S. Attorney's offices across the country.

Through ''cooperative enforcement,'' these agencies have focused on investigations of possible round trip trading, false reporting and fraud and manipulation by energy companies and their affiliates, employees and agents. There have been a number of arrests, settlements and continued investigations and prosecutions reported based on these agencies' efforts.

And the argument is made that:

The Cantwell Amendment will not improve or change these actions.

Then reference is made to:

The Domenici Electricity Amendment effectively deals with market manipulation.

This is the amendment that is part of the Energy bill that is now in conference. The memo outlines all the reasons why that particular amendment is sufficient.

As I say, I am waiting for a member of the Energy Committee to come make these arguments with perhaps a little more background than I have. I would like to move to a vote on this amendment, so I ask, before I would suggest the absence of a quorum, if the Senator from Washington would agree to a vote, let us say, at 4:20. Would that be a sufficient period of time for the Senator?

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Washington.

Ms. CANTWELL. Mr. President, I have not taken up a significant amount of time because I think Members have been educated on this issue, so I would suggest we just go ahead and vote on the issue and move ahead.

Mr. BENNETT. The Senator is suggesting we vote right now? I am willing. I am anxious to move as much time as possible. If the Senator is ready, if there is no one else who wants to speak on this issue——

Ms. CANTWELL. Mr. President, I am sure there are Members who, if they had the time, would come and speak, but I think to make this process move as smoothly as possible, I see no need to continue to wait for Members of the Energy Committee to show up. If Members are here who want to speak on behalf of the amendment, one way or another——

Mr. BENNETT. I see the Senator from Nevada is on the floor, and he may wish to speak.

I would ask, then, following the remarks of the Senator from Nevada, if no other Senator has come wishing to speak, we proceed directly to the vote.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Nevada.

Mr. REID. Mr. President, I have always been a great admirer of the Senator from the State of Washington. She always steps forward with amendments that are extremely important.

Mr. BENNETT. Mr. President, will the Senator yield for another unanimous consent request?

Mr. REID. I am happy to yield for a question.

Mr. BENNETT. I would propound a unanimous consent request that the vote occur at 4:30.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BENNETT. I thank the Senator.

Mr. REID. Mr. President, I do not think there is going to be a vote very soon on this matter. I think it is going to be quite a long time before we vote. We have a lot of things we need to talk about.

(The remarks of Mr. REID are located in today's RECORD under ''Morning Business.'')

Mr. REID. Mr. President, I believe maybe we need a vote.

So when would my friend from Utah like to vote?

Mr. BENNETT. Mr. President, I would be happy to vote on the Cantwell amendment immediately and then go on to other business connected to the bill.

Mr. REID. I think the Senator should move forward.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the Cantwell amendment No. 2087. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 57, nays 40, as follows:

[Rollcall Vote No. 439 Leg.]

YEAS—57

| | | |
|---|---|---|
| Akaka | Durbin | McCain |
| Baucus | Ensign | Mikulski |
| Bayh | Feingold | Murray |
| Biden | Feinstein | Nelson (FL) |
| Bingaman | Fitzgerald | Nelson (NE) |
| Boxer | Graham (FL) | Pryor |
| Breaux | Gregg | Reed |
| Byrd | Harkin | Reid |
| Cantwell | Hollings | Rockefeller |
| Carper | Inouye | Santorum |
| Chafee | Jeffords | Sarbanes |
| Clinton | Johnson | Schumer |
| Collins | Kennedy | Smith |
| Conrad | Kohl | Snowe |
| Corzine | Landrieu | Specter |
| Daschle | Lautenberg | Stabenow |
| Dayton | Leahy | Sununu |
| Dodd | Levin | Voinovich |
| Dorgan | Lincoln | Wyden |

NAYS—40

| | | |
|---|---|---|
| Alexander | Crapo | Lugar |
| Allard | DeWine | McConnell |
| Allen | Dole | Miller |
| Bennett | Domenici | Murkowski |
| Bond | Enzi | Nickles |
| Brownback | Frist | Roberts |
| Bunning | Graham (SC) | Sessions |
| Burns | Grassley | Shelby |
| Campbell | Hagel | Stevens |
| Chambliss | Hatch | Talent |
| Cochran | Hutchison | Thomas |
| Coleman | Inhofe | Warner |
| Cornyn | Kyl | |
| Craig | Lott | |

NOT VOTING—3

| | | |
|---|---|---|
| Edwards | Kerry | Lieberman |

The amendment (No. 2087) was agreed to.

Ms. CANTWELL. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I understand there are several Senators who have amendments they would like to offer. Senator DAYTON has one. Senator BINGAMAN has one. We have not yet had an opportunity to go through the Bingaman amendment which came to us relatively recently. So I would prefer to go to Senator DAYTON to give us a little more time to examine the Bingaman amendment, but that could be the decision of the minority. I prefer to go to Senator DAYTON's amendment next if that is agreeable.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I defer to the manager of the bill. If he would like time to review the amendment that I have given him, I have no problem with that course of action.

Mr. BENNETT. Mr. President, I ask Senator DAYTON if he would give us some indication of how long he thinks he will take on his amendment and see if we cannot enter into a time agreement so that we can know when we might be able to vote.

Mr. DAYTON. Mr. President, responding to the distinguished manager of the bill, I myself will take less than 10 minutes. It is my understanding there may be one or two other Senators who wish to speak on this matter. I do not have their requests before me.

Mr. BENNETT. Mr. President, I ask unanimous consent then that we vote on the Dayton amendment at 5:15.

Mr. REID. I object. I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Minnesota.

Mr. DAYTON. It is my understanding then that I have the floor to proceed but there is no further agreement thereafter; is that correct?

The PRESIDING OFFICER. There is no agreement.

AMENDMENT NO. 2089

(Purpose: To provide emergency disaster assistance to Agricultural producers)

Mr. DAYTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DAYTON] proposes an amendment numbered 2089.

Mr. DAYTON. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DAYTON. Mr. President, this summer farmers in my State of Minnesota suffered one of the worst droughts in the State's history. Throughout the critical months of July and August, Minnesota received no rain whatsoever. Those cloudless blue skies with lots of warm sunshine which are considered good summer weather become deadly when it becomes relentless. Ninety-five percent of Minnesota's crop acres suffered some loss as a result, and 62 of our 87 counties were declared by the Secretary of Agriculture to be disaster area counties. Yields, moisture content, and overall quality of crops were all adversely affected by this drought.

To add misery to injury, insect infestation attacked thousands of soybean acres in southern Minnesota, further destroying plants, lowering yields, and forcing already hard-pressed growers to spend $10,000, $20,000, or even more to spray their fields in order to fight off total devastation.

In total, Minnesota farmers lost more than $1.1 billion in expected crop revenues. That is over 30 percent of our State's total crop revenue.

Yet, tragically, another disaster afflicts those unfortunate farmers and thousands of other farmers who suffered similar losses in other States this year. That disaster is that there is no disaster aid funding in the current farm law which was enacted last year. The Senate bill that we passed here provided disaster aid. The House bill did not. The conference report, regrettably, took the House and the administration's position, with the result that if you are hurt by low prices, you are helped under the current law, but if you are devastated, you are on your own and receive no assistance whatsoever.

My amendment provides assistance when disaster does strike. It does so by starting with the formula that was used in last year's disaster aid bill; from losses exceeding 35 percent of total value, farmers received disaster aid payments equal to 65 percent of the losses above the 35 percent threshold. It is a survival payment. It is not a break-even and certainly not a profit payment.

My amendment also adds a lower reimbursement for losses between 25 percent and 35 percent of value. Formerly, those losses would have received no assistance whatsoever. This formula pays 40 percent of those losses between 20 percent and 35 percent of total value.

The amendment also covers unreimbursed losses during the 2001 and 2002 seasons. As my colleagues will recall, farmers who suffered disasters in both of those years were allowed to receive payments from losses in only one of them. In other words, disaster aid is Sophie's choice. This amendment would compensate those farmers for their losses in the second year.

My amendment as written covered program crop losses and specialty crop losses throughout the country. However, I have also added, at the request of other Members, losses suffered during the year, which means the amendment now covers losses of shrimp in Louisiana, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, and Texas, and other losses which occurred in the States of Michigan, Florida, and California, as well as other national specialty crops.

The total cost of my amendment, as estimated by the Congressional Budget Office, is approximately $6.3 billion. Because it is, in my view, an emergency expenditure, I do not believe it requires, under the Budget Act, an offset, and I am not providing one.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceed to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. I ask the chairman if this is an appropriate time for me to make a 10- or 15-minute statement relative to an amendment which you have accepted on the FDA and dietary supplements.

Mr. BENNETT. I ask the Senator if he would withhold for just a moment. We are trying to pull a few things together. But I am more than happy to have the time appropriately spent other than in a quorum call.

If the Senator will withhold for just a few moments, I will be in a position to respond.

Mr. DURBIN. I thank the Chair and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENNETT. Mr. President, the chairman of the Budget Committee is anxious to come over to develop the issue of the budget point of order for emergency designation with respect to the amendment offered by Senator DAYTON. As he has indicated, it is $6.3 billion, and there is no offset in the bill. Our bill is $1 billion below last year's fiscal year 302(b) allocation, and therefore this is obviously a very significant number.

Until the Senator from Oklahoma, the chairman of the Budget Committee, has an opportunity to be here to review this matter with us, I would be willing to allow the Senator from New Mexico to begin the description of his amendment because I understand he would like to get that done. He has a timeframe tonight. And we could view the possibility of voting on both amendments at some point when the debate on both amendments has subsided rather than keeping the time tied up in a quorum call.

With recognition of the pressures the Senator from New Mexico is under, I would like to perhaps move ahead on both of those amendments on a double track situation.

Mr. REID. I object. If there is going to be a request to set aside the Dayton amendment, I object.

Mr. BENNETT. All right. There is objection. Therefore, I do not pursue that. I suggest to the Senator from Illinois this might be a good time to hear from him.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I thank the Chair of the committee and the ranking member, Senator KOHL of Wisconsin, for agreeing to an amendment which will be offered here in a moment as part of a managers' amendment, to my understanding. This is an amendment with which I tried to construct a deal, facing what I consider to be an extremely serious situation.

We now have a body of law in America relative to products which are sold for human consumption, and there are different laws and standards for different products. The ordinary American walking into a pharmacy or drugstore or health food store or nutrition store may not know that, depending on which product you take off the shelf, there is a different standard of care, a different legal requirement.

I would like to spend a moment to discuss the differences.

If you were to go into your local pharmacy and have a prescription filled—which many of us have—this is what you know. This prescription drug has been tested for three things before it was sold to you. First, that it is safe, that you can consume it without injuring yourself; second, that it is efficacious, meaning it will do what it is supposed to do; and, third, it has been packaged and manufactured in a fashion so when they say it is 200 milligrams, it is in fact 200 milligrams. You know that. The Food and Drug Administration has required clinical tests to make sure it is safe—efficacious—and packaged in a fashion as it is represented. With that assurance, your doctor prescribes it and you take the medicine.

Now you walk down from the pharmacy counter in the drugstore and you decide to pick up some cough syrup such as this. You have bought this cough syrup. The question is: What standard of care, what body of law governed the manufacture of this over-the-counter drug, in this case, Robitussin DM, which was previously a prescription drug. It went through the same test for safety and efficacy to determine whether or not it met those tests and could be sold. Then it reached a point where a medical decision was made that you no longer needed a prescription and the component parts of this drug meet the same test of safety and efficacy and it is packaged in such a fashion that you know what you are buying.

I might also add for both the prescription drug and the over-the-counter drugs, which I have just described, if something happens—if you take this prescription, for example, and have a bad health result or this over-the-counter drug with a bad health report and you report it to the company or to your doctor, it is expected and required that adverse event, as it is known, will be reported to the Food and Drug Administration. They keep track of those. If they find out what they thought was a safe drug turns out to have a bad reaction, they will pull it from the market. The same is true with an over-the-counter drug. You know the standard of care for both prescription drugs and over-the-counter drugs.

We have other things which you will find in that same drugstore. One of them would be ordinary vitamin pills, the kind I took this morning. What are the standards for these vitamins—vitamin C or ordinary multivitamins? Unfortunately, the standards are much different. In this case, they are basically being manufactured and sold without the same clinical tests. No one has tested them for safety, for efficacy. Frankly, the standards for many are questionable as to even how they are packaged and sold to the public. But the belief is most of these naturally occurring minerals and vitamins and this type of supplement are generally good for your health. Those who believe in them take them for a variety of conditions. It is believed they cause no great harm; in fact, that they may have real health benefits.

We passed a law about 9 years ago which established a standard for something we call dietary supplements which are also for sale in the same drugstore with prescription drugs, over-the-counter drugs, and vitamins. These dietary supplements might be one such as this, natural herbal formula to promote energy and diet. What kind of standard of testing went into this product? The answer is none. There was no testing in advance required by law that what is included in this bottle is safe for human consumption or in fact even helps you when it comes to your energy or diet, and few, if any, standards about whether or not when they say this is 200 grams of one thing or another, in fact, are included. When you buy a dietary supplement, frankly, there are no standards of testing and care before the product is put on the shelf for the consumers.

I tell you this by way of background because that is why this amendment is important. When we passed the Dietary Supplement Health Education Act, we said we were dealing with natural supplements like vitamin C and garlic, multivitamins and the like. What has happened over the past 8 or 9 years is we have gone way beyond the basic vitamins. We now find a witches brew of a variety of different dietary supplements way beyond vitamins and minerals that are being sold under the same law with no testing standards, with no establishment of their safety or efficacy, no standards as to how they are packaged, and no requirement that they report adverse events to the FDA. As you walk into the drugstore and fill your prescription and walk past the counters, the American consumer has no idea that at end of the counter, the standard of protection and care changes depending on what you are buying.

That is why I am offering an amendment to this bill which earmarks $250,000 for the Food and Drug Administration to examine one particular compound being sold in dietary supplements. The compound is ephedrine. Ephedrine is a naturally occurring chemical that one finds similar to the synthetic chemical ephedra. Ephedrine is very closely monitored by FDA in

both prescription drugs and over-the-counter drugs. But when it is sold in these types of dietary supplements, it isn't tested for safety, it isn't tested for efficacy, and it isn't tested in terms of how much is included in the bottle, and certainly no requirement for adverse events to be reported to the FDA.

Sadly, this product I have in my hand, known as Yellow Jackets, is sold as an extreme energizer, an herbal dietary supplement containing ephedrine. The reason I have kept this bottle is because 30 miles from my hometown in Springfield, IL, just last year a young man who was a high school senior and a football player in preparation for a football game decided he needed a shot of energy, a boost of strength to go out and play for his team. He went into a local gas station and bought these Yellow Jacket energizers and washed them down with Mountain Dew, which is heavy in caffeine, had a heart attack, and died. Ephedra products, as a consequence, have been under suspicion for a long time.

The sad reality is the United States is almost last in the world when it comes to dealing with ephedra products. You may not know it, but almost 2 years ago Canada banned ephedra products for sale in their country. They said it is too dangerous. Over a year ago, the American Medical Association said to the Food and Drug Administration, take these ephedra products off the shelf; they are dangerous. After 30 service men and women had serious adverse health effects, we have removed all ephedra products from military commissaries across the United States. The National Football League, the NCAA, the National Basketball Association, and major league baseball have banned the use of these products. You can't use them if you want to compete in Olympic competition. Yet kids in junior high and high school can walk into a gas station and still buy this in most States, with the exception of Illinois, and I believe New York and California have joined suit in banning ephedra products.

Over a year ago, I wrote to Secretary Tommy Thompson of Health and Human Services and said you have to do something. If Canada believes they are dangerous, if we think they are dangerous for service men and women, if the American Medical Association says they are dangerous, and if major sports have banned them, why in the world do we allow them to be sold in America?

What happened in the meantime is the Government did absolutely nothing—issued a press release and did nothing to take these products off the shelf.

What happened was a lot of the victims and their families went into courtrooms. A lot of people are critical of people filing lawsuits. This is a clear example where that was the only place to turn to protect innocent families and victims across America. Because of the class action lawsuits that were filed, we have now determined there were over 16,500 adverse events reports related to ephedra products that had been accumulated by all the companies that were selling them. Now they had to turn them over and disclose them.

Within those 16,500 adverse events there were events including seizures, strokes, and 155 deaths. I think, frankly, we all know what is at stake here. We realize major drugstores see liability if they continue to sell products like these Yellow Jackets and they will take them off the shelf. Walgreen's, CVS, Eckerd, Rite Aid, and Wal-Mart, representing 17,300 stores nationwide, have pulled these ephedra-containing dietary supplements from shelves. GNC, the largest specialty retailer of nutritional supplements in the country, with 5,300 stores nationwide, stopped selling ephedra products in June.

One of the largest sellers of ephedra products, Metabolite—I am sure you have heard that name—sold ephedra compounds and was sued right and left because of these compounds. They said at one point they didn't have any adverse event reports. After they were pressed in a lawsuit they turned over thousands of examples of people who had bad health events because they took Metabolite's ephedra products.

Metabalife is now advertising what they are selling is ''Ephedra free.'' Despite all this having taken place, our Government has done nothing, absolutely nothing. I have written over and over again to Secretary Thompson. I have met with Dr. McClellan, the doctor in charge of the Food and Drug Administration, and asked: When are you going to start protecting Americans? We have a clinical trial in America today. We are selling Ephedra to innocent people and seeing if they have a seizure or heart attack.

Secretary Thompson, in April, said he was concerned about Ephedra and had taken more and stronger actions to address public health issues raised by Ephedra alkaloid than in the previous decade.

That was his letter to me in April. Since Secretary Thompson wrote that letter to me, another 38 reports of death related to Ephedra have been accumulated, bringing the total to 155.

A representative of the FDA spoke in front of the Senate Commerce Committee last week and said the Agency is in the process of analyzing 30,000 comments they have received in response to the reopening of the 1997 proposed rule on Ephedra and they are reviewing scientific evidence. Of course, delay means death, delay means injury, and delay is evidence that the Food and Drug Administration is not meeting its obligation under the law to protect American families from dangerous products.

We had a hearing in the Senate Commerce Committee before Senator MCCAIN last week. A case was made very clearly that it is time to change the law. But first, get Ephedra off the shelves. That is why I introduced this amendment, put $250,000 in the FDA, earmarked to deal with Ephedra, to get an answer, get a conclusion and get it off the shelf as quickly as possible.

When that is done, we will have made progress. But we need to do more. The makers of dietary supplements such as this one must be required by law to report to the Food and Drug Administration if people are dying from their products. That is not too much to ask in this society. Those who say that, because I am going after a deadly product like yellow jackets, that my real war is against vitamin C just do not understand the reality. The reality is vitamin C can help. Vitamin C is not going to kill you.

This product killed a 16-year-old high school football player in Lincoln, IL. It has been attributed to the death of a Major League baseball player of the Baltimore Orioles.

I asked the committee to earmark this money. I am glad the chairman has accepted. I hope that finally this will push Health and Human Services into doing the right thing and banning this dangerous substance.

I yield the floor.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, thank you very much for this opportunity to speak on an issue important not only to my State but also to other States in my country as it continues to plague agricultural producers all over the United States. I thank Senator DAYTON, my colleague from Minnesota, for offering this amendment and for his continuing good work on this important issue.

Last year at this time this Chamber had a prolonged debate on whether to provide much needed emergency drought assistance to those hurt by continuing record drought. Some argued that there should be no assistance; others argued that, unlike with every other national disaster, assistance for drought victims should be funded through offsets. Some even argued we could always come back to take care of these victims at a later date.

Still some argued that a drought is no less devastating than a hurricane or flood for those who are affected and it should be treated as we would treat other natural disasters, by providing full assistance, treat it as an emergency, which, in fact, it is.

It took a while to get any help to our agricultural producers. Despite the plague of bankruptcies and the anticipated loss of thousands of family farms across the country, we could not get drought assistance passed until last spring, nearly 2 years after the worst of the drought had begun. That assistance came at a cost.

It covered less than half of the damage the USDA estimated had been caused by the drought, and it was paid for out of elements of the new farm

bill, robbing Paul to pay Paul. To survive, our farmers would have to sacrifice their future for their present.

Despite all that, despite waiting months for Congress to act, despite getting what assistance was offered at the expense of the farm bill, even now, more than 7 months after the passage of that inadequate bill, many of those hurt are just beginning to receive emergency payments. Some have received nothing while the least fortunate went bankrupt during the wait.

The drought package passed last spring offered a little over $3 billion for drought losses, half the estimated $6 billion in actual damages. By October 1, $1.85 billion had been distributed, just over a quarter of actual damages through 2002. Nebraska, which alone had $1.2 billion in damages, has received only $138 million in crop disaster payments, barely 10 cents on the $1 of what it lost. As of September 15, the sugar beet program had not even been implemented, leaving those producers with nothing.

Still, the drought continues. That is why I am here today. And still, because that drought continues, our farmers and ranchers need help.

I am here today to remind those who settle for less that we still need to do more. This map reflects the current drought impact in the United States. The red and brown areas are those areas that have been labeled as a drought area by the U.S. Drought Monitor at the University of Nebraska. The red areas within the regions have been declared as drought areas by the State or Federal Government. The brown areas have not been declared. As I said, they are considered to be declared drought areas by the U.S. Drought Monitor. The green areas are recovering from drought but could be impacted by recurring or lingering conditions. The yellow areas are under drought watch.

This map is for the time period of September 5 through October 2 of this year, less than 60 days ago. We can see this drought continues.

As is clear from this map, 16 States have seen at least half of their counties declared drought disasters and another 5 have some declared drought area and 2 additional States are considered drought States by the U.S. Drought Monitor but not all declared drought regions. All told, 23 States at the present time have at least some drought regions as labeled by the U.S. Drought Monitor. Another six States have some areas under drought watch.

This map makes it very clear, and it should be clear for everyone to see, the drought has not ended. It remains a national problem and has taken another planting season, another growing season, and another harvest. We need to provide more assistance for our farmers and our ranchers. We need to do more to mitigate the effects of this drought.

Finally, we need to take seriously the fact that a drought is no less devastating to those afflicted than of any other natural disaster.

The unfortunate thing on a comparison basis, some natural disasters are immediate or nearly immediate. This natural disaster takes time to develop. In this case, it is continuing.

If some believe this drought is not as damaging as other natural disasters, I invite them to visit Nebraska and the other States, visit farmers and ranchers who are selling their lands, selling their herds or those who have already sold their land and herds. I invite them to tour our rural communities to see how damaging this drought has been to small businesses, Main Street America, small communities that comprise those Main Streets that are connected to the land and the economic activity that it produces. I invite them to talk to the Governor of Nebraska who a few days ago asked the Department of Agriculture to declare our entire State a disaster area because of drought damages.

I tried a number of measures to focus some attention on the plight of our agricultural producers. I even tried to name the drought, Drought David, thinking that would give it some sort of focus, just as we name hurricanes. I even brought drought ribbons that some of my colleagues were good enough to wear a year ago because they understood the national impact of this drought as well as the impact on their particular States. I worked with leaders in this area such as Senators DASCHLE, HARKIN, BAUCUS, DAYTON, and JOHNSON, who also pushed for comprehensive drought assistance. But still it has not been enough. We need to do more. With economic conditions being what they are, we cannot risk losing more family farms, we cannot risk losing rural businesses, and we cannot risk agricultural bankruptcies and foreclosures.

This issue has not been resolved—not through the rains these counties and States need, and not through the paltry assistance provided by the Federal Government. We need to do more.

So today I rise in support of Senator DAYTON's amendment to provide more support for our family farmers. In fact, I considered offering an amendment myself on this very issue. And that, again, shows the breadth of the disaster. Such States as Nebraska and Minnesota, and everything in between, and all around, are still in dire trouble. Our Nation is at economic risk.

If we dislike importing 50 to 60 percent of our oil for our energy needs, let me assure you, we will hate importing our food if it ever gets to the point that we lose agriculture as we have it today.

So we must act. We must act now or it will be too late for tens of thousands of more family farms and the rural way of life.

I thank you, Madam President. I thank the chairman, and I yield the floor.

Mr. BAUCUS. Mr. President, I would like to thank Senator DAYTON for offering this amendment to secure emergency agricultural disaster assistance for our drought stricken agricultural producers.

I worked the past 2 years to pass meaningful disaster assistance. For 2 years, I worked to attach a disaster assistance package onto every piece of legislation I could. It passed twice in the Senate—once with 70 votes. Unfortunately, the House and the administration failed to see the necessity of disaster assistance for our Nation's agricultural producers.

A disaster package was eventually signed into law, but this package was a mere ghost of the original disaster package and did little to help those who were hurt the most by drought. Producers in my State of Montana experienced devastating drought in 2001 and 2002, but the package that was signed into law only provided relief for one of those years. I don't know many businessmen who would stay in business after 2 years of more than 35 percent losses.

Our Nation's agricultural producers are still hurting. I can count on one hand how many days it has rained in Billings, MT since June. The lack of moisture in my State combined with consecutive days of 100-plus temperatures during the summer exasperated the multiyear drought conditions.

The effects of the drought have gone beyond our farmers and ranchers. Businesses are closing their doors, employees are being laid off, and main streets are literally drying up.

When drought hits, it affects everyone in the area. In Geraldine, MT, which is located in Choteau County—right in the heart of the drought—students who qualify for free and reduced meals increased from 47 percent to 64 percent over the past year. This signals a dramatic fall in income for this area. Farmers who grow food for a living are asking for help to feed their families.

As a Nation, we provide emergency assistance when a hurricane smashes into the East Coast, when a tornado rips through the Midwest, or when a flood destroys southern communities. We step in and help our neighbors who are in need and offsets are not required. There is no reason that a double standard should apply to drought.

The agricultural producers in Montana hung on to strings of hope last year as we were fighting for disaster assistance for drought. After witnessing the atrocity of a package that passed, many of them were forced to sell their farms, their livelihood, their way of life. It was heartbreaking. Many people are still hanging on by their fingertips though and that is why I support this amendment. We need to save these producers—the people who wake up at the crack of dawn every day to ensure that our Nation has a safe, abundant, and inexpensive food supply.

This is about providing relief for the small businessmen and women who raise our food and experienced a natural disaster.

I urge my colleagues to do what is right and what is fair and to vote for this amendment.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Madam President, I see no other Senators wishing to speak on this matter. The chairman of the Budget Committee has not presented himself. But speaking on his behalf, I will raise a budget point of order about the emergency designation.

Utah is at the bull's eye of the drought. We have more drought problems in Utah perhaps than any other State, and it is with some reluctance that I raise this point of order. But this is $6.3 billion, and there is no offset for it.

I think if it is of value, it is of sufficient value that it is worthwhile to have a supermajority to support going $6.3 billion into an emergency. I think an emergency designation for this much money is something for which this procedure is designed.

Therefore, I raise a point of order against the emergency designation contained in the pending amendment, that it violates section 502 of the concurrent budget resolution on the budget for fiscal year 2004, and therefore is not in order.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Madam President, with due respect to the Senator from Utah, it seems to me that if we are going to measure whether something is an emergency by the extent of the emergency, we are misperceiving those situations.

I regret that the cost of this measure is estimated to be $6.3 billion, but that is a function of the extent of the disaster which has occurred nationwide. If disaster aid is not itself considered to be an emergency, frankly, I don't know what possibly could be under the Budget Act.

So, Madam President, I move to waive the budget point of order and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Georgia (Mr. MILLER) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 40, nays 55, as follows:

[Rollcall Vote No. 440 Leg.]

YEAS—40

| | | |
|---|---|---|
| Akaka | Dodd | Murray |
| Baucus | Dorgan | Nelson (FL) |
| Bayh | Durbin | Nelson (NE) |
| Bingaman | Feinstein | Pryor |
| Bond | Graham (FL) | Reed |
| Boxer | Harkin | Reid |
| Breaux | Inouye | Rockefeller |
| Byrd | Jeffords | Sarbanes |
| Cantwell | Johnson | Schumer |
| Clinton | Kennedy | Stabenow |
| Coleman | Landrieu | Talent |
| Conrad | Levin | Wyden |
| Daschle | Lincoln | |
| Dayton | Mikulski | |

NAYS—55

| | | |
|---|---|---|
| Alexander | Dole | Lugar |
| Allard | Ensign | McCain |
| Allen | Enzi | McConnell |
| Bennett | Feingold | Murkowski |
| Biden | Fitzgerald | Nickles |
| Brownback | Frist | Roberts |
| Bunning | Graham (SC) | Santorum |
| Burns | Grassley | Sessions |
| Campbell | Gregg | Shelby |
| Carper | Hagel | Smith (OR) |
| Chafee | Hatch | Snowe |
| Chambliss | Hollings | Specter |
| Cochran | Hutchison | Stevens |
| Collins | Inhofe | Sununu |
| Cornyn | Kohl | Thomas |
| Corzine | Kyl | Voinovich |
| Craig | Lautenberg | Warner |
| Crapo | Leahy | |
| DeWine | Lott | |

NOT VOTING—5

| | | |
|---|---|---|
| Domenici | Kerry | Miller |
| Edwards | Lieberman | |

The PRESIDING OFFICER. On this vote, the yeas are 40, the nays are 55. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained. The emergency designation is stricken.

The question is on agreeing to the amendment.

The Senator from Utah.

Mr. BENNETT. Madam President, the amendment is still pending. It is now $6.3 billion for which there is no offset. Therefore, I believe we should vote the amendment down. We have already said this was the last vote today, but if the Senator wants a vote, I suppose there could be one. This is now $6.3 billion for which there is no offset with the emergency designation stricken.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Madam President, I will agree to a voice vote if the Senator from Utah concurs.

Mr. BENNETT. Under those circumstances, Madam President, I raise the point of order that this is in violation of the Budget Act since there is no emergency designation and urge a ''no'' vote on this amendment.

The PRESIDING OFFICER. The point of order is well taken, and it is sustained. The amendment falls.

Mr. BENNETT. Madam President, we now have a group of amendments which have been offered by a number of Senators and examined by a number of Senators on both sides of the aisle, all of which have been agreed to and cleared. I would like to send them to the desk, asking for a voice vote on each one. In every case, the amendment is in behalf of myself and Senator KOHL—I apologize, Madam President, there are other Senators involved. It is just the first amendment that is in behalf of myself and Senator KOHL.

AMENDMENT NO. 2091

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself and Mr. KOHL, proposes an amendment numbered 2091.

Mr. BENNETT. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 50, line 14, strike ''$27,745,981,000'' and insert in lieu thereof ''$29,945,981,000''.

Mr. BENNETT. Madam President, due to increased projections of unemployment which result in higher participation and food inflation, it is necessary that we increase the Food Stamp Program by $2.2 billion, and this amendment will enable all qualified applicants to participate in this mandatory program. I ask for a voice vote.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 2091) was agreed to.

AMENDMENT NO. 2092

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senator DURBIN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. DURBIN, proposes an amendment numbered 2092.

Mr. BENNETT. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture acting through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products.''.

Mr. BENNETT. Madam President, this amendment will ensure that USDA funding is not used to promote the sale or export of tobacco or tobacco products. This provision was inadvertently left out of the subcommittee bill. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2092) was agreed to.

AMENDMENT NO. 2093

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself and Mr. KOHL, proposes amendment numbered 2093.

Mr. BENNETT. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 51, lines 14 through 17, strike ''special'' and all that follows through ''1985,'' and insert in lieu thereof ''special assistance (in a form determined by the Secretary of Agriculture) for the nuclear affected islands, as authorized by section 103(h)(2) of the Compact of Free Association Act of 1985 (48 U.S.C. 1903(h)(2)) (or a successor law),''.

Mr. BENNETT. Madam President, this technical amendment clarifies the statutory authority for special assistance to the nuclear affected islands. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2093) was agreed to.

AMENDMENT NO. 2094

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senators MURKOWSKI, STEVENS, INOUYE, and AKAKA, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Ms. MURKOWSKI for herself and Mr. STEVENS, Mr. INOUYE, and Mr. AKAKA, proposes an amendment numbered 2094.

The amendment is as follows:

On page 33, line 9, strike ''$769,479,000'' and insert in lieu thereof ''767,479,000'' and on page 37, line 2, strike $25,000,000'' and insert in lieu thereof ''$23,000,000''.

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . (a) IN GENERAL.—Section 3(o)(4) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2012(o)(4)) is amended by inserting before the period at the end the following: '', and except that on October 1, 2003 in the case of households residing in Alaska and Hawaii the Secretary may not reduce the cost of such diet in effect on September 30, 2002.''

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective beginning on September 30, 2003.''.

Mr. BENNETT. Madam President, this amendment will prohibit the food stamp benefit for participants in Alaska and Hawaii from decreasing in the fiscal year 2004. The amendment has been cleared by the Agriculture Committee, and I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2094) was agreed to.

AMENDMENT NO. 2095

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senators SNOWE and DORGAN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Ms. SNOWE, for herself and Mr. DORGAN, proposes an amendment numbered 2095.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

**''SEC. _. MODIFICATION OF BOUNDARIES OF AROOSTOOK COUNTY AND GRIGGS-STEELE EMPOWERMENT ZONES.**

''(a) AROOSTOOK COUNTY EMPOWERMENT ZONE.—Notwithstanding any other provision of law, the Aroostook County empowerment zone shall include for the period such empowerment zone remains designated, in addition to the area designated as of the date of the enactment of this Act, the remaining area of the county not included in such designation.

''(b) GRIGGS-STEELE EMPOWERMENT ZONE.—Notwithstanding any other provision of law, the Griggs-Steele empowerment zone shall include for the period such empowerment zone remains designated, in addition to the area designated as of the date of the enactment of this Act, the remaining area of Griggs County not included in such designation.''.

Ms. COLLINS. Mr. President, I am pleased to join my colleague, Senator OLYMPIA SNOWE, in offering an amendment that will expand the borders of the Aroostook County Empowerment Zone to include the entire county, so that the benefits of empowerment zone designation can be fully realized throughout the northernmost county in Maine.

The Department of Agriculture's Empowerment Zone program addresses a comprehensive range of community challenges, including many that have traditionally received little Federal assistance, reflecting the fact that rural problems do not come in standardized packages but can vary widely from one place to another. The Empowerment Zone Program represents a long-term partnership between the Federal Government and rural communities—10 years in most cases—so that communities have enough time to implement projects to build the capacity to sustain their development beyond the term of the partnership. An Empowerment Zone designation gives designated regions potential access to millions of dollars in Federal grants for social services and community redevelopment as well as tax and regulatory relief over a ten-year period.

Aroostook County is the largest county east of the Mississippi River. Yet, despite the impressive character and work ethic of its citizens, the County has fallen on hard times. The 2000 Census indicated a 15 percent loss in population since 1990. Loring Air Force Base, which was closed in 1994, also caused an immediate out-migration of 8,500 people and a further outmigration of families and businesses that depended on Loring for their customer base.

Unfair trade practices have also struck a blow to the County's economy. Aroostook shares more border miles with Canada than most northern states. It is bordered for approximately 280 miles to the west, north and east by Canada. Canadian farmers and businesses have been extremely competitive in Aroostook's traditional business markets; as a result, Aroostook's farmers have experienced a loss in sales which has caused additional job loss, and still more people migrating from Aroostook County. Aroostook's economic situation has been further worsened by the strong value of the Canadian dollar in relation to the U.S. dollar and the restrictive personal exemption duty limits that Canada imposes on its citizens when they make shopping trips to U.S. businesses on the border.

In response to these developments, the Northern Maine Development Commission and other economic development organizations, the private business sector, and community leaders in Aroostook County have joined forces to stabilize, diversify, and grow the area's economy. The designation of Aroostook as an Empowerment Zone has been a vital element of this ongoing effort to enhance both the present and the future economic prosperity of the county.

There is, however, a restriction in the law governing empowerment zones that prevents this tremendous program from benefitting all of the small rural communities in Aroostook. Currently, the law limits the Aroostook empowerment zone to 1,000 square miles, despite the fact that Aroostook covers some 6,672 square miles and only has a population of approximately 72,000 people. Including all of the county in the empowerment zone will guarantee that parts of the county will not be left behind as economic prosperity returns to the area. It does little good to have a company move from one community to another within the County simply to take advantage of empowerment zone benefits.

America's greatest success can only be achieved when everyone has the opportunity to enjoy the fruits of a strong economy. It is only fair that all of Aroostook County's population be given the opportunity to fully benefit from the Empowerment Zone Program.

Mr. BENNETT. Madam President, this amendment would expand the boundaries of the Arrostook Empowerment Zone in the State of Maine and the Griggs-Steele Empowerment Zone in the State of North Dakota to encompass the remaining area of the respective counties not currently included in the empowerment zone designation. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2095) was agreed to.

AMENDMENT NO. 2096

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senator LEVIN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. LEVIN and Ms. STABENOW, proposes an amendment numbered 2096.

The amendment is as follows:

(Purpose: To prohibit the use of funds to issue to implement the proposed rule on cost-sharing for animal and plant health emergency programs)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. COST-SHARING FOR ANIMAL AND PLANT HEALTH EMERGENCY PROGRAMS.**

None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02–062–1; 68 Fed. Reg. 40541).

Mr. BENNETT. Madam President, this amendment prohibits APHIS from requiring affected States to match emergency funding provided by the Federal Government. Many States are currently experiencing their own fiscal problems and may not have sufficient funds to provide a match. If a State is unable to provide matching funds, Federal funds would not be released to address the emergency situation under this proposed rule. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2096) was agreed to.

AMENDMENT NO. 2097

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senator INHOFE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. INHOFE, proposes an amendment numbered 2097.

The amendment is as follows:

On page 77, line 18, strike the comma and insert ''; the City of Guymon, Oklahoma; the City of Shawnee, Oklahoma; and the City of Altus, Oklahoma,''.

Mr. BENNETT. This amendment would allow three communities in the State of Oklahoma to be eligible for the Rural Community Advancement Program. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2097) was agreed to.

AMENDMENT NO. 2098

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself, and Mr. KOHL, proposes an amendment numbered 2098.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Section 601(b)(2) of the rural Electrification Act of 1936 (7 U.S.C. 950bb(b)(2) is amended to read as follows:

'(2) ELIGIBLE RURAL COMMUNITY.—The term 'eligible rural community' means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.'.''.

Mr. BENNETT. Madam President, the amendment would allow rural communities with a population of less than 20,000 people to be eligible for broadband grants and loans. This amendment has been cleared by the Senate Agriculture Committee. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2098) was agreed to.

AMENDMENT NO. 2099

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senator INOUYE and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. INOUYE, proposes an amendment numbered 2099.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Notwithstanding any other provision of law, for all activities under programs of the Rural Development Mission Area within the County of Honolulu, Hawaii, the Secretary may designate any portion of the county as a rural area or eligible rural community that the Secretary determines is not urban in character.''.

Mr. BENNETT. The amendment allows the Secretary of Agriculture to designate any portion of Honolulu County as a rural area for purposes of programs under the rural development mission area. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2099) was agreed to.

AMENDMENT NO. 2100

Mr. BENNETT. I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself, and Mr. KOHL, proposes an amendment numbered 2100.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . The first sentence of section 306(g)(1) of the National Housing Act (12 U.S.C. 1721(g)(1)) is amended—

''(1) by striking 'or title V of the Housing Act of 1949'; and

''(2) by inserting after '1944' the following: ', title V of the Housing Act of 1949,'.''.

Mr. BENNETT. The amendment would allow the Government National Mortgage Association, Ginnie Mae, to join other financial institutions in participating in the Multifamily Housing Guarantee Program. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to amendment.

The amendment (No. 2100) was agreed to.

AMENDMENT NO. 2101

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. KOHL, proposes an amendment numbered 2101.

The amendment is as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Notwithstanding the provisions of the Consolidated Farm and Rural Development Act (including the associated regulations) governing the Community Facilities Program, the Secretary shall allow all Community Facility Program facility borrowers and grantees to enter into contracts with not-for-profit third parties for services consistent with the requirements of the Program, grant, and/or loan: *Provided*, That the contracts protect the interests of the Government regarding cost, liability, maintenance, and administrative fees.''.

Mr. BENNETT. This amendment would allow a small town which does not have sufficient internal resources to utilize an outside not-for-profit party to perform the service for which the grant was made. For instance, if a community received a grant for a childcare facility, the community could contract with a third party to provide the childcare.

I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2101) was agreed to.

AMENDMENT NO. 2102

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senator BROWNBACK and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. BROWNBACK, proposes an amendment numbered 2102.

The amendment is as follows:

On page 72, line 20, after the word ''Utah'' insert the following: '', and four flood control structures in Marmaton, Kansas''.

Mr. BENNETT. This amendment adds four flood control structures in Kansas to the list of projects which may receive financial and technical assistance through the Watershed and Flood Prevention Operations Program. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2102) was agreed to.

AMENDMENT NO. 2103

Mr. BENNETT. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT] proposes an amendment numbered 2103.

The amendment is as follows:

On page 42, line 1, insert ''Utah,'' after ''Mississippi,''.''.

Mr. BENNETT. This amendment adds the State of Utah to the list of States in which a processing worker demonstration pilot project is to be initiated. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2103) was agreed to.

AMENDMENT NO. 2104

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of myself and Senator KOHL and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for himself, and Mr. KOHL, proposes an amendment numbered 2104.

The amendment is as follows:

On page 74, line 7, insert ''(a)'' before the word ''Notwithstanding'' and on line 15 insert the following new subsection:

''(b) The Secretary shall publish a proposed rule to carry out Section 313A of the Rural Electrification Act of 1936 within 60 days of enactment of this Act.''.

Mr. BENNETT. This amendment directs the Secretary to move forward with the implementation of the Rural Economic Development Loan and Grant Program authorized in the 2002 farm bill. I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2104) was agreed to.

AMENDMENT NO. 2105

Mr. BENNETT. Madam President, I send an amendment to the desk on behalf of Senators GRASSLEY and DORGAN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. GRASSLEY, and Mr. DORGAN, proposes an amendment numbered 2105.

The amendment is as follows:

(Purpose: To limit payments under the environmental quality incentives program)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. EQIP PAYMENT LIMIT.**

None of the funds made available under this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out chapter 4 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) to make payments to an individual, entity, or agricultural operation, directly or indirectly, in excess of an aggregate of $300,000 for all contracts entered into by the individual, entity, or agricultural operation during the period of fiscal years 2002 through 2007.

Mr. BENNETT. Madam President, in recognition that this is the last one of this stack, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2105) was agreed to.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from North Dakota.

Mr. DORGAN. I wonder if the Senator from Utah will yield for a question.

Mr. BENNETT. I would be happy to yield.

Mr. DORGAN. I am not certain exactly what the status of the bill is. I know we have been working on it all day. My understanding is that we have had the last vote of the day so that may suggest that other amendments will not be offered, or certainly not voted on. I did want to inquire of the Senator from Utah about his plans for this bill.

I have a sense-of-the-Senate amendment that deals with the importation of live cattle from Canada. As my colleagues know, last week the Secretary of Agriculture took some action to put Canada on a minimum risk category. This is a country within the last 6 or 8 months that has had one case of mad cow disease. I am very concerned about that, and I want to offer a sense-of-the-Senate amendment dealing with the importation of live cattle from Canada and my concerns about that.

I would certainly be available to do that in the morning or at a time appropriate. I wanted to inquire what the Senator anticipates may happen on this legislation this evening.

Mr. BENNETT. Mr. President, I say to the Senator and to all Senators that I was prepared to go on further tonight but I have been informed that no amendments will be offered tonight. Therefore, no more debate and certainly no more votes. I would be happy to welcome the amendment from the Senator when he is prepared to offer it. It is certainly my intention to go forward tomorrow. I hope the decision not to offer any amendments tonight will be lifted by tomorrow and that we will have amendments before us and therefore items to debate and vote on.

Mr. DORGAN. Mr. President, if the Senator would yield further for an inquiry.

I have worked with the Senator from Utah as a ranking member when he chaired the subcommittee. He is easy to work with and I know we will be able to work with the Senator from Utah and the Senator from Wisconsin on this issue.

Especially in the last week or so, I have been immensely concerned about this issue of the importation of live cattle from Canada, only because the circumstances of live cattle coming across borders from a country in which there has been a case of mad cow disease is a very difficult situation. We want to be very careful about our country's beef herd and the potential devastation to that herd were we to have an outbreak or a case of mad cow disease.

We belong to an organization called the Office of International Des Epizooties, which establishes the guidelines that our country and others follow with respect to animal health. I want to talk about that at some length and then offer the sense-of-the-Senate resolution because I think all of us ought to be very concerned about when and how we decide to take action with respect to the import of live cattle from Canada.

Finally, I might say I regret Canada has suffered this problem. It is a devastating problem for them to have had a mad cow case, but we ought to be very concerned and very careful about our beef herd in this country, and my amendment will address that subject.

I thank the Senator from Utah for his courtesy.

Mr. BENNETT. Mr. President, I say to the Senator, if he wanted to offer that amendment tonight and debate it tonight, certainly that would be very much in order. It has been made very clear there will be no further votes tonight.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I ask unanimous consent to speak for a period not exceeding 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. CORNYN pertaining to the introduction of S.J. Res. 23 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

AMENDMENT NO. 2106

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of Senator CRAIG.

The PRESIDING OFFICER. The clerk will report.

The assistant clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. CRAIG, proposes an amendment numbered 2106.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To facilitate cooperative agreements for wildlife services programs of the Animal and Plant Health Inspection Service of the Department of Agriculture)

At the appropriate place insert the following:

Notwithstanding any other provision of law, the Secretary of Agriculture may use appropriations available to the Secretary for activities authorized under 7 U.S.C. 426–426c, under this or any other Act, to enter into cooperative agreements, with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, to lease aircraft if the Secretary determines that the objectives of the agreement will: (1) serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Animal Plant Health Inspection Service, Wildlife Service; and (2) all parties will contribute resources to the accomplishment of these objectives; award of a cooperative agreement authorized by the Secretary may be made for an initial term not to exceed 5 years.

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2106) was agreed to.

AMENDMENT NO. 2107

Mr. BENNETT. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. GRAHAM of Florida, and Mr. NELSON of Florida, proposes an amendment numbered 2107.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To make a technical amendment to ensure that assistance is provided for tree replacement for losses due to citrus canker)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. CITRUS CANKER ASSISTANCE.**

Section 211 of the Agricultural Assistance Act of 2003 (117 Stat. 545) is amended—

(1) in the section heading, by inserting ''**TREE REPLACEMENT AND**'' after ''**FOR**''; and

(2) in subsection (a), by inserting ''tree replacement and'' after ''Florida for''.

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2107) was agreed to.

AMENDMENT NO. 2108

Mr. BENNETT. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. BURNS, and Mrs. CLINTON, proposes an amendment numbered 2108.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To permit the use of certain unoblogated carryover funds to carry out the 911 access loan program)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. RURAL ELECTRIFICATION.**

For fiscal year 2004, the Secretary of Agriculture may use any unobligated carryover funds made available for any program administered by the Rural Utilities Service (not including funds made available under the heading ''RURAL COMMUNITY ADVANCEMENT PROGRAM'' in any Act of appropriation) to carry out section 315 of the Rural Electrification Act of 1936 (7 U.S.C. 940e).

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2108) was agreed to.

AMENDMENT NO. 2109

Mr. BENNETT. Mr. President, I call up an amendment which is at the desk on behalf of Senator DURBIN.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. DURBIN, proposes an amendment numbered 2109.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To insert a provision relating to funding the processing of comments in response to a Federal Register item concerning ephedra)

At the appropriate place, insert the following:

SEC. . The Commissioner of the Food and Drug Administration shall provide no less than $250,000, from within funds appropriated or otherwise made available in this Act for the Food and Drug Administration, to process comments submitted in response to Docket No. 95N–0304 published in the Federal Register on March 5, 2003 (68 FR 10417). Provided further, the Commission should expedite and complete review of available scientific evidence of ephedra's pharmacology and mechanism of action.

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2109) was agreed to.

AMENDMENT NO. 2110

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of Senator SCHUMER.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. SCHUMER, proposes an amendment numbered 2110.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To ensure that amounts are made available for the generic drugs program)

On page 57, line 4, insert ''and of which no less than $52,845,000 shall be available for the generic drugs program'' before the semicolon.

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2110) was agreed to.

AMENDMENT NO. 2111

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of Senator MILLER.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. MILLER, proposes an amendment numbered 2111.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To restrict the expenditure of funds for the salary of the Under Secretary for Farm and Foreign Agricultural Services)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. WORKLOAD ANALYSIS OF FARM SERVICE AGENCY.**

None of the funds made available by this Act may be used to pay more than ½ of the salary of the Under Secretary for Farm and Foreign Agricultural Services after January 31, 2004, unless and until the Secretary of Agriculture provides to the Committee on Agriculture of House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a workload analysis of employees of the Farm Service Agency for each of fiscal years 2001, 2002, and 2003 (including an analysis of the number of workload items and required man-years, by State).

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2111) was agreed to.

AMENDMENT NO. 2112

Mr. BENNETT. Mr. President, I send an amendment to the desk on behalf of Senators FRIST and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST and Mr. DASCHLE, proposes an amendment numbered 2112.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require the Secretary of Agriculture to establish university-based research, extension, and educational programs to implement biobased energy technologies, products, and economic diversification in rural areas of the United States)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. SUN GRANT RESEARCH INITIATIVE.**

(a) SHORT TITLE.—This section may be cited as the ''Sun Grant Research Initiative Act of 2003''.

(b) RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.—Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding at the end the following:

**''SEC. 9011. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.**

''(a) PURPOSES.—The purposes of the programs established under this section are—

''(1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

''(2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

''(3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

''(4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration between the Department of Agriculture, the Department of Energy, and the land-grant colleges and universities.

''(b) DEFINITIONS.—In this section:

''(1) LAND-GRANT COLLEGES AND UNIVERSITIES.—The term 'land-grant colleges and universities' means—

''(A) 1862 Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

''(B) 1890 Institutions (as defined in section 2 of that Act) and West Virginia State College; and

''(C) 1994 Institutions (as defined in section 2 of that Act).

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

''(c) ESTABLISHMENT.—To carry out the purposes described in subsection (a), the Secretary shall establish programs under which—

''(1) the Secretary shall provide grants to sun grant centers specified in subsection (d); and

''(2) the sun grant centers shall use the grants in accordance with this section.

''(d) GRANTS TO CENTERS.—The Secretary shall use amounts made available for a fiscal year under subsection (j) to provide a grants in equal amounts to each of the following sun grant centers:

''(1) NORTH-CENTRAL CENTER.—A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

''(2) SOUTHEASTERN CENTER.—A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

''(A) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

''(B) the Commonwealth of Puerto Rico; and

''(C) the United States Virgin Islands.

''(3) SOUTH-CENTRAL CENTER.—A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

''(4) WESTERN CENTER.—A western sun grant center at Oregon State University for the region composed of—

''(A) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

''(B) territories and possessions of the United States (other than the territories referred to in subparagraphs (B) and (C) of paragraph (2)).

''(5) NORTHEASTERN CENTER.—A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

''(e) USE OF FUNDS.—

''(1) CENTERS OF EXCELLENCE.—Of the amount of funds that are made available for a fiscal year to a sun grant center under subsection (d), the center shall use not more than 25 percent of the amount for administration to support excellence in science, engineering, and economics at the center to promote the purposes described in subsection (a) through the State agricultural experiment station, cooperative extension services, and relevant educational programs of the university.

''(2) GRANTS TO LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(A) IN GENERAL.—The sun grant center established for a region shall use the funds that remain available for a fiscal year after expenditures made under paragraph (1) to provide competitive grants to land-grant colleges and universities in the region of the sun grant center to conduct, consistent with the purposes described in subsection (a), multiinstitutional and multistate—

''(i) research, extension, and educational programs on technology development; and

''(ii) integrated research, extension, and educational programs on technology implementation.

''(B) PROGRAMS.—Of the amount of funds that are used to provide grants for a fiscal year under subparagraph (A), the center shall use—

''(i) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(i); and

''(ii) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(ii).

''(3) INDIRECT COSTS.—A sun grant center may not recover the indirect costs of making grants under paragraph (2) to other land-grant colleges and universities.

''(f) PLAN.—

''(1) IN GENERAL.—Subject to the availability of funds under subsection (j), in cooperation with other land-grant colleges and universities and private industry in accordance with paragraph (2), the sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for addressing at the State and regional levels the bioenergy, biomass, and gasification research priorities of the Department of Agriculture and the Department of Energy for the making of grants under paragraphs (1) and (2) of subsection (e).

''(2) GASIFICATION COORDINATION.—

''(A) IN GENERAL.—In developing the plan under paragraph (1) with respect to gasification research, the sun grant centers identified in paragraphs (1) and (2) of subsection (d) shall coordinate with land grant colleges and universities in their respective regions that have ongoing research activities with respect to the research.

''(B) FUNDING.—Funds made available under subsection (d) to the sun grant center identified in subsection (e)(2) shall be available to carry out planning coordination under paragraph (1) of this subsection.

''(g) GRANTS TO OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(1) PRIORITY FOR GRANTS.—In making grants under subsection (e)(2), a sun grant center shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (f).

''(2) TERM OF GRANTS.—The term of a grant provided by a sun grant center under subsection (e)(2) shall not exceed 5 years.

''(h) GRANT INFORMATION ANALYSIS CENTER.—The sun grant centers shall maintain a Sun Grant Information Analysis Center at the sun grant center specified in subsection (d)(1) to provide sun grant centers analysis and data management support.

''(i) ANNUAL REPORTS.—Not later than 90 days after the end of a year for which a sun grant center receives a grant under subsection (d), the sun grant center shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center during the year, including a description of progress made in facilitating the priorities described in subsection (f).

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $25,000,000 for fiscal year 2005;

''(B) $50,000,000 for fiscal year 2006; and

''(C) $75,000,000 for each of fiscal years 2007 through 2010.

''(2) GRANT INFORAMTION ANALYSIS CENTER.—Of amounts made available under paragraph (1), not more than $4,000,000 for each fiscal year shall be made available to carry out subsection (h).''.

Mr. DASCHLE. Mr. President, today Senator FRIST and I are offering an amendment to authorize a new program that we call the Sun Grant Initiative. The Sun Grant Initiative—or SGI—is an effort to provide an innovative approach to creating new biobased products and markets for farmers, thereby enhancing the environment and developing new industries in our Nation's rural communities.

The SGI would establish five Sun Grant Centers across the Nation to stimulate needed research and development projects, while providing leadership and coordination for a regional competitive grant program that will address national research issues and educational needs at the regional and local levels. This new program will provide a much-needed bridge between our Government's current national research efforts and the State-based research education networks of the Land-Grant universities. The SGI will forge a new partnership between the national leadership and energy expertise of the

Federal Government and the agricultural and rural community development expertise of the Agricultural Experiment Stations and the Cooperative Extension System.

The United States has steadily increased its reliance on imported oil. Alternative sources of energy and industrial chemicals must be developed as soon as possible. The Sun Grant Initiative will stimulate the production of bioenergy resources to complement and augment petroleum energy resources, while helping to reduce our dependence on imported oil and constrain energy costs for American industries and consumers.

Additionally, American farmers need new products and viable market alternatives. Sun Grant research, development and education programs will stimulate the development bioenergy and bioproducts on American farms, creating an opportunity for an additional, significant source of income to farmers. The SGI will encourage new biobased industries and new capital investments, stimulating the economies of these rural communities.

I want to thank Senator FRIST, Chairman BENNETT, and Senators KOHL, COCHRAN, HARKIN and SMITH for their support of this innovative and exciting effort to build a biobased economy that can assist our Nation in so many ways.

Mr. BENNETT. Mr. President, I ask for a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2112) was agreed to.

AMENDMENT NO. 2090

Mr. BENNETT. Mr. President, I call up amendment No. 2090.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT] for Mr. HATCH, Mr. HARKIN, and Mr. DURBIN, proposes an amendment numbered 2090.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To specify a minimum level of funding for regulation of dietary supplements)

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. DIETARY SUPPLEMENTS.**

The Commissioner of Food and Drugs shall provide not less than $11,400,000 from within funds appropriated or otherwise made available by this Act for regulation by the Food and Drug Administration of dietary supplements.

Mr. HATCH. Mr. President, I thank the managers, Chairman BENNETT and Senator KOHL, for agreeing to the amendment that Senators HARKIN, DURBIN and I offer today.

The purpose of our amendment is simple. The Food and Drug Administration has advised us that, in fiscal year 2004, it will spend $10.4 million to regulate dietary supplements. The Hatch-Harkin-Durbin amendment would increase those activities by 10 percent, or $1 million.

Let me explain why this amendment is necessary. First, I will explain the pertinent law that the FDA administers.

There is no question that tens of millions of Americans rely daily on safe dietary supplements to maintain and improve their healthy lifestyles. The popularity of these products and the concern over their regulation are what led to enactment of the Dietary Supplement Health and Education Act, DSHEA, in 1994, a bill that Senator HARKIN and I were proud to author with now-Governor of New Mexico Bill Richardson. DSHEA is a strong law that properly implemented will protect the interests of consumers. But, as with any law, it has to be implemented for it to work.

Enactment of DSHEA followed literally decades of Food and Drug Administration animosity toward dietary supplement products. This animosity and the lack of a clear regulatory structure for supplements were clearly demonstrated prior to passage of DSHEA. That is why two-thirds of the Senate cosponsored our bill. That is why a majority of the House cosponsored the bill. And that is why it passed so overwhelmingly.

The basic structure of DSHEA allowed all products marketed as dietary supplements when the bill was enacted to stay on the market unless the FDA could show safety problems with a particular product or line of products—this is the so-called ''grandfather'' provision; manufacturers must notify the FDA before any new ingredients are marketed. At the same time, we provided the FDA with the full range of enforcement mechanisms to act against unsafe or misbranded supplements, including seizure, injunction, civil monetary penalties and even criminal penalties.

When Chairman DINGELL and Chairman WAXMAN expressed lingering concerns that an unsafe product might be marketed and FDA would not have adequate authority to act against it, we added a new tool—imminent hazard—so that the Secretary could take immediate action against a product that he believed poses an imminent hazard to public health. I might add, the definition as to what constitutes an ''imminent hazard'' is entirely up to the Department of Health and Human Services, so this is a very broad authority.

Even so, there are some who believe that dietary supplements should not be marketed in the United States without a preclearance similar to that for pharmaceuticals. We who drafted and passed DSHEA along with millions of Americans were persuaded that was not necessary.

First, most supplements cannot be patented, so there is little incentive for manufacturers to undergo the expensive and time-consuming FDA approval process.

Second, many supplements have been used safely for literally centuries, if not millennia, so it is not necessary to subject them to the approval process. That was why even the most liberal members felt comfortable with the grandfather structure.

Finally, we added a provision so that FDA would have the time to examine any ingredient not previously marketed and the evidence of its safety before that product actually reached the stores.

When we drafted DSHEA, ensuring the safety of products was at the forefront of our efforts. The law gives the FDA abundant tools to remove products that are unsafe from the market. It includes a safety standard that was carefully crafted with Senator KENNEDY and Representatives DINGELL and WAXMAN, the chairs of FDA-related panels in 1994.

There is no excuse for a supplement manufacturer to market products that are unsafe or inaccurately labeled or that make outlandish claims. Unfortunately, a small number of irresponsible supplement companies are taking advantage of consumers. I contend that the law is adequate to deal with them if FDA implements and enforces it. So, we come to the purpose of our amendment.

In the nine-plus years since DSHEA was enacted, there has been too much talk that the law handcuffs FDA and too little effort to apply the law.

It is impossible for this law to protect consumers if it is not enforced.

I am not here to criticize the FDA or throw barbs. Frankly, the FDA under Commissioner Mark McClellan has done more to enforce DSHEA than the previous administration had. I credit Commissioner McClellan for his commitment to implement the law fully. I truly believe he wants to make this law work. Congress must support him.

That is why I have joined with Senator HARKIN to introduce the DSHEA Full Implementation and Enforcement Act of 2003, S. 1538. And that is why we are offering this amendment today, which we consider to be a down payment on S. 1538.

Yes, there is a small number of products that do raise serious concerns. Ephedra is one. As I have done for many years, I urge the FDA to act definitively on this issue based on the best available science, not politics. If the agency deems that ephedra poses a significant or unreasonable risk of illness or injury when used as labeled, than the agency can and must move to take the product off the market. This has gone on for too long. That is the reason I am happy to cosponsor the companion amendment offered by Senator DURBIN.

Earlier this year, the FDA advised me it had received 3,000 comments and 12,000 letters in response to the agency's proposed rule-making on ephedra.

This has obviously placed a burden on this tiny agency, which needs funding to complete the job it has undertaken.

Indeed, as this example shows, the fight for resources is a huge challenge for FDA. The FDA simply does not have the staff or money it needs to do the job. In short, the agency is woefully underfunded, especially when it comes to dietary supplement regulation. That is the only reason I can see that the safety standard we enacted has never been invoked. That has to be the reason that it has taken almost a decade to promulgate the good manufacturing practice standards that can help guarantee the safety, the purity, and the accurate labeling of products. And that must be the reason that a product like androstenedione, which I believe is not even a dietary supplement, continues to be marketed in this country.

I have been very concerned about the safety of steroid precursor products like andro—and especially when they fall into the hands of our youth.

That is why I have joined with Senator BIDEN, Senator HARKIN and Senator GRASSLEY to cosponsor the Anabolic Steroid Control Act, S. 1780, that will add andro and other steroid precursors, as well as THG, to the list of controlled substances. I intend for the Judiciary Committee to make adoption of S. 1780 a priority, and I hope my colleagues will join me in supporting both S. 1780 and S. 1538.

We have a very solid dietary supplement law that can deal with problems that arise. But, the FDA must use that law for it to be effective, and Congress must support the agency in that effort.

Mr. BENNETT. Mr. President, I ask for a voice vote.

This language has been cleared by both sides.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2090) was agreed to.

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

BEAVER CONTROL COST-SHARE PROGRAM IN MAINE

Ms. SNOWE. Mr. President, I rise today to engage in a colloquy with the distinguished chairman of the Agriculture Appropriations Subcommittee. As the chairman of this subcommittee, my good friend from Utah is no doubt aware of the important role that wildlife services provided by the Animal and Plant Health Inspection Service (APHIS) have in managing and protecting wildlife. I am pleased that the subcommittee maintained funding for these operations as many States, including my own, depend on the cooperative efforts of the Federal Government to meet the growing demands for wildlife services. Given the need for beaver management in my State, I would ask the Chairman to work to have APHIS continue providing cooperative beaver management services in Maine.

The State's Cooperative Beaver Management Program (CBMP) was established in 1995 by Maine Wildlife Services as a cooperative effort between State, Federal, and local governments to provide services to landholders, the Maine Department of Transportation, towns and municipalities who are experiencing problems caused by beavers. With the cost-share agreement between the State and APHIS, CBMP has been able to mitigate beaver related property, road, water, and environmental damage.

A reduction in cost share assistance to Maine would have a severe impact on many of the State's public resources and roadways. Beaver-flooded roadways endanger the driving public while beaver-flooded sewer and septic systems create a health hazard as well as incur significant repair expenses. In addition to helping avoid costly repairs to our public infrastructure, cost-share assistance to the CBMP can reduce damage to private logging roads that are important to the forest products based local economies. It reduces environmental damage, such as erosion, sedimentation, and habitat degradation, caused by road wash-outs.

The State of Maine reports that the CBMP provides significant benefits to the public in a very effective way. For example, in fiscal year 2002 CBMP activities prevented the loss of, or damage to, $1.3 million in resources. For the driving public, the benefits are particularly significant. The program saved $500,000 in roadway repair costs by alleviating flooded roads and rights-of way along the interstate and other State maintained highways. Comparing the cost of the program to the value of resources saved gives a cost-benefit ratio of 1 to 10. In other words, for every dollar spent, ten dollars were saved over the long-term.

Ever since the creation of the CBMP in 1995, funding has remained level. Under this agreement Maine has received $75,000 annually. In recent years, however, demand for CBMP services has outstripped program funding thereby limiting the State's ability to prevent property damage and threats to human health and safety. Additionally, the State is concerned that highway safety is being compromised because of flooding caused by beaver dams.

I recognize that the subcommittee has worked to maintain APHIS wildlife services in the face of budget limitations. I appreciate the chairman's effort to continue this program and thank the chairman for considering options to address the unique beaver management needs in Maine.

Mr. BENNETT. I thank the distinguished Senator from Maine for bringing this issue to my attention. It is evident that the funding used for Maine's Cooperative Beaver Management Program has been used wisely. I expect APHIS to continue its cooperative wildlife agreements with the funding provided by the fiscal year 2004 Agriculture appropriations bill, and I will work in conference to see that these funds continue to be available for the State of Maine.

IMPROVING EMERGENCY COMMUNICATIONS SYSTEMS

Mr. BURNS. Mr. President, the Farm Security and Rural Investment Act of 2002 added new a new provision of the Rural Electrification Act giving the Rural Utilities Service, (RUS), Administrator the authority to make loans ''to expand or improve 911 access and integrated emergency communications systems in rural areas.''

This new provision was in response to the pressing need in rural America to upgrade and improve the ability to communicate in times of individual and mass emergencies.

In the wake of 9/11 there is no higher telecommunications priority than to ensure that communications systems work best when they are needed most.

Senator CLINTON and I proposed the emergency communications provision in the Agriculture Appropriations bill to give life to that new section of the Rural Electrification Act.

Mrs. CLINTON. I am pleased to join the Senator from Montana in this initiative. Last week the Federal Communications Commission held a two day meeting on their E–911 Initiative. One issue that requires both attention and resources is access to modern emergency communications in rural areas. I was pleased that Ed Cameron represented the Rural Utilities Service at that meeting and reminded the participants of the long partnership the agency has had with rural telephone consumers and carriers and the commitment Administrator Hilda Gay Legg has to improving safety in rural areas.

Mr. BURNS. The Rural Utilities Service, through its talented staff of engineers, operations specialists can play an important role in ensuring that emergency responders can communicate in rural and remote areas.

The Burns-Clinton provision in this appropriations bill would not increase or decrease spending, but would give the administrator of the RUS the flexibility to use funding from several sources within the agency to give emergency communications projects in rural areas the high priority they deserve. It also gives the RUS Administrator a source of loan funds which compliment the grant funds available for emergency communications systems in the Community Facilities program.

Mrs. CLINTON. It is our intent that this funding flexibility not come at the expense of other worthy RUS loan or grant programs.

Mr. BURNS. That is correct. At any given time, there are authorities which are oversubscribed and others which are undersubscribed. This provision gives the Administrator flexibility to use underutilized funds for this high priority purpose.

As a member of the Agriculture Appropriations Committee, I will seek Conference report language to clarify that funding would be available to current and prospective RUS borrowers and that a wide range of projects be eligible for funding including 911 upgrades, broad emergency communications initiatives, statewide emergency communications projects which include rural areas and projects that provide a dual public safety and commercial uses.

Mrs. CLINTON. I strongly support the Senator's effort in this regard. As States and localities in rural parts of New York, Montana and across the country struggle to find sufficient funds to upgrade public safety radio and data systems, there are new opportunities to combine public safety needs with commercial efforts to deploy new wireless and broadband networks. These dual use networks also have the advantage of generating revenues which can be used to pay back loans under this section while bringing advanced voice and data capabilities to rural areas. As my colleague from Montana and I both know through our efforts with the Congressional E–911 Caucus, these funds would represent just a first step in the direction of ensuring deployment of a ubiquitous 911 system across our country.

Mr. BURNS. The emergency communications amendment will help ensure that rural America does not fall on the wrong side of a public safety divide.

NRCS CLARIFICATIONS

Mr. COCHRAN. Mr. President, I would like to thank my distinguished colleague, the chairman of the Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies, Senator BENNETT, for his outstanding work on the fiscal year 2004 Agriculture Appropriations bill.

I would also like to take the opportunity to clarify three provisions that it contains. Upon reviewing the bill I wish to bring to your attention three changes I hope can be incorporated in the statement of managers. First, I request that two separate projects, described as Old Canton Road and Watkins Drive in the current bill, be combined to include the same overall funding amount and read as follows: ''The Conference agreement provides $350,000 for erosion control and drainage improvements in Hinds County, Mississippi.'' Second, I request that reference to a specific floodwater retarding structure be removed from language regarding Town Creek in Tupelo, MS, and that the statement of managers read as follows: ''The Conference agreement provides funds for the agency to continue assistance for the Town Creek in Lee County, Mississippi.'' Finally, I request that funding for Oaklimeter Watershed, as provided through the Conservation Operations section of the bill, be provided instead through the Watershed and Flood Control section.

I would ask that the chairman work to incorporate these changes to this bill.

Mr. BENNETT. Mr. President, I appreciate my colleague from Mississippi bringing these changes to my attention and will work with him to incorporate them in the statement of managers.

Mr. COCHRAN. I thank the Chairman for his assistance in clarifying these issues and for his leadership as we complete work on this bill.

ANIMAL FIGHTING

Mr. ALLARD. Mr. Chairman, I appreciate your help addressing a long-standing concern of mine—the need for greater enforcement by USDA of the Federal law regarding animal fighting. Earlier this year, I and many of our colleagues—a bipartisan group of 38 other Senators—requested $800,000 to enable USDA's Office of Inspector General to focus on strengthening enforcement of the Federal animal fighting law. I am grateful that you were able, in the committee report, to include this $800,000 for the OIG to improve enforcement in this area.

However, I did want to ask the chairman for a bit of clarification on this item, as it was included in the committee report. I noted that the report provides ''an increase of $800,000 for OIG to address violations of the Animal Welfare Act and to coordinate with State and local law enforcement personnel in this effort.'' Would the chairman be willing to clarify that this funding would be used specifically to improve enforcement of Section 26 of the Animal Welfare Act, which deals exclusively with animal fighting, rather than having these funds used to enforce the entire Animal Welfare Act? This clarification could be finalized in conference.

Mr. BENNETT. Yes, I will work with the House of Representatives during conference negotiations to ensure that the $800,000 is provided to address animal fighting.

Mr. ALLARD. Senator KOHL, is it your intention as well that this funding would be used specifically to improve enforcement of Section 26 of the Animal Welfare Act?

Mr. KOHL. Yes. I agree with what Chairman BENNETT has said regarding the committee's intentions, and will work with him to make sure this is clear in the final bill.

Mr. ALLARD. I'm grateful to both of you for your help and leadership on this issue.

NUTRITION ASSISTANCE PROGRAM

Mr. KOHL. I would like to engage in a brief colloquy with the distinguished chairman to clarify the intent of language included in the Senate report regarding studies and evaluations in the Nutrition Programs Administration account. In our Senate report, we have included language stating that the committee is providing $3,195,000, the same as the fiscal year 2003 level, for studies and evaluations in the Nutrition Programs Administration Account.

I have since been contacted by USDA noting that the $3,195,000 provided in fiscal year 2003 was actually an increase over their base funding. Therefore, the question becomes whether our intent was simply to maintain $3,195,000 in funding for studies and evaluations, or to maintain the $3,195,000 increase provided in fiscal year 2003. It is may belief that our intention was to maintain the increase, and while I believe we should clarify this in the Statement of Managers during conference negotiations, I also wanted to mention it during our Senate debate.

Is it your understanding that it was our intention to maintain the increase in funding provided in this account?

Mr. BENNETT. I appreciate you bringing this to my attention and I agree our intention was to maintain increased funding for studies and evaluations.

RUS TELEMEDICINE LANGUAGE

Mr. COCHRAN. Mr. President, I would like to thank my distinguished colleague, the chairman of the Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies, Senator BENNETT, for his outstanding work on the FY 2004 Agriculture Appropriations bill.

Upon review of the bill, I request that the following language be included in the statement of the managers:

The conferees are aware of and encourage the Secretary to support the utilization of remote telemedicine services capable of transmitting medical information in both real-time and stored scenarios for diagnosis, medical monitoring and emergency purposes. Furthermore, the conferees recognize the need for integration and interoperability of real-time remote mobile medical technology with other devices, systems and services which together offer increased capabilities, functionality, and levels of care.

I would ask that the Chairman work to incorporate this language in the bill.

Mr. BENNETT. Mr. President, I appreciate my colleague from Mississippi bringing this language to my attention and will work with him to incorporate it in the statement of the managers.

Mr. COCHRAN. I thank the Chairman for his assistance with this language and for his leadership as we complete work on this bill.

NATIONAL AGRICULTURE STATISTICS SERVICE POTATO PRICING SURVEY

Mr. CRAIG. Mr. President, I would like to engage in a colloquy with the chairman and ranking member of the Appropriations Subcommittee on Agriculture, Rural Development, and Related Agencies regarding the National Agricultural Statistics Service—NASS—and the potato size and grade survey.

The NASS provides critical information to growers, processors, shippers, and all other segments of the agricultural industry. Its history of doing so reaches back to the Presidency of Abraham Lincoln and travels forward in time to the present, where those in the agricultural industry now rely heavily on information for planting and pricing decisions.

Of great importance to my State and others is the information NASS provides regarding the potato size and grade survey. The intent of this survey is to provide all market participants with comprehensive potato size and grade data. These data are crucial information to both potato growers and buyers in estimating the current potato crop's quality. This unbiased information will be used by all parties when negotiating sale or purchase contracts of processing potatoes.

The National Potato Council—NPC, which represents all segments of the potato industry, has identified that these data are imperative to the orderly marketing of the annual potato crop. These data also ensure no one group uses their market position to distort the true picture of annual crop quality. The size and grade data will complement the annual production data already provided by NASS and supply the necessary information for the orderly marketing of the potato crop.

Given the importance of the potato industry to the United States, I wish to add language to the fiscal year 2004 Agriculture Appropriations Act that simply asks the NASS to continue its work on the potato size and grade survey within the available funds of the agency.

I would ask the chairman and ranking member, given the subcommittee's continued support for NASS, whether it is also the Committee's intent to continue the vital work of this survey?

Mr. BENNETT. I understand the Senator's interest in this important survey. The Senator is correct that the committee intends that the Department maintain this important work. We will continue to work with the Senator in this area as this bill moves forward.

Mr. KOHL. I appreciate the Senator's comments and agree that this work merits appropriate emphasis in our upcoming conference on Agriculture appropriations.

ALKALINE DIGESTER

Mr. ROBERTS. Mr. President, I would like to engage my good friend and colleague Senator BENNETT, the distinguished chairman of the Senate Agriculture Appropriations Subcommittee, in a colloquy regarding funding for an alkaline digester for Kansas State University. This digester will be used to conduct important animal disease research to protect the United States from an agroterrorist attack.

Mr. BENNETT. I would be pleased.

Mr. ROBERTS. The published committee report for this legislation indicates that $225,000 has been provided for the digester. However, I understand this is typographical error and the Committee has actually provided $1 million. Is that correct?

Mr. BENNETT. That is correct.

Mr. ROBERTS. I thank the Chairman for his support.

ALLIANCE FOR FOOD PROTECTION

Mr. CHAMBLISS. I thank the Chairman for your hard work on this appropriations bill. I would like to bring to your attention a Cooperative State Research, Education and Extension Service project that is funded in the fiscal year 2004 Agriculture Appropriations bill, the Alliance for Food Protection. At the time which the Subcommittee on Agriculture Appropriations marked up the fiscal year 2004 bill, I had not been notified that the work on this project had been completed.

Mr. BENNETT. How does the Senator from Georgia wish to proceed since $268,000 has been designated in this bill for the Alliance for Food Protection project?

Mr. CHAMBLISS. My intention, with the Chairman's approval, of course, would be to move the funding designated for the Alliance for Food Protection project to the Cooperative State Research, Education and Extension Service Integrated Fruit and Vegetable research project which is in Cooperation with the University of Georgia Cooperative Extension Service.

Mr. BENNETT. I thank the Senator from Georgia for his explanation, and I will be happy to work with him during conference to address his concerns.

Mr. CHAMBLISS. I appreciate the Chairman's cooperation with my request.

RELOCATING THE WILDLIFE HABITAT MANAGEMENT INSTITUTE

Mr. COCHRAN. Mr. President, it is my understanding that the provisions in the Agriculture appropriations bill before the Senate would in no way affect the proposed reorganization of the Natural Resources Conservation Service's field laboratory structure. Does the Senator from Utah agree with that interpretation?

Mr. BENNETT. That is my understanding as well.

Mr. COCHRAN. Is the Senator aware that the Wildlife Habitat Management Institute, an NRCS facility in Jackson, MS, is unique among NRCS facilities in that it is a ''virtual institute'' which draws on staff from all across the country to develop innovative habitat management recommendations for landowners?

Mr. BENNETT. I was not.

Mr. COCHRAN. Would the Senator agree that relocating this Institute, given its unique organization and the dispersion of its staff, would not yield significant savings or efficiency?

Mr. BENNETT. I agree.

Mr. COCHRAN. Given this information, would it be the intent of the subcommittee that the Wildlife Habitat Management Institute remain in its current location and excluded from the reorganization?

Mr. BENNETT. That is correct.

Mr. COCHRAN. I appreciate the opportunity to discuss this with the distinguished chairman of the appropriations subcommittee.

CHRONIC WASTING DISEASE

Mr. DOMENICI. Mr. President, I appreciate the work that you have done in regard to funding for Chronic Wasting Disease (CWD). As you know, this is a fatal neurological disease of farmed and wild elk and deer that belongs to the family of diseases known as transmissible spongiform encephalopathies (TSE's). My State of New Mexico is inhabited with ample numbers of elk and deer. The elk are oftentimes harvested by hunters who get each animal tested for CWD. With that in mind, there continues to be a demand for the State to provide hunters with an accessible location that can perform the test in a timely fashion.

The State of New Mexico is a Tier I State, which means a confirmed case of CWD has been discovered and the disease is present. I am hopeful that the final version of the fiscal year 2004 Agriculture Appropriations bill will provide the opportunity for the State of New Mexico to work in collaboration with the Department of Agriculture to establish an approved CWD testing facility. The State of New Mexico has requested approval of a proposal to establish, equip, and operate a laboratory to conduct a rapid screening test for CWD in the New Mexico elk and deer population. This would be done at State expense.

Mr. BENNETT. I thank the Senator from New Mexico and will encourage the Department of Agriculture to review the current situation. If the review warrants a testing facility, I will suggest that the Department of Agriculture consider establishing a testing facility in the State of New Mexico.

NUTRICORE NORTHEAST AND GEISINGER RURAL AGING STUDY (GRAS)

Mr. SPECTER. Mr. President, I have sought recognition of the chairman of the Agriculture Appropriations Subcommittee to bring to his attention two projects that are of great importance to the Commonwealth of Pennsylvania: NutriCore Northeast and Geisinger Rural Aging Study.

Mr. BENNETT. Mr. President, I am more than willing to acknowledge my colleague from Pennsylvania with regard to his two projects.

Mr. SPECTER. NutriCore Northeast would be a self-managed and ultimately self-sustaining not-for-profit corporation existing in Pennsylvania working in a cooperative research and development agreement with the United States Department of Agriculture to provide a 50-year road map assessing progress toward a healthy and fit populace. Additionally, Geisinger Rural Aging Study is a USDA Agricultural Research Service cohort study of 21,646 rural older Pennsylvanians that would assist them with proper dietary intake as well as formulate a longitudinal nutrition database. I am hopeful that we can work together to consider these requests as you complete action on the bill.

Mr. BENNETT. I thank my distinguished colleague for bringing these important projects to my attention. While this committee is working within a very tight budget, I will give your requests all due consideration.

Mr. SPECTER. I am keenly aware of the tight budgetary constraints under which you are operating, and I appreciate whatever assistance you may be able to provide with respect to these requests.

FOOD AID PROGRAMS

Mr. ROBERTS. Mr. President, currently, USDA does not distinguish between white (food grade) sorghum and yellow feed grade sorghum in our food aid programs. Unfortunately, sorghum that is used to make animal and pet food, or used to make ethanol, is being sent to African countries where people have been eating sorghum for generations. In fact, sorghum originated in Africa. They are keenly aware of the difference between the food grade sorghum that they eat and the feed grade sorghum that is fed to cattle. It is my view that USDA should provide recipient countries with sorghum that has the food qualities and characteristics with which the people receiving the aid are familiar.

Mr. BENNETT. I understand the Senator's concern and would also like to see that USDA make that distinction.

Mr. ROBERTS. By all appearances, the demand for sorghum in our food aid will be growing in the near future. USAID has doubled the amount of sorghum programmed in food aid over the past three years. My sorghum farmers are appreciative of this fact. I think both of us want USAID and USDA to provide food aid recipients with the commodity that they want, whenever the commodity is available in the market place.

Mr. BENNETT. That is correct.

Mr. ROBERTS. I thank the chairman for his support.

ELIMINATING AVIAN INFLUENZA IN RHODE ISLAND

Mr. REED. Mr. President, I rise to engage in a colloquy with the distinghished Chairman and Ranking Member of the Agriculture Appropriations Subcommittee, as well as my colleague from Rhode Island, Senator CHAFEE, regarding the presence of Avian Influenza in Rhode Island. Since March of this year, the Rhode Island Department of Environmental Management's Division of Agriculture has been working to contain an outbreak of Low Pathogenic Avian Influenza in a poultry operation in Foster, Rhode Island, as well as a live bird market in Providence. The virus has been definitively identified as H7N2 Avian Influenza, of the same genetic sequence as the virus recently found in nearby poultry operations in Connecticut. Little Rhody Farms, the last of the traditional egg houses in Rhode Island, currently houses 32,000 hens producing brown eggs for sale in markets and food stores. Sales and distribution of eggs from the farm have declined due to customers' concerns that the produce may be tainted, and a federally imposed quarantine that has frozen the operation at half capacity. To eliminate the risk of the disease spreading further and to give the farm a greater chance to survive, state officials have strongly recommended depopulating the infected flock and disinfecting the premises. We have been unable to secure financial assistance from USDA to make depopulation possible.

I look forward to working with the Chairman and Ranking Member to include language in the fiscal year 2004 Agriculture, Rural Development, and Related Agencies Appropriations bill to direct USDA's Animal and Plant Health Inspection Service to provide assistance to Rhode Island Egg producers who have depopulated their flocks.

Mr. CHAFEE. I am grateful to my colleagues on the Appropriations Committee, Senator BENNETT and Senator KOHL, for giving us an opportunity to discuss this matter on the floor. Let me just underscore a few of the points that Senator REED has made.

First, everyone involved with this situation agrees that depopulation is the best strategy for dealing with the problem. The Rhode Island Division of Agriculture, the State Veterinarian, and the farmer favor depopulation and disinfection. And I understand that APHIS has been successful in taking this approach with poultry operations in Virginia and Texas.

Second, it is evident that without some compensation, the farm will face bankruptcy. Maintaining the viability of Rhode Island's family farms is a critical element of our efforts to preserve the state's character, as well as the natural landscape.

Third, I am told that in rare circumstances, low pathogenic forms of avian influenza can transform into high pathogenic organisms that pose serious threats to human health. Not surprisingly, the presence of avian influenza on American poultry and egg farms is a matter of grave concern to our trading partners. No one wants to give the virus and opportunity to mutate.

Given the risks associated with avian influenza and the clear evidence that the current protocol was not successful in containing the original Connecticut outbreak, I am anxious to find a solution to this problem. I thank the chairman and ranking member for working with us, and hope that language directing APHIS to provide the necessary financial assistance can be included in the bill.

Mr. BENNETT. I appreciate Senator CHAFEE and Senator REED bringing this situation in Rhode Island to the attention of the Agriculture Appropriations Subcommittee. For all of the reasons that my colleagues have raised, I agree that it makes sense to try to eradicate this organism from American poultry flocks. I look forward to working with the two Senators and the Ranking Member of the Subcommittee, Senator KOHL, to develop language that directs APHIS to play an active role in depopulating these flocks in Rhode Island.

Mr. KOHL. I rise to join Senator REED and Senator CHAFEE in expressing my concern about this outbreak of Low-Path Avian Influenza in Rhode Island. This disease has resulted in substantial losses in poultry producers in several states and, in response, Congress has previously directed APHIS to help poultry producers cover costs associated with depopulating infected flocks. I agree with the importance of doing what we can to prevent avian influenza from threatening the livelihood of poultry operations in Rhode Island and southern New England. I will work with the distinguished subcommittee chairman and try to include language in the fiscal year 2004 Agriculture, Rural Development, and Related Agencies Appropriations bill to ensure that APHIS provides assistance with depopulation of infected flocks in Rhode Island.

SOUTHERN PLAINS RANGE RESEARCH STATION

Mr. NICKLES. Mr. President, Chairman BENNETT faces many difficult funding decisions as he puts together this year's bill. I appreciate the work he has done in a challenging job. I rise today regarding the United States Department of Agriculture Southern Plains Range Research Station in Woodward, OK.

As you know, the Agricultural Research Service is currently undergoing a facility modernization at the Southern Plains Range Research Station in Woodward. I submitted a request for Phase II funding to allow the ARS to complete construction of the facility and begin realizing the benefits that this facility will bring to both the ARS and the Woodward community.

The Research Station provides economic opportunities for the citizens of Woodward, OK and contributes to USDA's mission of building a competitive agriculture economy while enhancing the natural resources base in the Southern Plains.

This funding is necessary to implement the recommendations of the recent ARS review of facility needs at SPRRS: construction of a new greenhouse, a new laboratory, an office building, and new parking structures and site upgrades. According to USDA, ''The [SPRRS] laboratories are in dire need of repair and renovation.'' This modernization is necessary for SPRRS to employ cutting-edge techniques and procedures in rangeland and pasture research.

It is my hope that you will work with me to provide the funds necessary to complete construction at the USDA Southern Plains Range Research Station in Woodward, OK.

Mr. BENNETT. I appreciate my colleague's comments and the opportunity to discuss the USDA Southern Plains Range Research Station. I am aware of this project's importance to Oklahoma and the Oklahoma delegation. My colleague is uniquely aware of the constraints of the budget we must work within, and of the many areas in need of funding. I look forward to working with my colleague to address the issue of funding for Phase II of construction

at the Southern Plains Range Research Station in Woodward.

Mr. NICKLES. I appreciate the difficult challenges that the Chairman is facing as he puts together the FY 2004 Agriculture Appropriations bill. I thank him for his attention to this very important need and for his willingness to work with me to address this issue.

Mr. KENNEDY. Mr. President, I commend Chairman BENNETT and Senator KOHL for their help in obtaining funds for cranberry research in the Agriculture appropriations bill. Cranberry production is an issue of great importance to Massachusetts, and I hope that the Manager's will continue to work with Senator KERRY and me to obtain $280,000 for the University of Massachusetts Cranberry Station in Wareham for a complete renovation of the State Cranberry Bog.

The State Cranberry Bog provides income for Cranberry Station operations. More importantly, it is a research site for the Cranberry Station faculty and students. The bog is especially useful for conducting research not appropriate for cranberry farms in production. The faculty and students are able to use the facility to conduct research on new pesticide alternatives, or research that involves changes in practices not yet adopted by farmers.

Unfortunately, over time, the average yield of the state facility has declined because of its research activities, and the bog itself, built on peat, has begun to sink. The funds that Senator KERRY and I have requested will be used for a complete renovation of the bog, so that the Cranberry Station will again be able to conduct cutting-edge research plant physiology, pest and nutrient management, and irrigation management. The renovation will also enhance the Station's ability to demonstrate new technologies and practices as part of its educational mission. All of these activities contribute to both the economic health of the local economy and the overall vitality of the nation's cranberry industry.

Mr. KERRY. Mr. President, I again express my appreciation to Chairman BENNETT and Senator KOHL for their assistance in developing the Fiscal Year 2004 Senate Agriculture Appropriations bill and their ongoing assistance to the Cranberry farmers in Massachusetts who are facing economic difficulties. I would like to express my support for the comments made by Senator KENNEDY regarding funding for Cranberry research in the Fiscal Year 2004 Agriculture appropriations conference report. This important research will develop new technologies to help improve yields of cranberry bogs and help these farmers maintain their livelihood. I look forward to working with the Managers of this legislation to make sure this program receives funding in the Conference Report. I appreciate the Managers' attention to this matter.

Mr. KOHL. Since Wisconsin is also one of the top-producing cranberry states in the country, I recognize the need to support innovative research within this industry. I will continue to work with Senator KENNEDY and Senator KERRY on this issue, and I will do what I can to be of assistance.

FUNDING FOR SEAFOOD SAFETY

Mr. KENNEDY. Mr. President, I commend Chairman BENNETT and Senator KOHL for their effective work on the Agriculture appropriations bill. I particularly commend Senator KOHL for his help in obtaining $422,000 for Seafood Safety in Massachusetts. I'm hopeful that two worthwhile research programs—the Safe Seafood Project at the University of Massachusetts in Amherst, and the Center for Marine Phytoremediation Technologies at Northeastern University will be funded in the Fiscal Year 2004 Agriculture appropriations conference report.

In recent years, the Department of Agriculture, through the Cooperative State Research, Education, and Extension Services, has awarded grants to the University of Massachusetts, Amherst for their work on the Safe Seafood Project. The goal of this project is to provide useful, science-based recommendations to enhance the seafood industry's potential for producing safe, economically viable products. It is essential for the project to receive funding again this year in order to continue its essential work on seafood quality and health.

Northeastern University is also an impressive research university on marine issues. Funding will be used by the Center for Marine Phytoremediation Technologies to develop techniques employing marine plants to eliminate pollutants that result from fish aquaculture, as well as toxic materials found in our waters, such as mercury and TNT. The Center will also establish methods for restoring seagrass habitats where they have been destroyed.

We know that waste from the increasing number of fish aquaculture facilities leads to the production of harmful algae and the destruction of other marine life. If these problems continue, the fish aquaculture industry cannot be sustained, since it will cause greater risks in eating fish, and also endanger seagrass habitats, which are critical to the coastal economy of many states.

Mr. KERRY. Mr. President, I would like to take this opportunity to express my appreciation for the efforts of Chairman BENNETT and Senator KOHL for their work in developing the Fiscal Year 2004 Senate Agriculture Appropriations bill. Their work is especially noteworthy because of the difficult authorization level set by the Budget Resolution. I would like to express my support for the comments made by Senator KENNEDY regarding the Center of Marine Phytoremediation Technologies at Northeastern University. The Center has developed a proposal which I believe is an important opportunity to develop new technologies and help eliminate pollutants from fish aquaculture. This research can help the marine life in our oceans and eliminate pollutants from the seafood we enjoy. It is my hope that Senator KENNEDY and I could work with the Manager's of this legislation to make sure that these important programs receive funding in the Fiscal Year 2004 Agriculture appropriations conference report.

Mr. KOHL. I agree with both Senator KENNEDY and Senator KERRY on the importance of funding food safety initiatives, and I am glad we were able to obtain funding for seafood safety research in Massachusetts.

The University of Massachusetts, Amherst, and Northeastern University have impressive programs vital to improving marine issues and seafood safety. I will continue to work with both Senator KENNEDY and Senator KERRY, as the bill progresses, and do what I can to see that these resources are available to these institutions.

SECTION 306 (a)

Ms. MURKOWSKI. Mr. President, I would like to address a provision that Chairman BENNETT has added to the manager's amendment to the fiscal year 2004 Agriculture Appropriations bill on my behalf.

Mr. BENNETT. Mr. President, I would be happy if Senator MURKOWSKI explained this provision in greater detail.

Ms. MURKOWSKI. The provision in question makes the Alaska Department of Community and Economic Development eligible to receive a water and waste disposal grant under section 306(a) of the Consolidated Farm and Rural Development Act in an amount that is not less than 75 percent of the total cost of providing water and sewer service to the proposed hospital in the Matanuska-Susitna Borough in Alaska. In addition, this provision allows the funds to be passed through the department to the local governmental entity that will do the water and sewer work on the hospital. This local governmental entity will be chosen by the Regulatory Commission of Alaska.

Mr. BENNETT. Mr. President, I would like Ms. MURKOWSKI to explain her rationale for including this provision in the manager's amendment.

Ms. MURKOWSKI. This new hospital project will be an economic boon for the Matanuska-Susitna Borough. Currently, there is a hospital in Palmer, which is one of the larger communities in the borough. However, this is the only full-service hospital in the entire borough. This borough, which is the home to many people who commute to work in Anchorage, has grown a great deal over the years. In fact, the borough's population is projected to double in the next ten years. Therefore, a new hospital is needed in this borough. This proposed hospital will be located halfway between the communities of Wasilla and Palmer and will be more

easily accessible to more of the borough's residents.

Currently, the site on which the proposed hospital will be located does not have a water or sewer connection. Therefore, such a connection is critical to the success of the hospital project, which will serve so many people in a high-growth area in my State.

Please allow me to share with you some details on the economic effect that this hospital project will have on the Matanuska-Susitna Borough. It will create 680 full time and part time construction jobs during the first phase of the construction. Once the hospital is complete, 1,200 to 1,800 new jobs will be created through new hospital operations. It will add $22.8 million in construction labor income. The new hospital will pay approximately $1.3 million in local property taxes and will produce a total of $2.08 million in local and State revenues from construction and another $3.84 million from new hospital operations.

These statistics don't begin to depict the more significant statistics on lives saved and people healed. This project is a win-win for the Matanuska-Susitna Borough and the State of Alaska. It will have the single largest positive impact on the borough's economy for the next decade. More importantly, it will yield the single largest positive impact on the health of the community and residents, as well.

Mr. BENNETT. Mr. President, I thank Senator MURKOWSKI for explaining the need for her provision in the manager's amendment to this important legislation.

ARS RESEARCH

Mrs. LINCOLN. Mr. President, I wish to enter into a colloquy with the distinguished Chairman of the Appropriations Subcommittee on Agriculture to highlight a USDA agency that does extremely good work in my home State of Arkansas. First, I want to commend the chairman's efforts to provide resources to our Nation's most important agricultural and rural development priorities. It has been a difficult task and I appreciate your dedication.

In particular, I want to thank the chairman for his efforts to continue the necessary support for agricultural research, both within the USDA and with the State university partners. The USDA Agricultural Research Service is a critical agency in this effort. With the leadership of the chairman, I am pleased to note that ARS research will continue to have the strong support of Congress.

Mr. BENNETT. I thank the Senator and I share her assessment of the importance of agricultural research and the value of the USDA and its State partners.

Mrs. LINCOLN. The USDA ARS has a small, but vital presence in Arkansas. For example, is the chairman aware that my home State ranks seventh in the Nation in total net farm income?

Mr. BENNETT. I did not know that.

Mrs. LINCOLN. Yes. In fact, few States in the Nation, and none in the South, are blessed with a higher percentage of their economic activity dependent upon agriculture than is Arkansas. I am also aware that traditionally, however, the ARS presence in Arkansas has been surprisingly small, especially in relation to the importance of agriculture to the economy and size of your contribution to the net farm income of the United States.

Mr. BENNETT. In spite of this, I know that the research conducted in Arkansas benefits us all.

Mrs. LINCOLN. Yes, that is certainly true. We are proud of the ARS presence that we do have and the impact of its research on the Nation as a whole. The research that has been generated from Arkansas locations has been of great importance to the rice, poultry, small fruits, and aquaculture industries of the U.S. Additionally, the breakthroughs in human nutrition research that have come from the ARS human nutrition center in Arkansas have been remarkable. In light of the great importance of the research work being carried out at the ARS or ARS-supported research centers in Arkansas, I urge your continued support and ask that every effort be made, including in conference, to insure that the ARS units in Arkansas enter the 2004 fiscal year with no less than the same fiscal resources that they had in 2003. Additionally, I ask the chairman's assistance in working with Members of the House who will be on the conference committee to adopt the most favorable funding recommendations that are brought into conference by either House.

Mr. BENNETT. I share the Senator's commitment to agricultural research and to the ARS. And, I recognize the importance of the ARS research conducted in Arkansas to your State, to the region, and to the Nation. During our conference deliberations with the House, I will keep the importance of these research activities in mind. I look forward to working with my colleagues from the House in conference to insure the highest level of funding possible taking into consideration national research priorities. I am sure the Arkansas units will rank highly on that list of priorities. I thank the Senator for bringing this important matter to my attention.

TRAVEL AND PURCHASE CARD ABUSE

Mr. BENNETT. Mr. President, the Senator from Iowa brought an issue to me which he hopes to remedy through Agriculture Appropriations. The issue involves the Department of Agriculture and the documented fraud and abuse occurring within both the purchase and travel card programs. I would like to ask the Senator from Iowa for further clarification.

Mr. GRASSLEY. I thank the chairman for his interest in this issue. Additionally, I want to thank him for his concern regarding credit card abuse. Working together I'm confident we can help USDA remedy this issue.

As Chairman BENNETT knows, the Department's own Office of Inspector General (OIG) has stated that USDA's travel card program is plagued with problems including fraud, abusive ATM usage, ''bounded'' check payments, and lack of specific travel card policies and penalties. Many of these problems still remain unchecked despite recommendations from an OIG audit over 5 years ago.

USDA employees accumulated over $5.8 million in fraudulent charges in a six-month period. The majority of these charges were racked up when individuals were not even on travel. Purchases were made at The Gap, Bath and Body, Cigarettes for Less, Tatoo and More Ink, and an Oregon Liquor Store. They also included 900 trips to Wal-Mart, K-Mart and Target; tickets to Ozzy Osbourne, and automotive payments including the purchase of a $6,000 vehicles.

This is a clear abuse of government-issued cards and the trust embodied in these employees. Despite individuals signing an agreement acknowledging that the travel card is solely for work-related travel this abuse continues. The travel card is not meant to be a line of credit for employees, or to be used by individuals as a personal credit card. There is no excuse for this type of abuse.

When I was first made aware of this abuse I asked how this was allowed to occur at USDA. What I found was outdated or non-existent internal controls that do nothing more than provide lip-service to the concept of accountability. USDA's travel card program is operating under 19-year old regulations. Nineteen years ago our banking infrastructure was fundamentally different than it is today. Nineteen years ago we didn't even have ATM's!

In fact, ATM's pose the single most significant vulnerability to travel card misuse due to cash advances fees and other bank surcharges. During the six month review by the OIG, ATM transactions cost the government more than $137,000 in advance fees. There is chronic and intentional misuse with ATM withdrawals, for example, nearly $200,000 was withdrawn to pay personal debts during the six-month review period.

If that isn't bad enough, when individuals leave the department they don't always surrender their travel card! So individuals are out using the travel card as a personal credit card. OIG found that 1,549 individuals still had cards that could be used despite their departure from the Department. One individual was using his travel card nearly 2 years after he left the department!

OIG identified $650,000 in returned checks, stop payment fees and returned check fees in just a six-month period. A little diligence up front could prevent millions of dollars in fraudulent purchases.

I would point out that USDA has made recent efforts to limit abuse. USDA has attempted to reduce the number of credit card holders, revised

departmental regulations on purchase cards, and instituted new system alerts to catch abusive transactions.

With Chairman BENNETT's help I plan to monitor the new efforts being made by USDA to remedy these problems I'm cautiously optimistic that USDA will recognize that the reforms must be successful, or we will establish new, more stringent reforms for USDA next year.

Mr. BENNETT. I concur with my colleague's remarks. We will allow USDA to remedy the problems my colleague from Iowa has described. If USDA does not take action immediately and make substantive advances to fix these problems, we'll likely give them something more than encouragement in next year's agriculture appropriations legislation.

Mr. HOLLINGS. I would like to take a moment of the chairman and ranking members' time to discuss a project that has been supported by the committee since 1999. The Natural Resource Conservation Service (NRCS) in South Carolina and the Earth Sciences and Resources Institute at the University of South Carolina (ESRI–USC) have successfully developed technology to aid NRCS, both in South Carolina and throughout the Nation, to meet the needs of the agricultural community in a more effective and efficient manner. Over the years, the University of South Carolina has demonstrated their capabilities and the quality of their products while building a solid working partnership with the NRCS.

The implementation of the software tools they developed has produced significant savings in manpower and cost for many of NRCS's conservation programs. For example, it is estimated that the man-hours needed to create waste management plans using the traditional paper-based way was on the order of 230 man-hours per plan. Using the ESRI–USC geographic information systems tools, this time requirement was reduced to just over 100 man-hours per plan—that is 130 man-hours saved per plan. The evolving products ESRI–USC has developed for comprehensive nutrient management planning have resulted in even greater time, and cost savings than the earlier tools. As a result of the use of another program, EQIP-for-the-Web, South Carolina NRCS has conservatively saved three man-years of effort. Using another tool, NASIS-for-the-Web, we estimate that this automated access to the soil survey reports results in five man-hours per day in NRCS personnel savings. There is also a benefit to the public, which can access these data via the Web. The time savings to foresters, engineers, farmers, and other users of soil survey data is enormous. There are over 170 users of a particular program in 17 States and a user base in 31 States.

Consequently, I wish to continue to pursue this project at the next level and establish a Center of Excellence within ESRI–USC to assure a long-term, cost-effect means to provide a stable and sustained environment for the development of new technologies as well as support of existing capabilities such as AFOPro, C–Grax, NASIS for the Web, and EQIP for the Web. ESRI–USC's value added NRCS programs provide functional, rapidly developed and deployed applications that can be used by conservationists and field office staff level.

Mr. KOHL. I would concur with my friend from South Carolina. I agree it is important for any federal agency to have the ability to establish the appropriate technology to provide functional, rapidly developed and deployed applications that can be used by the field personal in a reliable, user friendly manner. Given the nationwide interest in their applications, it is time that the USDA seriously consider directly longer-term support with ESRI–USC.

Mr. BENNETT. I thank the senior Senator from South Carolina for bringing this matter to my attention. I encourage you to pursue this designation with NRCS. Additionally, In encourage NRCS to give every consideration to the Senator's proposal.

Mr. HOLLINGS. I thank my friend and colleague for your time. It may also be worth noting that Bruce Knight, Chief of NRCS recently visited the University this past April and was very impressed with their capabilities. He concurs that the work completed by ESRI–USC has been of high value to NRCS software development efforts.

ASSISTANCE TO THE MENOMINEE TRIBE

Mr. KOHL. It has recently come to my attention that the Menominee Indian Tribe in Wisconsin is in need of additional assistance from Rural Development. The latest poverty figures indicate 60 percent of rural Americans who are living in poverty reside in census tracks containing or adjacent to Indian reservations. Unfortunately, 50 percent of the members residing on the three reservations of the Menominee Tribe in my State of Wisconsin live below the poverty rate with less than 72 percent of children receiving a high school diploma. Unemployment exceeds 20 percent. The Department of Agriculture needs to consider meritorious applications for water and waste and business development programs which will benefit this tribe.

It is my intention that during our upcoming conference deliberations with the House, to include language in the statement of managers to support the consideration of an application in relation to the Mole Lake Water and Sewer System within the Water and Waste Loan and Grant account to address the current sanitary needs and provide opportunities to attract new homeowners. In addition, there is a need to construct a Menominee Mini-Mall Development project and the Forest Enterprises Technology Center to attract new businesses and create a business incubator. I intend to seek recognition that these two projects be included under the Rural Business Enterprise Grant account. Further, the Menominee Tribal Enterprises should receive consideration under the Intermediary Relending account to support small business loans and thereby, to provide sustainability to the community. The last request includes the Menominee Tribal Enterprises to be considered for the Rural Business Opportunity Grant in order to establish a business network including a market analysis.

RESOURCE CONSERVATION

Mr. NELSON of Nebraska. Resource conservation is an essential element of our Nation's agriculture programs that has proven to be very popular with farmers and ranchers. The incentives incorporated in programs such as the Farmland Protection Program, the Conservation Reserve Program, and the Environmental Quality Incentives Program, have not only heightened the awareness and value of good conservation practices, but they have made it possible for families to continue limited production and be compensated for protecting fragile resources. The success of these programs is that family farms can retain their economic viability and continue to contribute to the stability of communities throughout the Nation.

Conservation programs have touched on many fragile resources, but have not sufficiently encouraged the protection of the historic heritage that is embodied in historic buildings, structures, objects, and archaeological sites on farmland. Congress has declared that the spirit and direction of the nation is reflected in its historic heritage, and that the preservation of this heritage is in the public interest. Therefore, I believe we must work together to protect our common heritage embedded on these private lands.

Senator KOHL, today I am requesting a report to the United States Congress from the United States Department of Agriculture evaluating their conservation programs under the Natural Resources Conservation Service with the objective of determining what affirmative and programmatic actions are being taken to conserve and protect archaeological and historical resources on agricultural lands. Furthermore, this report should also provide or suggest new methods or program modifications to the conservation programs which will increase the protection of historical and archaeological resources on agricultural lands and help determine the manner in which these type of lands can be included within the overall goal of natural resources protection.

Finally, I am requesting that this report be completed within 120 days of enactment of the FY04 Agriculture Appropriations bill.

Senator KOHL, will you support this request and work towards its inclusion in the final conference report of the FY 04 Agriculture Appropriations bill?

Mr. KOHL. I thank the Senator for bringing this matter to my attention. I will work to include this provision during conference negotiations of this bill.

TREE ASSISTANCE PROGRAM FUNDING

Mr. SCHUMER. Mr. President, I would like to recognize Senator BENNETT and Senator KOHL for their effort on behalf of our Nation's farmers. At this time, I would like to engage them in a colloquy regarding the need to provide aid to the fruit orchards of Western New York through the Tree Assistance Program.

Mr. BENNETT. I thank the Senator from New York for his kind remarks, and would be happy to engage in a colloquy with him.

Mr. KOHL. I am also happy to engage in this colloquy with the Senator from New York.

Mr. SCHUMER. As the Senators may know, New York is the third largest producer of tart cherries in the nation and Wayne County is the largest cherry-producing county in New York. Unfortunately, fruit orchards throughout Western New York sustained major damages as a result of a 3-day long ice storm in April. Approximately 85 percent of the tart cherry trees in Wayne County were severely damaged or destroyed by the storm. Throughout the region, sweet cherry, peach, pear, apple and plum trees were destroyed by the violent ice storm. The impact that these losses are already having on the fruit tree industry in New York is devastating and will continue to effect growers in for years to come since it takes new trees over eight years to mature. In fact, it is estimated that losses resulting from this April's storms could reach a total of $15,000,000.

Federal assistance is greatly needed to cover the expenses of removing and replacing the ruined trees. The Tree Assistance Program (TAP) was created in order to help farmers facing the challenges now faced by those in Western New York. The TAP provides assistance to eligible growers who have lost trees used for commercial purposes as a result of a natural disaster.

Since its reauthorization, the TAP has yet to receive funding in order to carry out its mission. However, the House-passed version of the FY04 Agricultural Appropriations Act contains $5,000,000 in funding for the TAP program in order to provide assistance to the growers of Western New York. The inclusion of these funds in this year's USDA budget are extremely important to the long term health of the fruit industry in New York.

Mr. BENNETT. I appreciate the comments of the Senator from New York, and assure him that I will take his concerns into consideration when conferencing the House and Senate bills.

Mr. KOHL. I too, appreciate the difficulties facing these farmers, and will work with the chairman to do what we can during conference.

EELGRASS RESTORATION IN RHODE ISLAND

Mr. REED. Mr. President, I rise to engage in a brief colloquy with the distinguished ranking member of the Senate Appropriations Committee's Subcommittee on Agriculture, Senator KOHL, regarding language in the Committee's report to accompany S. 1427, the fiscal year 2004 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill. I thank the Senator from Wisconsin for including language in the committee's report recognizing the importance of eelgrass habitats to marine ecosystems along the coast of the Atlantic Ocean, and urging the Department of Agriculture to make funds available for projects in Rhode Island to enhance these habitats. I understand that it was the Committee's intention to encourage USDA to make such funding available through the Wildlife Habitat Incentives Program (WHIP), rather than through the Environmental Quality Incentives Program (EQIP) as stated on page 101 of Senate Report 108–107. The purpose of our colloquy today is to clarify that the report language should have read as follows: ''The Committee urges the Department to give consideration to the use of WHIP funding for projects in Rhode Island, and similar areas, that will enhance these habitats.''

Mr. KOHL. Mr. President, the Senator from Rhode Island is correct. I join him in stating for the record that the Committee urges the Department of Agriculture to make funding available through the Wildlife Habitat Incentives Program for eelgrass habitat projects in Rhode Island.

HEBER SPRINGS

Mr. PRYOR. Mr. President, it has recently come to my attention that there is urgent need to construct a new medical facility with the associated water and sewer capability in Heber Springs in my home State of Arkansas.

Heber Springs is located in the medically underserved rural part of north-central Arkansas. It is the only hospital in Cleburne County and surrounding areas providing treatment for local citizens.

Mr. KOHL. Just to make sure I understand, this is a medically underserved area?

Mr. PRYOR. Yes, this 34-year-old facility is the only one in this county and surrounding areas. Secondary facilities are approximately one hour in driving distance. Additionally, the population of Cleburne County and secondary service areas have grown more than threefold during the past thirty-four years.

Mr. KOHL. What are the numbers of emergency room visits for that increased population?

Mr. PRYOR. The emergency room experienced over 8,000 visits during 2001. This volume of patients cannot be managed safely or efficiently in a thirty-four year old emergency room with a four patient capacity. Additionally, the hospital operated on 851 patients in 2001 with only one small preoperative room available and three beds available for recovery. The volume of outpatients reached 13,649 in that year. The current facility has been found deficient by both the Joint Commission on Accreditation of Healthcare Organizations and the Arkansas Department of Health.

I would request that this community be included in the conference report under the Rural Community Advancement Program (RCAP) for the Community Facility Loan and Grant Program and the Water and Waste Loan and Grant Program for consideration of funding for a new facility with water and sewer assistance.

Mr. KOHL. I thank the Senator for making me and the committee aware of Heber Springs' situation and I will work with you to address these issues in conference.

Mr. PRYOR. I thank you for consideration of these requests.

ENERGY PHOTOVOLTAICS IN RURAL AREAS

Mr. LAUTENBERG. Mr. President, I would like to bring to your attention a renewable energy program for rural communities that I believe should be given strong consideration for funding. There is a program in my state of New Jersey in Gloucester, Burlington, and Hunterdon Counties that will use photovoltaics to generate electricity in remote agriculture locations to power water supply systems for farm animals and ventilation systems in livestock barns.

Mr. KOHL. I thank the Senator from the State of New Jersey. This program sounds interesting, but tell me, are rural areas being deprived of adequate energy sources?

Mr. LAUTENBERG. I am glad the Senator asked that question. The economic pressure of rapid suburbanization is forcing farmers to lower operating costs to preserve their farming operations in New Jersey. Farms with livestock often need remote watering stations, ventilation in barns, and shade in grazing fields. Satisfying these requirements traditionally requires substantial capital investment and increases operating costs. The use of electricity from photovoltaics would offer the lowest cost option for farmers to apply these improvements. Energy Photovoltaics, Inc., based in Lawrenceville, NJ, will provide and monitor this technology.

Mr. KOHL. This sounds like the type of initiative that should receive consideration under the Renewable Energy Program. I thank the Senator from New Jersey for bringing this program to my attention. As we proceed to conference, I will do what I can to see that this activity receives proper attention.

LOUISIANA PROGRAMS

Ms. LANDRIEU. Mr. President, I would like to thank the chairman and ranking member of the Senate Agriculture appropriations subcommittee for the opportunity to address several issues as the Agricultural appropriations bill for fiscal year 2004 is considered on the floor of the Senate as well as in a conference with House Agricultural Appropriations Subcommittee. It is my intention in this statement to express positions with respect to several areas of particular importance to me and my State of Louisiana that the

chairman and ranking member will take during conference with the House. I would also like to thank both the chairman and ranking member for the number of my requests that have been addressed in S. Rept. 108–107.

First, there are two instances where the House Committee report, 108–193, included references to items that were not provided for in the Senate report. On page 28 of the House Report, $1.5 million was provided for planning and design in the establishment of a new facility at the ARS Sugarcane Research Laboratory in Houma, Louisiana. Also, on page 18 of the same report, language was included that referenced the Pennington Biomedical Research Center (PBRC). Although, neither item is included in Senate Report, 108–107, I request that the Senate defer to the House and provide for both items in a final conference report just exactly as they are referenced in the House Report.

Second, during the fiscal year 2003 appropriation process, both the Senate Agricultural Appropriations Committee Report, 107–223, p. 55 and Senate Amendment 1 to the Consolidated Appropriations Resolution, H.J. Res. 2 or Omnibus Appropriations Bill for fiscal year 2003, provided $70,000 to be used to initiate a multi-year program to conduct clinical epidemiologic research on diseases associated with intensive reptile disease research in Louisiana. Unfortunately, this funding was not included in H.J. Res. 2 as signed into law on February 20, 2003, P.L. 108–7. Although I included this same request among my requests submitted to the Senate Agriculture Appropriations Subcommittee in fiscal year 2004, unfortunately there was no funding provided in either the Senate or House Bills. I am hopeful that during conference negotiations, the chairman and ranking member of the Senate Agriculture Subcommittee can provide some funding for this urgent research.

Third, I am hopeful that during conference negotiations, the Chairman and Ranking Member can recognize the expertise of Grambling State University in Louisiana, one of 117 Historically Black Colleges and Universities (HBCUs) which for over 100 years has been providing African American farmers the education and skills to produce better crops. Specifically, Grambling's contribution in the area of aquaculture research has and would continue to spur economic development and sustainability within impoverished communities in North Central Louisiana and the Louisiana Delta Region. In addition, the significant impact of this research would be felt among farmers and businesses throughout the State. Furthermore, this research would accentuate the intent of the White House Initiatives on HBCUs regarding increasing both the capacity and capability for HBCUs to engage in research. Grambling State University would serve as the lead institution in a collaborative effort that will lend the expertise of institutional resources and technical support in assisting individuals and communities among the tri-State areas of Arkansas, Louisiana and Mississippi.

Finally, I want to thank the chairman and ranking member for maintaining the funding at the same levels as fiscal year 2003 for four accounts that greatly impact the Nation's 18 historically black land-grant colleges and universities or the 1890s as they are often referred. Southern University of my State of Louisiana is among this group of very important and unique public universities. These four accounts include: Evans Allen—research formula funds; Extension formula funds; Capacity building Grants Program and Facilities Funding Grants. While I realize that the Subcommittee's spending cap for this year is significantly less than last year, I request that these four accounts be increased during conference negotiations with the House. With adequate funding the 1890 black land-grant colleges and universities could build and sustain new areas of specialization and, thus become more competitive in attracting public and private financing. Capacity Building is the model for eradicating historic inequities in State and Federal funding to the 1890 black land-grant colleges/universities, especially with regards to chronically under-funded faculty capacity. In fact, a recently released GAO study, 03–541, May 2003, entitled ''USDA's Outreach to Minority Serving Institutions Could Improve Grant Competition'' highlights capacity building and facilities funding as two key areas necessary for successful competitive grant awards. The GAO study finds that many 1890s need to attract top faculty to perform research, and it is very difficult to do so when research facilities are underfunded. An increase in facilities funding is necessary to fund costs of badly needed facilities while not hindering the improvements today for research, extension, students and faculty on 1890s campuses.

Increased Research and Extension formula funding means saving otherwise lost faculty positions at the Nation's historically black land-grant universities. Cash-strapped States are actually forcing cuts and substantial tuition increases on these institutions who served students from the lower economic scale. Formula funds constitute the core of 1890 land-grant programs and are critical to sustaining the 1890s land-grant mission of teaching, research and extension and public service. I am hopeful that we can find a way to increase the funding for some if not all of these four accounts.

Mr. KOHL. Mr. President, I recognize the importance of the above items to the Senator from Louisiana and will be as helpful as I can during conference negotiations to address these issues as she has requested.

NORTH CAROLINA AGROMEDICINE INSTITUTE

Mr. EDWARDS. As a partnership of three strong North Carolina universities, the North Carolina Agromedicine Institute is a leader in developing collaborative initiatives with colleagues in agencies and universities throughout the country. The Institute is having a significant impact in my State of North Carolina, across the Southeast region, and across the country, on the health and safety of workers and their families in agriculture, forestry, and commercial fishing—three of the four most dangerous occupations in the Nation.

Support from the Congress over the past 3 years has provided essential core funding to the Institute as it has strived to initiate research projects to address some of the important health and safety issues that are found, not just in North Carolina, but also in all the southeastern States and across the Nation. In addition, fiscal year 2003 funding has been used to expand the Institute's focus to address the important areas of food safety, agricultural disasters, and agroterrorism. The Institute is working with the NC State Health Department, Department of Agriculture and other governmental agencies in these efforts. This year, the Senate Agriculture Appropriations Committee appropriated $139,000 while the House Agriculture Appropriations set aside $278,000 for the Institute. It is vital that the Institute receive the House level if it is to maintain its cutting-edge work.

When the House and Senate conference committee considers the fiscal year 2004 agriculture appropriations measure, I strongly urge you and your fellow conferees to provide $278,000 for the NC Agromedicine Institute.

Senator KOHL, you have been a strong supporter of the Institute and I greatly appreciate your efforts.

Mr. KOHL. I appreciate your request and I assure you I and my fellow conferees will give your request full consideration.

GARDEN STATE ETHANOL

Mr. CORZINE. Mr. President, I would like to commend Senators BENNETT and KOHL for their leadership on this appropriations bill for Agriculture and related agencies for fiscal year 2004.

I would also like to take a moment to engage my colleagues Mr. KOHL and Mr. BENNETT in a colloquy.

Mr. KOHL. I thank my colleague for his kind words and would be happy to engage in a colloquy with the Senator from New Jersey.

Mr. BENNETT. And I the same.

Mr. CORZINE. Mr. President, it has come to my attention that in Title III of this bill, a new program in renewable energy has been added to the bill. the Senate committee report accompanying this bill identified a number of worthy projects under this program.

I hope that the conferees to this bill will consider adding to this list a promising project from my State. The State of New Jersey has entered a partnership with Garden State Ethanol, a consortium of farmers that wants to provide the farmers of New Jersey and surrounding States with an alternative

market for their field corn, while generating a profit for its investors and producing a domestic, renewable transportation fuel. They plan to create an ethanol plant in order to provide a new opportunity for area producers to sell their grain, and to employ directly significant numbers of farmers and laborers. In addition, this project will create jobs related to the construction/renovation of the plant, generate an increase in wages, and increase the output of the regional economy.

With a strong commitment to agriculture combined with its close proximity to high-value markets, New Jersey makes an excellent location for an ethanol production plant.

Mr. KOHL. I share my colleague from New Jersey's interest in this project and also urge the conferees on this bill to include this project in the conference report under the Renewable Energy Program.

Mr. BENNETT. I would like to join my colleague, Mr. KOHL, in voicing my support for this project, and also hope that it will be added in conference.

Mr. CORZINE. I thank the distinguished chairman and ranking member of the Senate Appropriations Subcommittee on Agriculture for their interest in this project and for their outstanding leadership on this essential appropriations bill.

TREE ASSISTANCE PROGRAM

Mrs. CLINTON. On September 14, I was pleased to have the opportunity to host our second annual Farm Day, an event that I derive great pleasure from. While showcasing agriculture, our State's No. 1 industry, my excitement was put in check by some visitors that stopped by my office before the festivities. Cherry growers from Wayne County had made the long trek down to Washington, not to partake in the fun of Farm Day, but to remind me, and the rest of our country, of the perils of their profession.

Mr. KOHL. It is my understanding that these farmers suffered a devastating loss this spring.

Mrs. CLINTON. That is correct. We depend on farmers for the food on our tables but rarely do we contemplate the vital part farmers and growers play in our local and State economies. On April 3, 2003, Mother Nature dealt our New York cherry growers an unbearable hardship. Seventy-five percent of our cherry orchards and 20 percent of our peach orchards were destroyed by an atypically severe ice storm.

Today, I strongly believe that we as a country have an obligation to specialty crop producers. New York State growers have historically been self-sufficient, asking for little and receiving next to nothing in comparison to large staple crop producers. Ineligible for the crop insurance that many other farmers benefit from, fruit growers' need for direct assistance from the Federal Government is all the more imperative during times of natural disaster.

Mr. KOHL. What assistance is available to these farmers?

Mrs. CLINTON. As I explained in my letter to the Committee dated April 16, 2003, without our help in funding the Tree Assistance Program (TAP), most, if not all cherry growers will not be able to afford the costs of replanting on top of the estimated 20 percent annual income loss they will incur over the next 7 to 10 years while new cherry trees mature to regular production capacity. Wayne County farmers cannot bear this and neither can the economy of New York, a State that ranks second only to Michigan in tart cherry production. I respectfully ask that you recede to the House on this measure in conference.

Mr. KOHL. I understand the concerns of the Senator from New York, and I assure her that I will do what I can to be helpful during our conference with the House.

FARMERS' MARKET ELECTRONIC BENEFITS TRANSFER PROGRAM

Mrs. CLINTON. I would like to ask today that Senator KOHL and other members of the Appropriations Committee give consideration to a matter of great importance to me. Few would disagree that we are living in an increasingly complex world. It is a world dominated by technological innovation but still ruled by the most basic of needs. Two years ago, New York was chosen for a special pilot program related to the Food Stamp Program. Since the food stamp program changed to the debit card system, farmers' markets across the country have been left out of the food stamp program. Lacking electricity or the necessary phone lines to hard wire the terminals needed to process the new food stamp cards, farmers' markets have been forced to refuse business, while food stamp recipients have been denied the opportunity to patronize local fresh markets.

Mr. KOHL. I understand that in previous Agriculture Appropriations bills, the State of New York received a grant to try to curb this problem. What was that funding used for, and what needs remain?

Mrs. CLINTON. USDA grants have paid for the purchase of over 50 electronic benefit transfer machines. Now it is up to us to make sure this investment proves to be a worthwhile one. Though there are already positive reports about the use of this new technology in New York farmers' markets, we have an obligation to insure that in the upcoming fiscal year the necessary funds are made available to facilitate the integration of this new equipment, in such a way that we may have an accurate picture of the viability of EBT nationwide. To do anything less is illogical and unfair to the many communities that have openly embraced this pilot program. I therefore request that you support the House language continuing the electronic benefit transfer grant program in conference.

Mr. KOHL. I appreciate the Senator from New York bringing this to my attention, and appreciate the hard work she does on behalf of her constituents. I will keep her concerns under consideration as we work to complete this bill in our conference with the House.

DELMARVA CONSERVATION CORRIDOR DEMONSTRATION PROGRAM

Mr. BIDEN. Mr. President, I rise today, joined by my good friend and colleague from Delaware, Senator CARPER, to bring to the attention of the esteemed ranking member of the Agriculture Appropriations Subcommittee an important provision in his bill relating to the Delmarva Conservation Corridor Demonstration Program.

I just want to take a few minutes to emphasize the importance of this provision for the State of Delaware and for the entire Delmarva peninsula. As you know, the Secretary of the Department of Agriculture was authorized to develop a Delmarva Conservation Corridor Demonstration Program in the 2002 farm bill. Unfortunately, the USDA has not implemented the program.

The Delmarva Conservation Corridor Demonstration Program does, however, complement the existing conservation provisions in the bill and allows the USDA to target the benefits of watershed-based conservation programs to farmlands that local stakeholders have determined to be the most ecologically and economically important.

We must prevent the shrinking and fragmentation of undeveloped open space that results from increasing growth pressures. By fortifying and restoring green infrastructure, we can maximize the ecological and working lands' potential of our landscape. Creating extensive corridors of both natural and agricultural lands will safeguard wildlife habitat, contiguous headwaters, wetlands and open space. Left unprotected, our remaining green infrastructure is vulnerable and will be further reduced or fragmented.

The Delmarva Peninsula is blessed with an abundance of important natural resources and productive working lands that support agriculture, forestry and the seafood industry. We believe that this is the right time to make this commitment to conservation that reaches across state lines and is important to a much larger region.

Mr. CARPER. Mr. President, let me say that I agree with everything the Senator has said about the importance of the Delmarva Conservation Corridor Demonstration Program.

In addition to your comments, I would only add a request to our colleagues who have been working on this Agriculture appropriations bill that they be made aware that the 2002 Farm bill included specific language that authorized the Secretary to develop this program with the intent that it would provide a benefit not just to the three states of Delaware, Maryland and Virginia, but also to other programs being considered throughout the country. The lessons learned from work on the Delmarva Conservation Corridor will improve similar efforts elsewhere.

Conferees should also be made aware that their colleagues in the House agree that the intent of the provision was to allow the Secretary of Agriculture and the States appropriate flexibility in using the resources of existing agricultural conservation and forestry programs. In supporting this program during the farm bill, it was not our intent, nor is it today, to require new or earmarked funding. The USDA has not yet implemented this program because of what I believe is a misunderstanding regarding the concept of the program and the congressional intent contained within the farm bill. This confusion should be resolved so that this example of effective conservation policy can be realized.

Mr. KOHL. I thank my colleagues for their interest in this program, and I want you to know that I understand the importance the Delmarva Conservation Corridor Demonstration Program has to the State of Delaware and the entire Delmarva Peninsula. I can assure you both that I will support this project in conference and do all I can to see that it becomes a reality.

VITICULTURE ASSISTANCE FOR THE STATE OF IOWA

Mr. GRASSLEY. Mr. President, the State of Iowa has a blossoming viticulture industry, but the demand for technical assistance far exceeds the State's current resources. I have discussed this problem with the Senator from Utah and I appreciate his interest in the issue.

Mr. BENNETT. The Senator from Iowa has explained to me that his State is in need of specialized assistance through funding for a viticulture technician to provide on-site technical assistance.

Mr. GRASSLEY. A viticulture technician would help new producers with the basic knowledge needed about the industry. Such assistance will enable growers to benefit from increased production, and in turn, produce more successful vineyard businesses in Iowa.

This proposal has tremendous support from the Iowa Grape Growers Association, the Mississippi Valley Grape Growers Association, the Western Iowa Grape Growers Association, and the Iowa Wine and Grape Development Commission.

STUDY ON NORTH CAROLINA HORTICULTURE INDUSTRY

Mrs. DOLE. Mr. President, the horticulture industry in North Carolina is a fast growing industry contributing significantly to the State's economy. Though local, State and Federal officials know that the industry is important, there has been no analysis done to quantify the impact of this industry on North Carolina's economy.

Perhaps a possible remedy might be to direct the USDA Economic Research Service to coordinate with the North Carolina Department of Agriculture and NC State University to collect the economic data and do the statistical analysis necessary to conduct this study.

Mr. BENNETT. Mr. President, let me say to the Senator from North Carolina that I appreciate the suggestion particularly in light of the budget constraints that we face. I will be happy to look into this matter to see if there is a workable solution that will achieve the desired result.

Mrs. DOLE. Mr. President, I thank the Senator for his consideration on this matter.

NATIONAL RURAL DEVELOPMENT PARTNERSHIP

Mr. CRAIG. Mr. President I would like to engage in a colloquy with the distinguished Chairman and Ranking Member of the Agriculture Appropriations Subcommittee regarding funding for the National Rural Development Partnership (NRDP) for federal fiscal year 2004.

Last year, Congress included in the Farm Bill the provisions of the National Rural Development Partnership Act, which I sponsored along with the Senior Senator from North Dakota and 43 of our colleagues. The Farm Bill's NRDP language authorizes annual appropriations of up to $10 million. This authorization was included because of a recognition that the funding arrangement for the Partnership, which has been in place since its establishment a dozen years ago, has failed to provide adequate resources for the NRDP and the state rural development councils (SRDCs). That funding arrangement has depended on voluntary contributions of discretionary funds from USDA and four other federal agencies, as well as matching funds from the states and others.

The work of the NRDP and SRDCs is more important than ever. The current economic downturn has hit rural America hard. Drought and low prices have had a devastating impact on production agriculture, which continues to be the economic foundation of many rural communities. Other rural communities that depend on logging or mining have seen employment and economic activity diminish in those important industries. The nationwide decline in manufacturing has resulted in the closure of thousands of factories in rural areas, eliminating the sole or principal source of good-paying jobs in many rural communities. This situation has been aggravated by the fiscal challenges facing most State governments. As States slash budgets, the level of vital services upon which rural residents depend—from education and health care to transportation and libraries—has been greatly diminished. At this dire time in rural America, we must support organizations like the SRDCs which can help our citizens respond to the many challenges they face.

This year's committee report accompanying the fiscal year 2004 Agriculture Appropriations Bill includes language encouraging the USDA to continue its support of the NRDP and SRDCs by providing stable funding, technical support, and guidance practices as they have done over past years. Similar language was included in the Senate subcommittee's report on the fiscal year 2003 Agricultural Appropriations bill.

I appreciate the support the Chairman and Ranking Member have shown for the NRDP and SRDCs. Besides continuing current USDA involvement, it is important to continue and intensify its efforts to secure support for the NRDP and SRDCs from other federal agencies and with rural responsibilities as it has done successfully in the past. This is consistent with the intention of Congress in the Conference Committee Report of the 2002 Farm Bill.

The committee report has spoken to the importance of the Department continuing to support the continued development and increased involvement of the NRDP and SRDCs. I would also appreciate the Committee's continued emphasis on importance of multi-agency cooperation with USDA to strengthen this vital effort to spur and strengthen our rural economies.

Mr. BENNETT. Mr. President, I concur with my colleague's sentiments on the importance of multi-agency involvement in rural development. I appreciate the Senator's comments and look forward to our continuing to work together to support this effort when this bill goes to conference.

Mr. KOHL. Mr. President, our subcommittee has a consistent history of supporting this rural development effort and promoting this kind of multidisciplinary approach. That was the intent of our committee report and, I am sure, will continue to be an important focus of the subcommittee.

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MORNING BUSINESS

Mr. BENNETT. I ask that there now be a period of morning business with Senators speaking for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## HONORING OUR ARMED FORCES

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the live of a brave young man from Fort Wayne, IN. Specialist Brian H. Penisten, 28 years old, died in Al Fallujah on November 2, 2003, after the Chinook helicopter he was traveling in made a crash landing. Brian joined the Army with his entire life before him. He chose to risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Brian was the seventeenth Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. Brian leaves behind his father, John Penisten, his mother, Mona, his

fiancee, Johnna Loia, and his son, Trevor. Today, I join Brian's family, his friends, and the entire Fort Wayne community in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is this courage and strength of character that people will remember when they think of Brian, a memory that will burn brightly during these continuing days of conflict and grief.

Before leaving to fight in Iraq, Brian Penisten told his mother that he was proud to be an American. Today, his family members him as a true American hero, and we honor the sacrifice he made while serving his country.

Brian was born on March 30, 1975. He graduated from Bishop Dwenger High School, where he was a member of the wrestling team and was undefeated through the semi-State Championship in 1993. Friends and family members remember Brian for the inner drive he demonstrated in always challenging himself to be his best at whatever task lay at hand.

After joining the Army, Brian left home to begin full-time duty at Fort Carson in Colorado. He was assigned to the 3rd Air Defense Artillery, 3rd Armored Cavalry Regiment.

As I search for words to do justice in honoring Brian's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.'' This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Brian's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Brian H. Penisten in the official record of the United States Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families such as Brian's can find comfort in the words of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God bless the United States of America.

Mr. VOINOVICH. Mr. President, I rise today to congratulate and pay tribute to Mr. Umberto P. Fedeli of Gates Mills, OH as a 2003 Ellis Island Medal of Honor recipient.

The prestigious Ellis Island Medal of Honor award is presented annually to ''remarkable Americans who exemplify outstanding qualities in both their personal and professional lives,'' and ''who have distinguished themselves as citizens of the United States, while continuing to preserve the richness of their particular heritage.''

Umberto P. Fedeli is such an American. In addition to creating a business in Ohio and being active in numerous charitable causes, Umberto has maintained strong ties to the Italian American community. I've often said, ''show me someone who is proud of their ethnic heritage and I'll show you a great American!''

Mr. Fedeli's parents immigrated from Lascio, Italy to the same neighborhood in which I grew up—the Collinwood neighborhood of Cleveland, OH. He learned many important lessons from his father, Umberto, Sr. including a philosophy of life which is based on integrity, loyalty, civic responsibility and a strong work ethic.

In his early 20s, Mr. Fedeli formed a partnership which led to the creation of his own insurance company, The Fedeli Group which he built to one of the top 100 insurance firms in the nation. Today his company employs 85 people and provides a range of insurance products and services—property, general liability, life, health, workmen's compensation and estate planning. It provides insurance for over 3,000 businesses and, remarkably, has averaged nearly 20 percent growth per year for 20 years.

The Fedeli Group has received many industry awards and has been named several times as winner of the Weatherhead 100's fastest growing companies in northeastern Ohio.

Through the years, Mr. Fedeli has been active in Ohio politics—serving on advisory committees for my campaigns, those of Senator MIKE DEWINE and countless other state, local and national candidates.

As Governor-elect of Ohio in 1991, I appointed Umberto Fedeli to my gubernatorial transition team and after I took office, I was pleased to appoint him to the Ohio Turnpike Commission where he served as chairman for 6 years. Under his leadership, the turnpike's resources served as a catalyst for growth and economic development. In fact, as Governor, I noted that ''Umberto's leadership will be remembered as the Turnpike Commission's most energetic and accomplished era.'' I still believe that today. Umberto Fedeli was the best leader of the turnpike aside from the man who created it.

Mr. Fedeli is very involved in his community and is a friend to countless people in northeast Ohio, across the State—and throughout our Nation. He values serving others above all else, including his family, his church, his clients and his community.

He has been named Man of the Year for both the Italian-American Sports Hall of Fame and the Americans of Italian Heritage. In 1995, he was recognized by the John Carroll University Business School as one of ''Fifty of Its Finest.''

Umberto serves as chairman of the Cleveland Chapter of Legatus, an international group of Catholic CEOs for which he also serves on the International Board of Directors. He was recognized as 2002 Officer of the Year for Legatus, and became a Knight of the Holy Sepulchre of Jerusalem, administered by the Holy See, in 1998.

He received both the Grand Illusion Award for the Ohio Cancer Research Associates and the National Multiple Sclerosis Norman Cohn Hope Award for philanthropic and community service. In 2000 he was honored by the Italian Federation with its Columbian Award and 2003 Man of the Year for the Christ Child Society.

In 1995, Umberto was instrumental in the formation of the Northern Ohio Italian American Foundation, a group of prominent business people who lend philanthropic support to various groups in northeast Ohio and which he presently serves as chairman.

In 1997, the Northern Ohio Italian American Foundation established the Bishop Anthony M. Pilla Institute of Italian American Studies at John Carroll University.

Umberto is also a member of the Board of Directors of the Cleveland Clinic Foundation, the Board of Trustees at John Carroll University and trustee of the Cleveland Catholic Diocese Foundation.

Mr. Fedeli cares deeply for others and gives witness to his faith in God every day by helping people he knows well and those he has never met. He gives witness to the second great commandment, ''Love thy neighbor as thyself'' at every opportunity.

He is a role model in every sense of the word: in terms of his devotion to his family, his success in business and his contributions to his ''extended family'' in the community.

He and his wife Maryellen, whom he describes as the only girlfriend he ever had, have been married for 19 years and have five children.

Umberto Fedeli is indeed a remarkable American of the highest integrity in both his personal and professional life. He has made many outstanding contributions to the Italian American community, to his local community and to America.

I am proud to recognize my friend, Umberto P. Fedeli and congratulate him on this wonderful honor.

Mr. HAGEL. Mr. President, I rise to express my sympathy over the loss of Daniel Bader, a fellow Nebraskan and staff sergeant in the United States Army. Sergeant Bader was killed on November 2 near Fallujah, Iraq when the Chinook helicopter he was aboard was shot down. Sergeant Bader was one of 15 soldiers killed and 25 wounded en route to the United States for two weeks of leave. He was 28 years old.

Sergeant Bader served in the 3rd Armored Cavalry, Tiger Squadron, based in Fort Carson, CO. He was deployed to Iraq on April 4, 2003.

A York, NE, native, Sergeant Bader was a dedicated soldier who was committed to his family and country. He

joined the military shortly after graduating from high school and ''absolutely loved'' his career in the Army, said his wife, Tiffany. In addition to his wife, Sergeant Bader leaves behind a 14-month-old daughter, Taryn Makenzie. Our thoughts and prayers are with them both at this difficult time.

Sergeant Bader and thousands of brave American service men and women confront danger every day in Iraq. Their tremendous risks and sacrifices must never be taken fro granted. For his service, bravery, and sacrifice, I ask my colleagues to join me and all Americans in honoring SGT Daniel Bader.

## TRIBUTE TO DR. PHILLIP BOARDMAN

Mr. REID. Mr. President, I rise today to congratulate Dr. Phillip Boardman on his selection as Nevada Professor of the Year by the Council for Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching.

As someone whose life was transformed by education, I understand the importance of recognizing the work of good teachers, and I consider it an honor to speak today of Dr. Boardman's dedication to teaching and commitment to his students.

This award is a major accomplishment. The Professor of the Year Awards are the only national awards to recognize college and university professors for their teaching skills. But this is by no means the first time Dr. Boardman has been honored for his great gift as a teacher. He has previously received awards from the University of Nevada and the State of Nevada Regents.

A Professor of English and the Chair of Core Humanities at the University of Nevada, Reno, UNR, Dr. Boardman is an expert on English and Renaissance literature and has taught for three decades at UNR. Throughout his career he has taught courses on Shakespeare, C.S. Lewis, the Bible, medieval literature, linguistics, and composition.

Dr. Boardman's contributions to teaching have not been limited to the university classroom. He has also delivered scores of presentations to high school classes, senior centers and libraries. He was the executive co-producer of the The Western Tradition Lectures, a videotaped series of nine lectures by UNR instructors.

Dr. Boardman has also made substantial contributions to scholarship. Not only has he edited books and written numerous articles and reviews, he well soon complete his major 25-year project, The Arthurian Annals: The Tradition in English from the Beginnings to 2000.

Despite his strong commitment to his teaching and scholarly responsibilities, Dr. Boardman also finds time to assist his colleagues in their development as instructors. He was the author of a successful National Endowment for the Humanities Challenge Grant, matched during 1994–1998, to establish an endowment fund to support teacher stipends and faculty development at UNR. He has also written several articles on how to approach teaching medieval literature and culture.

Dr. Boardman has led a distinguished career in an important and noble profession. Please join me in congratulating him on his selection as the Nevada Professor of the Year.

## LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable to our society.

Gregory Beauchamp, a 21-year old gay male, was the last homicide victim of 2002 in Cincinnati, OH. On December 31, Mr. Beauchamp was headed to a nightclub to ring in the New Year with friends. At about 9 p.m. a blue Cadillac pulled up alongside them, and the four or five African American men inside started yelling anti-gay epithets, according to survivors of the attack. Shots were fired from the vehicle, killing Mr. Beauchamp. The murder was reported as a hate crime.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

## THE FORD FOUNDATION AND THE DURBAN CONFERENCE

Mr. SANTORUM. Mr. President. I want to bring to the attention of my colleagues troubling reports that indicate one of America's leading philanthropic foundations has meddled in world diplomacy in a deeply disturbing way.

Let me say that I think my colleagues know very well that I have great respect for the good works done by America's non-profit sector, including philanthropic foundations. So much respect, in fact, that, as my colleagues know, I am working with some of them to get a conference committee to convene with the other body so that we can complete work on the CARE Act and provide a range of incentives that would boost contributions to charities and foundations at a time of great need.

And so it pains me that I must come to the floor today to apprise my colleagues of allegations that have been reported with regard to some of the activities of one of America's leading foundations, the Ford Foundation. The reports—published initially by the Jewish Telegraphic newswire service and picked up by many newspapers around the country and in this week's New Republic magazine—describe how the Ford Foundation gave million of dollars to dozen of Palestinian organizations that have been in the forefront of the anti—semitic and anti-Israel campaign that is ongoing around the world.

In particular, these reports describe how the Ford Foundation funded Palestinian non-governmental organizations, NGOs, that were responsible for transforming the 2001 United Nations Conference on Racism held in Durban, South Africa into a forum of virulent anti-Semitic and anti-Israel hate. According to the investigation and reports—which interviewed dozens of individuals and reviewed 9,000 pages of documents—Ford contributions financed the development of the anti-Israel strategy and its public relations strategy for dissemination.

Accroding to the reports, Ford has extended more than $35 million in grants to more than 270 Arab and Palestinian NGOs in the 2001–01 period alone, and since the 1950s, Ford has distributed nearly $200 million to Arab and Islamic NGOs in the Mideast, and many Palestinian operatives who were involved in the Durban Conference admit that ''Ford has made it possible for us to do much of our work'' and that ''Our biggest donations come, of course, from Ford.''

At least two groups identified in the news reports—the Palestinians Committee for the Protection of Human Rights and the Environment and the Palestinian NGO Network—received more than $2.5 million from Ford in the last few years and were key players in hijacking the agenda of the Durban conference.

And let me just remind my colleagues how badly the Durban conference was hijacked. It was so bad that Secretary of State Powell declared the conference to be ''a transparent attempt to delegitimize the moral argument for Israel's existence,'' and Secretary Powell withdrew our country's delegation from participation.

As The New Republic's editor in chief writes—''the Ford Foundation's . . . reckless generously is empowering foreign haters and apologists for killers.''

In fairness, the Ford Foundation has denied the charges made in these reports. Ford's vice president has said that his institution was ''shocked by the extremist rhetoric of some participants on Israeli-Palestinian issues.'' Moreover, Ford has said that it shares our government's commitment to ''ensure that grant funds are not diverted for terrorist and other purposes.''

I appreciate these statements by Ford, but I don't believe they have put this matter to rest. The news reports are too specific and well documented to be dismissed by such generalities.

Fellow senators, we are in a war against terrorism and those who hate us and those who hate Israel are very often one and the same. We, of course, are responsible for ensuring that government funds we distribute as foreign aid are serving our national security interests and those of our allies. But what I think these reports have brought to our attention is that there are other entities out there, foundations, and not just of the sort that are part of extremist communities whose clear purpose is to channel funds to the terrorists and against whom the Treasury Department is moving aggressively and indictments are being handed down but well known, respected foundations can undermine our policies and activities by making an end run and supporting those with whom we deeply disagree,

As a member of the Finance Committee, I am going to be asking Chairman GRASSLEY that the committee look into this more deeply and again review the controls we have in place for foundation activities and grant overseas.

## VOLUNTEERS ARE ESSENTIAL TO VA

Mr. GRAHAM of Florida. Mr. President, the Department of Veterans Affairs, VA, has some of the most dedicated volunteers in the country, and today I would like to shine a light on those at the Gainesville VA Medical Center, VAMC, in my home State of Florida.

The Malcolm Randall VAMC in Gainesville is a tertiary care facility that specializes in an array of services including cardiology, neurosurgery, and nursing home care. With its symbiotic relationship to the University of Florida, it is also an active teaching hospital. In 2002, the hospital had 388,471 outpatient visits, and it continues to draw hundreds of volunteers. The hospital currently has over 800 registered volunteers.

The Gainesville Sun profiled some of these selfless individuals and their commitment to service at the VAMC. Included among these volunteers was an 82-year-old widow named Dorothy ''Dot'' Caldwell. The article described how every Tuesday, Dot leaves her home at 3:30 in the morning to make the 1-hour drive to the medical center and then spends 10 hours there. She makes this 100-mile round trip every week so she can repay VA for the care if gave he husband William, a World War II veteran, her father, and two of her brothers. Dot has been volunteering at the Gainesville VAMC for 21 years.

Each of us owes a debt of gratitude to those who risked their lives defending our country, and I am thankful to all of this Nation's hardworking, compassionate volunteers for helping to repay that debt. I am especially proud that such shining examples of this kind of service hail from my own State, one that is so highly populated with veterans.

I ask unanimous consent that the article from the Gainesville Sun highlighting the work of these volunteers, as well as the complete list of volunteers who work at the Gainesville VAMC be printed in the RECORD.

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

[From the Gainesville Sun, Sept. 25, 2003]

HOSPITAL ANGELS

(By Julie Garrett)

At a time when friends and loved ones are serving our country overseas and when cuts to veterans' benefits are taking place back home, one way we can support veterans is by taking care of those who need us here in the states.

Dorothy ''Dot'' Caldwell has given more than 20,500 hours of volunteer time to the Malcom Randall VA Medical Center in Gainesville. That's the equivalent of a full-time job for more than 10 years.

Every Tuesday morning, she rises at 2:30 a.m. (''God wakes me up. I don't need an alarm clock.'') so that she can be on the road by 3:30 a.m. to make the one-hour trip to Gainesville from her home in Old Town—a 100-mile round-trip drive. She'll volunteer 10 hours, then start home at about 2:30 p.m. She's 82.

''It's kind of special to see a vet smile at you when you come in and just pat him on the arm or hand him something,'' says Caldwell. ''That look of gratitude on their faces. They light up. They look at us as family.''

Caldwell started volunteering at the VA 21 years ago after her husband, William, a combat engineer during World War II, underwent heart surgery.

''I saw the volunteers running around and I said, 'When you get out of this hospital, we're gonna repay. We're gonna volunteer.' He said, 'Like hell I am.'''

But she prevailed, fueled by the fact that William, her father and two of her brothers were veterans who received medical care through the VA. ''So I'm trying to pay back,'' she says.

Her own health is good. William died of cancer 10 years ago after the couple were married for 53 years.

''Volunteering is keeping me young. God is rewarding me,'' she says. ''You see veterans here a lot younger than I am and they can't even feed themselves.''

The Gainesville VA had 388,471 outpatient visits in fiscal year 2002, said John Pickens, public affairs officer for the North Florida South Georgia Veteran's Health System.

And last year, more than 800 volunteers gave more than 80,000 hours at the VA Medical Center in Gainesville, says Julie Baker, chief of voluntary services.

The youngest volunteers are 13, the eldest is 88, with a 50-50 split between male and female volunteers, Baker says.

The entire VA orientation takes about three hours and consists of watching a short video and meeting with Baker.

Volunteers perform clerical duties, staff the information desk, transport patients to appointments in departments around the hospital and make hospitality visits. In the pharmacy, they open and sort mail.

Groups from organizations such as the American Legion and Veterans of Foreign Wars serve coffee and doughnuts in the outpatient clinics' reception areas.

''It's a great PR tool for us,'' says Baker. ''This is a great way for a group to volunteer together.''

During the holidays, the VA encourages people to sing Christmas carols to patients. You need to coordinate your visit through the Voluntary Services office, but Baker says it tends to be easier to set up a visit at the VA than at other hospitals.

Students planning careers in medicine can get their feet wet by volunteering at the VA. They observe in the emergency room, surgical unit and intensive care unit, take specimens to labs, answer phones and stock supplies.

Helena Chapman, a 22-year-old University of Florida graduate student in public health, began volunteering at the VA through the teen volunteer program as a 15-year-old Oak Hall student.

At first, she volunteered through the recreational therapy department, playing bingo with the veterans on Saturdays. From there, she proceeded to the ICU, where she helped with bedside stocking.

The nurses took her under their wing when they saw she was a serious, consistent and responsible volunteer. It wasn't long before she was drawn to medicine as a career choice.

On the lighter side, Chapman plays piano for the VA's nursing home patients—there's a nursing home onsite—and paints the nails of female veterans.

''I like to pamper them,'' she said. ''Everyone has a story to tell. I love 'em.''

Chapman was awarded the Disabled American Veterans' $5,000 National Commander Youth Scholarship for 2002 for her volunteering and plans to become a physician focusing on geriatric medicine. Despite the demands of graduate school, she still volunteers at least three hours a week, sometimes up to 10.

Baker says the VA's teenage volunteer program is growing in popularity as schools require community service for graduation.

In the summer, young people ages 13 to 18 can volunteer two to three full days a week, or weekdays four hours a day. The VA starts accepting applications May 1. Slots fill quickly.

Once teens volunteer for the summer, they can return on school breaks and weekends to continue volunteering, if they choose.

And finally, if you've had bus driver fantasies all your life, you can drive a van through the Disabled American Veterans Driver Program. Drivers are needed to transport veterans to appointments in Jacksonville, Ocala and Inverness. You don't need a special driver's license to do this, but they do check driving records and require a physical.

''We need more drivers. There's always a turnover,'' says Baker.

Don Myhre, a 79-year-old retired UF professor, started volunteering at the VA 11 years ago.

He and his wife travel a lot to visit family, but when he's home in Gainesville he volunteers about four hours a day at the VA.

He spent three years in the U.S. Army as an X-ray technician during World War II. The GI Bill of Rights sent him to college. He worked as a soil chemist and retired from UF as a meritorious professor in 1991.

''I'm giving back something to the government. That was a good program,'' he says.

Myhre says he likes volunteering at the VA and being around all sorts of people.

''It's fun, and you get the benefit of lots of exercise. I probably walk about 3 miles a day here. I like to be doing something constructive.''

## HONORING THE LIFE OF CONGRESSMAN FRANK MCCLOSKEY

Mr. BAYH. Mr. President, I rise today to honor the life of my fellow

Hoosier, Congressman Frank McCloskey, who lost his battle with cancer on Sunday, November 2. Congressman McCloskey dedicated his life to serving his country and our home State of Indiana, setting an example of personal conviction and political courage throughout his years as a public servant.

Francis Xavier McCloskey was born on June 12, 1939 in Philadelphia. He earned both his undergraduate and law degrees at Indiana University in Bloomington, where he would later serve as mayor for three terms, following 4 years in the Air Force and a brief career as a newspaper reporter. During his time as mayor, McCloskey transformed Bloomington politics with his new style of leadership. He initiated a transit service and the first direct passageway through the center of Bloomington, and oversaw the formation of city boards and commissions dedicated to the environment, women and human rights.

In 1982, McCloskey was elected to the U.S. Congress from Indiana's 8th district. In a district known across the Nation for its tumultuous and closely contested races, McCloskey held his seat to serve as Congressman for six terms. During his time in office, Frank McCloskey became one of the first public servants to travel overseas and witness first hand the atrocities taking place in Bosnia. A man of great compassion and conviction, Frank McCloskey focused his career on ending the ethnic cleansing taking place in Bosnia during the 1990s. His dedication to the cause continued even after he left public office, until cancer forced him to cancel his plans to return to Bosnia and continue democratic reforms there.

The sense of loss to all those who knew Congressman Frank McCloskey is tremendous. His work in Bloomington and later in Washington inspired a generation of Hoosiers to answer the call to public service. Many of Indian's current political leaders owe their start to the example set by McCloskey, and their continued works will serve as a lasting legacy to a man who dedicated his life to serving others. He is survived by his wife, Roberta Ann Barker, and their two children, Helen and Mark.

It is my honor to enter the name of Congressman Frank McCloskey into the CONGRESSIONAL RECORD.

## ADDITIONAL STATEMENTS

### HONORING MRS. CAROL KANAREK

● Mr. GRAHAM of Florida. Mr. President, every November organizations throughout America recognize the spirit of community service with National Philanthropy Day.

This November, I would like to take the opportunity to congratulate an outstanding Floridian, Mrs. Carol Kanarek of Vero Beach, who is receiving the 2003 National Philanthropy Day Unsung Hero Award from the Treasure Coast Chapter of the Association of Fundraising Professionals.

The Unsung Hero Award is given to an individual who has been an exceptional volunteer. Carol Kanarek certainly fits this description.

Carol Kanarek is a valued member of the Vero Beach community for her leadership, commitment, and extensive knowledge and experience. She is known as a coalition builder—someone who brings people and resources together to further the goals of the organizations for whom she volunteers. She has a true love of people, and a compassion for all causes.

For more than 20 years, Mrs. Kanarek has volunteered her time and energy to numerous organizations in her community including health care organizations, religious organizations, schools, and charities. For example, Mrs. Kanarek has worked with the Riverside Children's Theatre, the March of Dimes, the United Way, the Visiting Nurses Association Hospice House, St. Edwards School, and the Temple Beth Shalom. This list is by no means exhaustive.

No project is too big or too small for Mrs. Kanarek. From chairing the Rabbi Selection committee at Temple Beth Shalom to working the concession stand at a Riverside Children's Theatre event, she always makes time. When working on committees, Mr. Kanarek is known as a consensus builder, always considering the concerns of others when developing a solution. Her gracious manner and gentle persistence have made Mrs. Kanarek a valuable asset to the many organizations of which she is a member. Mrs. Kanarek's patience and tireless enthusiasm for community service distinguish her as a woman who places others before herself.

Mr. President, philanthropy is one of defining characteristics of American society. Service for the benefit of others and commitment to something greater than personal reward strengthen our communities and neighborhoods, bringing us together and improving our quality of life.

I commend Carol Kanarek for her commitment to community service, volunteerism, and philanthropy. I am pleased that outstanding Floridians like Mrs. Kanarek are setting an example for communities across our nation, and I want to thank her for her service.●

### THE EXPLORING FREE ENTERPRISE PROGRAM

● Mr. NELSON of Nebraska. Mr. President, over the past few years the U.S. Senate has acted to stimulate the American economy. This spring we passed an economic stimulus package to provide meaningful tax relief for businesses and assistance for unemployed workers to soften the blow of difficult economic times. We have also worked to approve trade agreements that ensure a free and fair trade market for U.S. businesses.

As we work on these measures to improve our economy today, it is equally important to ensure that America's economy remains strong for the next generation as well.

I recently joined with Chadron State College to establish the Exploring Free Enterprise program. This program will focus on teaching students in elementary, middle and high school the principles of market economics, entrepreneurship, personal financial success and business ethics.

Entrepreneurship is a particularly important skill in Nebraska. A revitalized rural economy requires individuals who are able to seize upon openings in the marketplace and expand employment opportunities.

Business ethics is another area of great importance. I am proud to be a part of a program that will teach our future leaders that being honest is even more important than making money.

In 2002 I was honored to receive the U.S. Chamber of Commerce Spirit of Enterprise award. The Exploring Free Enterprise program seeks to spread that spirit of enterprise to a new generation of young business leaders and entrepreneurs. It is their entrepreneurial spirit that will drive America's economic engine in a competitive world economy.

I would like to thank Chadron State College for the opportunity to participate in this program and especially Dr. Rick Koza, the director of the program, and Dr. Tom Krepel, president Chadron State College, for their leadership.

Together, our investment in education recognizes that while children may only be 20 percent of our population, that they are 100 percent of our future.●

### ELLIS ISLAND MEDAL OF HONOR RECIPIENT MONTE AHUJA

● Mr. VOINOVICH. Mr. President, I rise today to congratulate and pay tribute to Mr. Monte Ahuja of Hunting Valley, OH as an Ellis Island Medal of Honor recipient.

The prestigious Ellis Island Medal of Honor award is presented annually to ''remarkable Americans who exemplify outstanding qualities in both their personal and professional lives,'' and ''who have distinguished themselves as citizens of the United States, while continuing to preserve the richness of their particular heritage.'' Monte Ahuja was selected to receive this honor in 2001.

Mr. Ahuja is a distinguished American who immigrated to the United States from India in 1969. He received a bachelor of science degree in mechanical engineering in India and pursued his graduate education at Ohio State University where he received his masters degree in mechanical engineering. He moved to Cleveland, OH in 1972 and received his masters in business administration at Cleveland State University in 1975 while working full time.

While pursuing his MBA, Mr. Ahuja began to dream about creating a global parts distribution network solely dedicated to providing transmission rebuilders the highest quality products and services. He pursued his dream by undertaking considerable research and hard work developing his idea, and he established Transtar Industries, Inc. in 1975.

Over the past 28 years, Transtar Industries has grown from a two-person, one-location operation to a company with over 25 locations nationwide and over 500 dedicated employees that services the automotive transmission aftermarket in over 60 countries.

Transtar Industries, Inc. is headquartered in Cleveland, OH and distributes the world's largest and most comprehensive line of automotive transmission replacement parts and kits. The company's products are the result of proactive product research and development. Transtar also has outstanding business systems. Its sales forecasting system is state-of-the art and its level of customer service consistently exceeds 95 percent. All of Transtar's distribution centers are electronically linked, which makes it possible for Transtar to ship virtually every order the same day.

Mr. Ahuja has provided outstanding leadership at Transtar Industries and he has received numerous awards for his achievements, including the Arthur Anderson 2000 Leadership Award, the Inside Business NEO Success Award and the Association of Corporate Growth Deal Makers Award.

As Governor of Ohio, I was proud to recognize Mr. Ahuja on two occasions as recipient of the ''E'' Award for Excellence in Export.

In 2002, Mr. Ahuja was chosen the World Trade Center Cleveland International Executive of the Year.

Monte Ahuja is also extremely involved in the community and he demonstrates generously his philosophy of contributing to the community that has given him so much.

He has a passion for education which is demonstrated by his years of commitment to his alma mater where he began to envision and create his company. At Cleveland State University, he has served as director of the Cleveland State University Foundation and he has established the Ahuja Endowed Scholarship Fund in business administration and engineering.

He also established the Distinguished Scholar in Comparative Indian and Western Philosophy—which is so important today as we strive to appreciate the richness of this country's cultural diversity.

I was so impressed with Monte's devotion to education that when I was governor of Ohio I appointed him to Cleveland State's Board of Trustees in 1991. From 1992 to 1998, he served with distinction as chairman of the Board of Trustees.

He also served as chairman of the Cleveland State University Task Force, part of a statewide project I initiated as governor of Ohio, the ''Ohio Task Force for Managing Future Higher Education in the State of Ohio'' to challenge the universities to conduct private sector management audits to work harder and smarter and do more with less. Under Monte Ahuja's leadership, Cleveland State University's audit was one of the best in the State and saved the University $8.5 million a year.

Monte Ahuja's commitment to education is relentless and he has dedicated himself to the advancement of quality education at Cleveland State and in Ohio.

He is the embodiment of the achievements that a quality education can help facilitate. In 1990, Mr. Ahuja was named one of Cleveland State University's 25 most distinguished alumni. In 1999, he received Harvard University Business School's Dively Award and that same year his alma mater recognized him again by naming the Business School building at Cleveland State University Monte Ahuja Hall.

Mr. Ahuja has served on the boards of many civic, business and philanthropic organizations, including the Greater Cleveland Roundtable, The National Conference, World Trade Center Advisory Council, and Ohio Export Promotion and Trade Council.

Currently, Mr. Ahuja serves on the boards of the Cleveland Cuyahoga County Port Authority, University Hospitals of Cleveland, Greater Cleveland Growth Association, United Way, WVIZ/PBS, Enterprise Development, Inc., and the Cleveland Council on World Affairs.

In addition to his significant contributions to the community, Monte has a wonderful sense of family. He is a loving husband to Usha, his wife of 30 years, a tremendous father to his two daughters and a caring son.

Monte Ahuja is a remarkable American and someone I am privileged to call friend. He has the highest integrity in both his personal and professional life and he has made many outstanding contributions to the Asian Indian community, to his local community in Cleveland, OH and to American society.

I am proud to recognize my friend Monte Ahuja and congratulate him on this wonderful honor.●

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

At 3:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 506. An act to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes.

H.R. 982. An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa.

H.R. 2438. An act to designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the ''Major Henry A. Commiskey, Sr. Post Office Building''.

H.R. 2766. An act to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

H.R. 3029. An act to designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the ''S. Truett Cathy Post Office Building''.

H.R. 3118. An act to designate the Orville Wright Federal Building and the Wilbur Wright Federal Building in Washington, District of Columbia.

H.R. 3166. An act to designate the facility of the United States Postal Service located at 57 Old Tappan Road in Tappan, New York, as the ''John G. Dow Post Office Building''.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 94. Concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

H. Con. Res. 176. Concurrent resolution supporting the goals and ideals of Financial Planning Week, recognizing the significant impact of sound financial planning on achieving life's goals, and honoring American families and the financial planning profession for their adherence and dedication to the financial planning process.

H. Con. Res. 237. Concurrent resolution honoring the late Rick Lupe, lead forestry technician for the Bureau of Indian Affairs Fort Apache Agency, for his dedication and service to the United States and for his essential service in fighting wildfires and protecting the environment and communities of Arizona.

H. Con. Res. 262. Concurrent resolution expressing the sense of the Congress in support of the National Anthem ''SingAmerica'' project.

H. Con. Res. 280. Concurrent resolution recognizing the National Stone, Sand & Gravel Association for reaching its 100th Anniversary, and for the many vital contributions of its members to the Nation's economy and to improving the quality of life through the constantly expanding roles stone, sand, and gravel serve in Nation's everyday life.

The message further announced that the House has disagreed to the amendment of the Senate to the bill (H.R. 2800) making appropriations for foreign operations, export financing, and relaed programs for the fiscal year ending September 30, 2004, and for other purposes, and asks for a conference

with the Senate on the disagreeing votes of the two Houses thereon; and appoints the following members as the managers of the conference on the part of the House: Mr. KOLBE, Mr. KNOLLENBERG, Mr. LEWIS of California, Mr. WICKER, Mr. BONILLA, Mr. VITTER, Mr. KIRK, Mr. CRENSHAW, Mr. YOUNG of Florida, Mrs. LOWEY, Mr. JACKSON of Illinois, Ms. KILPATRICK, Mr. ROTHMAN, Ms. KAPTUR, and Mr. OBEY.

The message also announced that the House has passed the following bill, without amendment:

S. 677. An act to revise the boundary of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area in the State of Colorado, and for other purposes.

S. 924. An act to authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes.

The message further announced that the House has passed the following bill, with an amendment:

S. 313. An act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

At 6:26 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 76. Joint resolution making further continuing appropriations for the fiscal year 2004, and for other purposes.

The message also announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2559) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes.

## MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 982. An act to clarify the tax treatment of bonds and other obligations issued by the Government of American Samoa; to the Committee on Finance.

H.R. 2438. An act to designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the ''Major Henry A. Commiskey, Sr. Post Office Building''; to the Committee on Governmental Affairs.

H.R. 2766. An act to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado; to the Committee on Energy and Natural Resources.

H.R. 3029. An act to designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the ''S. Truett Cathy Post Office Building''; to the Committee on Governmental Affairs.

H.R. 3118. An act to designate the Orville Wright Federal Building and the Wilbur Wright Federal Building in Washington, District of Columbia; to the Committee on Environment and Public Works.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 94. Concurrent resolution expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce; to the Committee on Health, Education, Labor, and Pensions.

H. Con. Res. 176. Concurrent resolution supporting the goals and ideals of Financial Planning Week, recognizing the significant impact of sound financial planning on achieving life's goals, and honoring American families and the financial planning profession for their adherence and dedication to the financial planning process; to the Committee on Banking, Housing, and Urban Affairs.

H. Con. Res. 237. Concurrent resolution honoring the late Rick Lupe, lead forestry technician for the Bureau of Indian Affairs Fort Apache Agency, for his dedication and service to the United States and for his essential service in fighting wildfires and protecting the environment and communities of Arizona; to the Committee on Indian Affairs.

H. Con. Res. 262. Concurrent resolution expressing the sense of the Congress in support of the National Anthem ''SingAmerica'' project; to the Committee on the Judiciary.

H. Con. Res. 280. Concurrent resolution recognizing the National Stone, Sand & Gravel Association for reaching its 100th Anniversary, and for the many vital contributions of its members to the Nation's economy and to improving the quality of life through the constantly expanding roles stone, sand, and gravel serve in the Nation's everyday life; to the Committee on the Judiciary.

## MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 506. An act to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes.

H.R. 3166. An act to designate the facility of the United States Postal Service located at 57 Old Tappan Road in Tappan, New York, as the ''John G. Dow Post Office Building''.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–5034. A communication from the Secretary of Homeland Security, transmitting, the 5-year business plan for the Coast Guard Yard as directed by the Department of Transportation and Related Agencies Appropriations Bill 2002; to the Committee on Commerce, Science, and Transportation.

EC–5035. A communication from the Secretary of Homeland Security, transmitting, pursuant to law, a report relative to the use of the Coast Guard Housing Authorities; to the Committee on Commerce, Science, and Transportation.

EC–5036. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Directed Fishing for Pollock in Statistical Area 630 of the Gulf of Alaska'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5037. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure'' (ID090503B) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5038. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Closure of Directed Fishing for Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5039. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Closure; Prohibition of Directed Fishing for Pacific Cod in the Central Gulf Offshore in the Gulf of Alaska'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5040. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Directed Fishing for Pollock in Statistical Area 610 of the Gulf of Alaska'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5041. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Retention Limit Adjustment'' (ID092403C) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5042. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Reopening Directed Fishing for Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska for 48 Hours'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5043. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Reopening Directed Fishing for Pollock in Statistical Area 630 of the Gulf of Alaska'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5044. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Magnuson Act Provisions; Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specification Groundfish Fishery Management Measures; Emergency Rule; Corrections'' (RIN0648–AR47) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5045. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and

in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications; Pacific Mackerel Fishery'' (RIN0648–AP43) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5046. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Weakfish Fishery; increases the incidental catch allowance for weakfish caught in the Exclusive Economic Zone (EEZ) from 150 lb to no more than 300 lb per day or trip, whichever is longer in duration, and removes Connecticut from the list of states where commercially caught weakfish from the EEZ can be landed'' (RIN0648–AR11) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5047. A communication from the Deputy Assistant Administrator for Regulatory Programs, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement a Fishery Management Plan for Pelagic Sargassum Habitat of the South Atlantic Region'' (RIN0648–AN87) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5048. A communication from the Assistant Administrator, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications, General Category Effort Controls and Permit Revisions'' (RIN0648–AQ38) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5049. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 727-200 Series Airplanes'' (RIN2120-AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5050. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney PW40000 Series Turbofan Engines Correction'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5051. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC–8–11, -12, -21, 31, -32, -33, -41, -42, -43, -50, -54, -F55, -60, -70, and -70F Series Airplaines'' (RIN2120-AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5052. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: PILATUS Aircraft Ltd. Model PC–7 Airplanes'' (RIN2120-AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5053. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney Canada Models PW 118 , PW120, PW120A, PW121 Turboprop Engines'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5054. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–400, 500, 600, 700, and 800 Series Airplanes'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5055. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model C1–600–2B19 (Regional Jet Series 100 & 400) Airplanes'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5056. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model SAAB 2000 Series Airplanes'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5057. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747SP, 747SR, 747-100, 200, and 300 Series Airplanes; Equipped with Pratt and Whitney Model JT9D–3, -7, and 7Q Series Engines and Model Jt9D–7R4G2 Engines'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5058. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS 350B3, SA–365N, Ni, AS–365N2, AS365N3, and EC155B Helicopters'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5059. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF6–6 Series Turbofan Engines'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5060. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter Deutchland GmbH Model EC135 , P1, P2, T1, and T2 Helicopters'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5061. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dirnier Model 328–300 Series Airplanes Equipped with Certain Pratt and Whitney PW306B Engines Nacelles'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5062. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF34–3A1, -3B , and 3B1 Turbofan Engines'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5063. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Univair Aircraft Corporation Models Alon A2–A and A2–A; ERCO 415–C, 415CD, 415D, 415E, and 415G; Forney f–1, and F–1A, and Mooney M10 Airplanes'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5064. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company 90, 100, and 200 Airplanes'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5065. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica S.A. (EMBRAER) Moedl EMB–135 and 145 Series Airplanes'' (RIN2120–AA64) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5066. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Beatrice, NE; Doc. No. 03–ACE–59'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5067. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Cedar Rapids, IA; Doc. No. 4–ACE–42'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5068. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Seaward, NE; Doc. No. 03–ACE–61'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5069. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Wayne, NE; Doc. No. 03–ACE–60'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5070. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Cedar Rapids, IA; Doc. No. 03–ACE–42'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5071. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Fort Leonard Wood, MO; Doc. No. 03–ACE–27'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5072. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Centerville, IA; Doc. No. 03–ACE–66'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5073. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Meade, KS; Doc. No. 03–ACE–65'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5074. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Seward, NE; Doc. No. 03–ACE–61'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5075. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Sullivan, MO; Doc. No. 03–ACE–63'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5076. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Aurora, MO; Correction Doc. No. 03–ACE–58'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5077. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace: Lee's Summit, MO; Doc. No. 03–ACE–64'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5078. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace: Iguigig, AK; Doc. No. 03–AAL–06'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5079. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace: Nelson Lagoon, AK; Doc. No. 03–AAL–5'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5080. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace: Pilot Point, AK; Doc. No. 03–AAL–4'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5081. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments'' (RIN2120–AA65) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5082. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of the VOR Federal Airways in the Vicinity of Tuscaloosa, AL Doc. No. 02–ASO–24'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5083. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airspace Designations; Incorporation By Reference Doc. No. 29334'' (RIN2120–ZZ60) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5084. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Jet Routes, Baton Rouge, LA Doc. No. 02–ASW–4'' (RIN2120–AA65) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5085. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Minor Revision of the Legal Description of VOR Federal Airway V–167 in the Vicinity of Hyannis, MA Doc. No. 03–ANE–102'' (RIN2120–AA66) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5086. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (77) Amendment No. 3067'' (RIN2120–AA65) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5087. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Procedures; Miscellaneous Amendments (40) Amendment No. 3068'' (RIN2120–AA65) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5088. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (26) Amendment No. 3074'' (RIN2120–AA65) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5089. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments No. 2058'' (RIN2120–AA65) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5090. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Electronic Options for Transmitting Certain Information Collection Responses to MARAD'' (RIN2120–AB56) received on October 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5091. A communication from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, a rule entitled ''Interagency Acquisition Approvals'' (RIN2700–AC78) received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5092. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Prohibition of Directed Fishing for Pollock in Statistical Area 620 of the Gulf of Alaska'' received on October 30, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5093. A communication from the Secretaries of Energy and Agriculture, transmitting, pursuant to law, a report relative to the Biomass Research and Development Initiative; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5094. A communication from the Chairman, Farm Credit System Insurance Corporation, transmitting, pursuant to law, the Corporation's Strategic Plan for Fiscal Years 2004 through 2008; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5095. A communication from the Under Secretary, Food, Nutrition, and Consumer Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Food Stamp Program: Non Discretionary Quality Control Previsions of Title IV of Public Law 107–171'' (RIN0584–AD31) received on October 30, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5096. A communication from the Staff Director, Office of Regulatory and Management Services, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''National Forest System Land and Resource Management Planning; Extension of Compliance Deadline or Site–Specific Projects'' (RIN0596–AC02) received on October 30, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5097. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting, pursuant to law, the report of a rule entitled ''Mexican Fruit Fly; Removal of Regulated Areas'' (Doc. No. 02–129–4) received on October 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5098. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting, pursuant to law, the report of a rule entitled ''Veterinary Services User Fees; Fee for Use of Animal Ramp at Miami International Airport'' (Doc. No. 02–041–2) received on October 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5099. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting, pursuant to law, the report of a rule entitled ''Interstate Movement of Swine Within a Production System; Inspection of Swine'' (Doc. No. 02–069–2) received on October 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5100. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting, pursuant to law, the report of a rule entitled ''Agricultural Bioterrorism Act of 2002; Possession, Use, and Transfer of Biological Agents and Toxins'' (Doc. No. 02–088–3) received on October 29, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5101. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Imidacloprid; Pesticide Tolerances for Emergency Exemptions'' (FRL#7330–4) received on October 30, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5102. A communication from the Administrator, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Changes in Fees for Federal Fruits and Vegetables, Processed'' (Doc. No. FV–03–333) received on November 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5103. A communication from the Administrator, Transportation and Marketing Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''National Organic Program; Amendments to the National List of Allowed and Prohibited Substances'' (RIN0581–AC19) received on November 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5104. A communication from the Administrator, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Fresh Bartlett Pears Grown in Oregon and Washington; Increased Assessment Rate'' (Doc. No. FV–03–931–1 FR) received on November 3, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5105. A communication from the Assistant Director, Executive and Political Personnel, transmitting, pursuant to law, the report of a nomination rejected, withdrawn, and returned, for the position of Assistant Secretary of Defense for Special Ops/Low Intensity Conflict, Department of Defense, received on October 30, 2003; to the Committee on Armed Services.

EC–5106. A communication from the Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense , transmitting, pursuant to law, a letter notifying Congress of the intent to obligate funds for one new Fiscal Year 202 out-of-cycle Foreign Comparative Testing project; to the Committee on Armed Services.

EC–5107. A communication from the Acting Under Secretary of Defense for Acquisition, Technology, and Logistics, Department of Defense, transmitting, a report relative to a request in Senate Report 107–151 requesting a study concerning the feasibility of hybrid vehicles in the defense fleet; to the Committee on Armed Services.

EC–5108. A communication from the Assistant General Counsel for Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Designation of Round III Urban Empowerment Zones and Renewal Communities'' (RIN2506–AC09) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5109. A communication from the Assistant General Counsel for Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants'' (RIN2501–AC89) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5110. A communication from the Assistant General Counsel for Regulations, Office of Community Planning and Development, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Correction'' (RIN2577–AC39) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5111. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six month periodic report on the national emergency with respect to Iran that was declared in Executive Order 12170; to the Committee on Banking, Housing, and Urban Affairs.

EC–5112. A communication from the Acting General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (44 CFR Part 67) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5113. A communication from the Acting General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' (44 CFR Part 65) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5114. A communication from the Acting General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (44 CFR Part 67) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5115. A communication from the Acting General Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' (44 CFR Part 67) received on October 30, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5116. A communication from the Executive Director, Neighborhood Reinvestment Corporation, transmitting, the Corporation's Five-Year Strategic/Operational Plan; to the Committee on Banking, Housing, and Urban Affairs.

EC–5117. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Texas Regulatory Program'' (TX–50–FOR) received on October 31, 2003; to the Committee on Energy and Natural Resources.

EC–5118. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Wyoming Regulatory Program'' (WY–031–FOR) received on October 31, 2003; to the Committee on Energy and Natural Resources.

EC–5119. A communication from the Assistant Secretary, Fish, Wildlife and Parks, National Park Service, transmitting, pursuant to law, the report of a rule entitled ''Special Regulations—Areas of the National Park System: Mountain Bike Use at Saguaro National Park'' (RIN1024–AD10) received on November 1, 2003; to the Committee on Energy and Natural Resources.

EC–5120. A communication from the Assistant Secretary, Fish, Wildlife and Parks, National Park Service, transmitting, pursuant to law, the report of a rule entitled ''Personal Watercraft Use: Assateague Island National Seashore'' (RIN1024–AD02) received on November 1, 2003; to the Committee on Energy and Natural Resources.

EC–5121. A communication from the Assistant Secretary, Fish, Wildlife, and Parks, National Park Service, transmitting, pursuant to law, the report of a rule entitled ''Operating Under the Influence of Alcohol and Drugs'' (RIN1024–AC69) received on November 3, 2003; to the Committee on Energy and Natural Resources.

EC–5122. A communication from the Assistant Secretary, Fish, Wildlife, and Parks, National Park Service, transmitting, pursuant to law, the report of a rule entitled ''New River Gorge National River Hunting Regulation'' (RIN1024–AD12) received on November 3, 2003; to the Committee on Energy and Natural Resources.

EC–5123. A communication from the Assistant Secretary, Fish, Wildlife, and Parks, National Park Service, transmitting, pursuant to law, the report of a rule entitled ''Special Regulations; Areas of the National Park System Personal Watercraft Use at Glen Canyon National Recreation Area'' (RIN1024–AC90) received on November 3, 2003; to the Committee on Energy and Natural Resources.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 1669. A bill to reauthorize the Dingell-Johnson Sport Fish Restoration Act (Rept. No. 108-186).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1627. A bill to reauthorize the Workforce Investment Act of 1998, and for other purposes (Rept. No. 108–187).

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CORNYN (for himself and Mr. LOTT):

S. 1820. A bill to authorize the States to implement such mechanisms as are necessary to endure the continuity of Congress in the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on Rules and Administration.

By Mr. HOLLINGS (for himself, Mr. INOUYE, Mr. ROCKEFELLER, Mr. KERRY, Mr. BREAUX, Mr. DORGAN, and Mr. LAUTENBERG):

S. 1821. A bill to establish a National Space Commission on activities of the United States related to the future of space; to the Committee on Commerce, Science, and Transportation.

By Mr. AKAKA (for himself, Mr. FITZGERALD, and Mr. LIEBERMAN):

S. 1822. A bill to require disclosure of Financial relationships between brokers and mutual fund companies and of certain brokerage commissions paid by mutual fund companies; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BURNS (for himself and Mr. BAUCUS):

S. 1823. A bill to amend the Act of August 9, 1955, to authorize the Assiniboine and Sioux Tribes of the Fort Peck Reservation to lease tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines; to the Committee on Indian Affairs.

By Mr. LUGAR (for himself, Mr. HAGEL, Mr. BIDEN, and Mr. SARBANES):

S. 1824. A bill to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes; to the Committee on Foreign Relations.

By Mr. DEWINE:

S. 1825. A bill to amend title 18, United States Code, to provide penalties for the sale

and use of unauthorized mobile infrared transmitters; to the Committee on the Judiciary.

By Mr. REID (for himself and Mr. ENSIGN):

S. 1826. A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada; to the Committee on Energy and Natural Resources.

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

S. 1827. A bill to amend the Agricultural Adjustment Act to remove the requirement that processors be members of an agency administering a marketing order applicable to pears; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KYL (for himself, Mr. CHAMBLISS, Mr. CRAIG, Mr. NICKLES, Mr. SESSIONS, and Mr. CORNYN):

S. 1828. A bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, and for other purposes; to the Committee on the Judiciary.

By Mr. CORNYN:

S.J. Res. 23. A joint resolution proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FRIST (for himself and Mr. DASCHLE):

S. Res. 259. A resolution to authorize legal representation in Bell Aviation, Inc., et al. v. Sino Swearingen Aircraft Co., L.P., et al; considered and agreed to.

## ADDITIONAL COSPONSORS

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 736

At the request of Mr. ENSIGN, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 973

At the request of Mr. NICKLES, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 973, a bill to amend the Internal Revenue Code of 1986 to provide a shorter recovery period for the depreciation of certain restaurant buildings.

S. 1037

At the request of Ms. SNOWE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1037, a bill to amend title XVIII of the Social Security Act to provide for coverage under the medicare program of all oral anticancer drugs.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1380

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1380, a bill to distribute universal service support equitably throughout rural America, and for other purposes.

S. 1524

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 1524, a bill to amend the Internal Revenue Code of 1986 to allow a 7-year applicable recovery period for depreciation of motorsports entertainment complexes.

S. 1702

At the request of Mr. SMITH, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1702, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage to designated plan beneficiaries of employees, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S.J. RES. 19

At the request of Mr. SPECTER, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S.J. Res. 19, a joint resolution recognizing Commodore John Barry as the first flag officer of the United States Navy.

S. RES. 202

At the request of Mr. CAMPBELL, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Res. 202, a resolution expressing the sense of the Senate regarding the genocidal Ukraine Famine of 1932–33.

S. RES. 244

At the request of Mrs. BOXER, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. Res. 244, a resolution congratulating Shirin Ebadi for winning the 2003 Nobel Peace Prize and commending her for her lifetime of work to promote democracy and human rights.

AMENDMENT NO. 2071

At the request of Mr. COCHRAN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of amendment No. 2071 intended to be proposed to H.R. 2673, a bill making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORNYN (for himself and Mr. LOTT):

S. 1820. A bill to authorize the States to implement such mechanisms as are necessary to endure the continuity of Congress in the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on Rules and Administration.

Mr. CORNYN. Mr. President, I rise to say a few words about the continuity of Government. More than 2 years since the terrible events of September 11, Congress has not taken any steps necessary to protect the Nation by ensuring continuity of Government operations should there be another attack and the tragic loss of life or disability on the part of Members of the United States Congress. The Founders of this country rightly required a majority of each House to constitute a quorum to do business, to ensure a nationally representative Congress. But the Constitution does not provide, I should say, adequate mechanisms to assure a continuing, functioning Congress if a majority of the Members are incapacitated or killed by a terrorist attack.

Our current system of providing for the continuity of Government in the event of a disaster is simply inadequate to meet the realities of a post-9/11 world. As unthinkable as another attack of that magnitude might be, we must be ready for the worst.

In fact, we have a duty as the elected Representatives of our respective States to do everything within our power to provide for a stable continuance and function of Government, despite all possible catastrophes. We must not leave our Nation's citizens without representation, without order, and without defense. We simply owe it to the American people to ensure that our Government will remain strong and stable, even in the face of disaster.

It is my conviction that this issue deserves more than just token attention. It is not something we can or should put off until another day. It is urgent and it is a critical element of our ongoing fight against terror.

Today, I have offered a proposal to provide for the continuity of congressional operations. In coming weeks, I will submit legislation to address the problems of our current system of Presidential succession as well.

Earlier this year, the bipartisan Continuity of Government Commission,

which was a joint project of the American Enterprise Institute and the Brookings Institution, issued a report which unanimously recommended a constitutional amendment:

> To allow immediate, temporary appointments to Congress until special elections could be held to fill vacancies or until matters of incapacitation can be resolved.

Many Members of Congress strongly agree with the recommendation of that commission. Some, however, are reluctant to allow for the appointment rather than the election of Representatives, no matter how dire the emergency. To protect the American people and ensure a functioning Congress, we must find a way to bridge the gap on a temporary basis. I submit that this must be an emergency measure which would allow for the ongoing operation of Government in a catastrophe but which would then allow for election in the ordinary course of events, after events had been stabilized.

I have proposed a constitutional amendment that would allow Congress to enact laws providing for congressional succession modeled after the provision of article II, authorizing Congress to enact laws providing for Presidential succession.

I also propose implementing legislation to authorize each State to craft their own mechanisms for filling vacancies in their congressional delegations, which is modeled after the 17th amendment. In other words, my proposal specifically refrains from choosing sides in this debate, as far as whether the temporary emergency measure be by appointment or by election, leaving that decision up to the States, following the model of the 17th amendment, which of course provides for the election or selection of Senators in the event of vacancy. Forty-eight States provide for temporary appointment by the Governor, but two States provide for special elections. This proposal would give each State the option to choose which procedures they deem most advisable. The proposed constitutional amendment would simply defer the question to Congress, and the implementing legislation would defer the question to the States.

In an age of terrorism and weapons of mass destruction, I believe it is high time to address this need that is all that much more apparent post-9/11 to ensure the continuity of this body and of the entire Congress. In my capacity as chairman of the Constitution Subcommittee of the Senate, the Committee of the Judiciary, I plan to convene hearings next year so we can debate this proposal as soon as possible.

I was not in Washington when the attacks came on September 11. Like so many other Americans, I was at home in Texas, getting ready to go to work when I heard the terrible news, and then was rivetted to the events unfolding on television. But I know for many of my friends and colleagues who were here on that horrific day, they and we all feel a tremendous debt of gratitude to the heroes of flight 93. The brave passengers on that airplane did more than just save the lives of their fellow citizens. Absent their courageous sacrifice, flight 93 could have reached its final destination, perhaps this very building, in an attack that could have eliminated an entire branch of government.

That hallowed ground in Pennsylvania, where flight 93 met its ultimate rest, marks a promise left behind by those courageous heroes, a promise carried on to their children, to their loved ones, and, indeed, to this very Nation.

It is a promise that says that freedom will not end here in the violent acts of evil men. It persists, it endures, and it will not be destroyed.

Even as we dedicate ourselves to the ongoing war on terror at home and abroad, even as we hope and pray that the tragedies of September 11 will never be repeated, we must always remain conscious of our promise as Senators, to serve the people of our States and of our Nation, and to support and defend the Constitution of the United States. It is not every day that you introduce legislation hoping and praying that it will never be necessary, but this legislation is, in a very real sense, urgent and necessary.

We must prepare for all contingencies fulfilling our oaths of office to ensure that this promise—the promise of a free government, a government of laws, not men—shall not perish from the Earth.

I yield the floor.

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By Mr. HOLLINGS (for himself, Mr. INOUYE, Mr. ROCKEFELLER, Mr. KERRY, Mr. BREAUX, Mr. DORGAN, and Mr. LAUTENBERG):

S. 1821. A bill to establish a National Space Commission on activities of the United States related to the future of space; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, we have 17 dead astronauts on our plate—3 from Apollo I, all preventable; 7 from the *Challenger*, all preventable; and 7 from the *Columbia*, all preventable.

What we are trying to do on behalf of myself and these several other Senators is get to a good healthy debate on the future of space in the United States and, more particularly, on correcting the safety features. There is a culture there that prevents safety from being adhered to, and, more than anything else, NASA is broke.

What is not understood is that at the present time we are going in all directions. It is like the Navy during World War II: When in danger, when in doubt, run in circles, scream and shout.

We here are saying we ought to take the orbital space station and accelerate it. Others on the other side say no, that is should be abolished. Some say we ought to go to Mars, and others say what we really need is to hire more expert personnel and bring them in. No one is going to leave their job and come work for the NASA endeavor at this particular time until we get a mixture and a program and a policy. That has to come from the President of the United States.

I introduce the National Space Commission Act to address the range of issues that the Columbia Accident Investigation Board—CAIB—identified with the National Aeronautics and Space Administration—NASA—and our space program in general, following the tragic loss of the *Columbia* Space Shuttle and its crew of seven astronauts. This bill authorizes the creation of a National Space Commission appointed by the President, to ensure that the safety reforms and recommendations of the *Columbia* investigation board are fully implemented by NASA. The commission will review and make recommendations regarding NASA's return-to-flight proposals and institutional changes that NASA will need to make to improve safety in the agency and to improve safety of the space shuttle, and other actions to assure future safe transportation to space and to the International Space Station. The commission will also look at the broader question of how the United States is organized for the safety of space flight across civilian, military and commercial sectors. It will begin to build a consensus on a future vision of space exploration that I hope will rekindle enthusiasm for our space program and generate the necessary support in the Congress and the administration for these endeavors.

The Columbia Accident Investigation Board shone a laser-sharp spotlight upon NASA and its program of human space exploration. Their pain-staking work to determine the cause of the loss of the Space Shuttle *Columbia* provides the context and justification for a new national agenda for space, a turning point in the history of space. Though the board stopped short of laying out this new future, its clear expectation is that the President and Congress should take up where the board left off.

> The U.S. civilian space effort has moved forward for more than 30 years without a guiding vision, and none seems imminent . . . Recommending the content of this debate goes well beyond the Board's mandate, but we believe that the White House, Congress, and NASA should honor the memory of Columbia's crew by reflecting on the nation's future in space and the role of new space transportation capabilities in enabling whatever space goals the nation chooses to pursue.
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> Columbia Accident Investigation Board Report, Volume I, August 2003, p. 210

The legislation I am introducing today, the National Space Commission Act, is designed to respond to this challenge. It is a complex challenge, and a complex undertaking, that now lies before the Congress and the Nation. My bill is not intended to supplant, nor substitute for, the President's desire to set a new goal in place for the Human Space Flight Program. But as we have seen in the board's report, merely setting a far-reaching goal into place for

NASA and for the Nation is not enough. It will not resolve the many complex issues raised by Admiral Harold Gehman and the Columbia Accident Investigation Board. No, this report, and these challenges, run deeper than a rousing call for future missions to Mars on the Earth's Moon can resolve. As Admiral Gehman said last week in testimony before the Senate Commerce, Science, and Transportation Committee:

In the course of (our) study, we became convinced how difficult it is to get into and out of low Earth orbit. It is extraordinarily dangerous and very difficult to do . . . We have to do it more safely than 49 out of 50 times, that's not good enough . . . No matter what your vision is for human space flight, whether it's Mars or the L2 or the Moon or whatever it is, it starts in low Earth orbit . . . We need some leadership to say, ''Just getting into and out of low Earth orbit is a goal worthy of itself, without killing a lot of people.'' And that's hard to argue, because it isn't very jazzy.
Hearing on NASA's Future, October 29, 2003

Since the inception of the human space flight program, seventeen astronauts have lost their lives and all were avoidable. In its investigative work, the Columbia Accident Investigation Board reached several fundamental conclusions that went beyond the specific technical and physical causes of the loss of *Columbia*. The Columbia Board found basic flaws in how NASA managers behaved, the belief system that lay behind NASA attitudes and behavior, and NASA's understanding of basic technical and organizational requirements of safety.

The attitudes and decision-making of Shuttle Program managers and engineers during the events leading up to this accident were clearly overconfident and often bureaucratic in nature.
Columbia Accident Investigation Board Report, Volume I, August 2003, p. 177

NASA's bureaucratic culture kept important information from reaching engineers and managers alike. The same NASA whose engineers showed initiative and a solid working knowledge of how to get things done fast had a managerial culture with an allegiance to bureaucracy and cost-efficiency that squelched the engineers' efforts. When it came to NASA managers' own actions, however, a different set of rules prevailed. The Board found that Mission Management Team decision-making operated outside the rules even as it held its engineers to a stifling protocol . . .

Each decision, taken by itself, seemed correct, routine, and indeed, insignificant and unremarkable. Yet, in retrospect, the cumulative effect was stunning.
Ibid, p. 202–203

Most troubling to the Board was the fact that these NASA tendencies were not new but existed in full force at the time of both the *Challenger* and the *Columbia* Shuttle accidents.

The (Rogers) Commission found that NASA's safety system had been silent . . . (denoted by) a lack of problem reporting requirements, inadequate trend analysis, misrepresentation of criticality, and lack of involvement in critical discussions . . .

By the eve of the *Columbia* accident, institutional practices that were in effect at the time of the *Challenger* accident—such as inadequate concern over deviations from expected performance, a silent safety program, and schedule pressure—had returned to NASA.
Ibid, p. 100–101

This ''echo'' between the events eighteen years ago and the present made the loss of *Columbia* and its explanation all the more confounding, because so many who reviewed the agency, its practices, and its culture had sounded an alarm. The fact that these NASA behaviors and beliefs were so enduring that they persisted beyond the stunning loss of the *Challenger* and her crew was all the more startling to the *Columbia* Board. So startling, that the Board found it necessary to offer a blunt and chilling assessment.

If these persistent, systemic flaws are not resolved, the scene is set for another accident.
Ibid, p. 195

The *Columbia* Accident Investigation Board also found that it was not only NASA that was at fault for the loss of *Columbia*. Rather, the Board found that the weaknesses at NASA were just as much a result of the Nation's neglect of its human space flight program.

Post-*Challenger* policy decisions made by the White House, Congress, and NASA leadership resulted in the agency reproducing many of the failings identified by the Rogers Commission. Policy constraints affected the Shuttle Program's organization culture, its structure, and the structure of its safety system.
Ibid, p. 197

The impact of this neglect extended beyond NASA's organizational responses, encompassing broad aspects of planning for NASA's future missions and the development of its technology.

There (has been a) lack, over the past three decades, of any national mandate providing NASA a compelling mission requiring human presence in space . . . (and a) lack of sustained government commitment over the past decade to improving U.S. access to space by developing a second-generation space transportation system.
Ibid, p. 209

It is the view of the Board that previous attempts to develop a replacement vehicle for the aging Shuttle represent a failure of national leadership.
Ibid, p. 211

The bill I am introducing today establishes a permanent National Space Commission to oversee the nation's current and future development and use of space. The commission is established with 12 members, appointed by the President and confirmed by the Senate. Commission members will be leaders chosen from industry, academia, and other professions who have a profound expertise in space flight and safety and have worn the mantle of responsibility and challenge in the development and use of space.

The Commission will be independent of NASA and is authorized to hire a staff to develop the engineering and technical expertise to carry out its work. It will begin its work looking at some of our most vexing current problems raised by the Columbia Board's report and provide the necessary oversight to ensure that the Board's recommendations are implemented in the following areas: (1) the return-to-flight of the Space Shuttle and return to assembling the International Space Station, (2) replacement of the Space Shuttle, and (3) changes to the culture of NASA. We specify a number of detailed questions, criteria, and concerns that the Commission should take up in laying out a near-term path forward for NASA's Human Space Flight program. In making its recommendations, the Commission is directed to consider the safety and dignity of human life as its highest priority.

This specific aspect of the bill is a special clause in my mind, one that is not subject redaction—the United States space flight program must, above all, be an American approach to the future of space flight and, as such, must place the dignity and preservation of human life above all other considerations. This assertion is not meant as an accusation or indictment of NASA—Admiral Gehman made it clear that the fault for the loss of Columbia rests with us all, impressed as we all were with space flight and our accomplishments, and naive about its risks and challenges.

If Shuttle operations came to be viewed as routine, it was, at least in part, thanks to the skill and dedication of those involved in the program. They have made it look easy, though in fact it never was. The Board urges NASA leadership, the architects of U.S. space policy, and the American people to adopt a realistic understanding of the risks and rewards of venturing into space.
Ibid, p.208

For never again should we have to read in a formal accident report of the United States space program:

Managers failed to fulfill the implicit contract to do whatever is possible to ensure the safety of the crew.
Ibid, p.170

Never again.

In each of these assessments of current issues in NASA's Human Space Flight Program, we intend the commission to provide the President, the Congress, and NASA its informed judgment and advice, so that we can expeditiously return the program to a condition of stability and adopt a NASA culture of safety as soon as possible.

The second aspect of the bill is to set a long-range view of our Nation's participation in and development of space.

Concurrent with the work on current issues at NASA, but due by late 2005, are two ground-breaking studies. These studies are intended to go beyond defining a destination for humans in space and to address broader questions about the goals and methods we use, with a specific concern for public and private utilization and investment in space. Though we have learned that the economics of space flight should never again take precedence over its safety, we also know that, in the past, its cost has driven us down pathways that have not resulted in success.

In all three (Shuttle replacement) projects—National Aerospace Plane, X–33,

and X–34—national leaders had set ambitious goals in response to NASA's ambitious proposals. The programs relied on the invention of revolutionary technology, had run into major technical problems, and had been denied the funds needed to overcome these problems—assuming they could be solved. NASA had spent nearly 15 years and several billion dollars, and yet had made no meaningful progress toward a Space Shuttle replacement.
Ibid, p. 111

Continued U.S. leadership in space is an important national objective. That leadership depends on a willingness to pay the costs of achieving it.
Ibid, p. 211

First, the commission is chartered to provide a sweeping assessment of the future of space. Included in that assessment is a review of United States capabilities, goals, and uses for space, including the state of our Nation's investment in launch capabilities, how space could benefit State and local governments and regions, and the role of non-governmental, private organizations in the promotion of our space endeavors. The review will also take up the difficult issues related to public and private investment: the role of private institutions in the development and use of space and the business conditions they must meet; how Federal Government programs in space science, exploration, national security, and public safety support or limit the commercial development of space; and how space contributes to the terrestrial economy of the United States.

Given the high cost of space, and the even higher costs of space that the Nation is certain to experience in the near and long-term future, resolution of these questions of private versus public participation and promotion of the development of space is a necessary part of the examination of possible technological and economic futures for the space sector of the economy.

Second, and most importantly, the National Space Commission Act is directed to perform a comprehensive assessment and inventorying of the Nation's programs and practices related to the conduct and safety of space flight. This study will assess the state of the Nation's acceptance, approval, and commercial licensing practices as they relate to the conduct of civil, commercial, and military space flight and explore how space launch and high-risk space operations are conducted across each of these sectors. This study is intended to result in a series of recommendations about the future management of space launch and high-risk orbital and sub-orbital space operations in order to achieve the highest level of safety and management of these risks. To those who question the importance of establishing an authority independent of NASA to assess these provisions, the Columbia Accident Investigation board stated the case most convincingly:

(NASA) cultural norms tend to be fairly resilient . . . The norms bounce back into shape after being stretched or bent. Beliefs held in common throughout the organization resist alteration.
Ibid, p. 101

Within NASA, the cultural impediments to safe and effective Shuttle operations are real and substantial . . . Leadership will have to rid the system of practices and patterns that have been validated simply because they have been around so long . . . These recommendations will be difficult to initiate, and they will encounter some degree of institutional resistance.
Ibid. p. 209

NASA's blind spot is it believes it has a strong safety culture . . . Twice in NASA history, the agency embarked on a slippery slope that resulted in catastrophe . . . A safety team must have equal and independent representation so that managers are not again lulled into complacency by shifting definitions of risk.
Ibid, p. 203

Since NASA is an independent agency answerable only to the White House and Congress, the ultimate responsibility for enforcement of the recommended corrective actions must reside with those governmental authorities.
Ibid, p. 209

The National Space Commission is established on a permanent basis to maintain oversight of the implementation of space flight across all sectors of industry and government and vigilance in the management of safety in all United States high-risk space operations.

Let me reiterate. Merely announcing a bold new plan to travel to the Earth's Moon or to Mars is not sufficient. If the loss of the Space Shuttle *Columbia* merely results in that proposal, we will have failed the memory of our brave astronauts who lost their lives aboard both *Challenger* and *Columbia*. And we will have failed our own future. Unfortunately, our current charge is more difficult. We must challenge our assumptions, question our decisions and designs, revisit our approaches, and rethink our Nation's ambitions and goals for space. We must submit ourselves to the discipline to begin anew. The future of space and our Nation's reputation that we carry into history rests in the balance.

I ask unanimous consent that the text of the bill and an article from the New York Times be printed in the RECORD.

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

S. 1821

*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 ''National Space Commission Act''.

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) Since the enactment of the National Aeronautics and Space Act of 1958, space has become increasingly important for science, public safety, national defense and intelligence gathering, commercial telecommunications and other Earth applications, and the advancement of international relations tied to the use of space for peaceful purposes.

(2) The recent loss of the Space Shuttle Columbia highlighted the true condition of space flight: that it is highly prone to risk, fundamentally challenges the laws of nature, is extremely unforgiving of lapses in judgment, and demands the utmost consideration of safety and the dignity of human life.

(3) The Columbia Accident Investigation Board expressed extreme misgivings about the management and technical culture of the National Aeronautics and Space Administration. In addition to prescribing a specific menu of recommendations, the Board expressed concerns that the agency may not be able to achieve its own reform, stating that, ''Based on NASA's history of ignoring external recommendations, or making improvements that atrophy with time, the Board has no confidence that the Space Shuttle can be safely operated for more than a few years based solely on renewed post-accident vigilance''.

(4) Today, American astronauts and International Partner cosmonauts reside in space with limited means of safe rescue and support. The Nation remains dependent on the Space Shuttle as the sole means of International Space Station assembly and human operation in space for the foreseeable future. And the Nation faces a period of greatly increased expense merely to sustain current space operations.

(5) Even if new vehicle technologies were available, it is a matter of public discussion whether the historic ideals and prospects for the human exploration and development of space still guide our national program in space or whether the role and purpose of human presence in space has become ambiguous in light of other potential purposes for and uses of space.

(6) Meanwhile, our national program in space suffers from an aging space workforce and aging, sometimes dilapidated space facilities and systems, an atrophying of expertise, and a general lack of renewal of purposes, objectives, and methods. Commercial markets requiring space launch that are crucial to establishing the firm economic basis for the development of space and for the commercial development of space technology have not emerged but have withered. Although the use of space for science and national security purposes is expanding, the economic and commercial development of space continues to be fledgling. Although the Nation stands on the doorstep of the permanent human habitation of space, a mature agenda for safe, economic operation in space necessary to broaden the Nation's participation and interest in the peaceful development of space is lacking.

(7) The Nation would benefit by establishing a permanent National Space Commission to advise the President and Congress on issues related to the reflight and future use of the Space Shuttle and on the possibilities for the future development and use of space, and to recommend measures the Nation should take to secure the safety of future space flight.

**SEC. 3. NATIONAL SPACE COMMISSION.**

(a) ESTABLISHMENT.—There is established a commission to be known as National Space Commission.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Commission shall have 12 Members, who shall be appointed by the President by and with the advice and consent of the Senate.

(2) TERM.—Members of the Commission shall serve for a term of 5 years and shall be eligible for reappointment, except that the members initially appointed shall be appointed for terms of 3 years each.

(3) QUALIFICATIONS.—Members shall be selected from among individuals—

(A) with national reputations in the conduct of space flight and the development of space systems and technology;

(B) who are representative of the many views about the future of space and the economic and technical prospects for its use and development; and

(C) who are or have been employed in space-related activities, including—

(i) leaders of aerospace companies and other industries involved in the development and use of space;

(ii) professionals who have performed in significant capacities in the management of space programs or ventures; and

(iii) distinguished members of academia.

(4) VACANCIES.—Any vacancy occurring other than by the expiration of a term shall be filled in a manner that best replaces the qualifications of the person vacating the position, unless a person with different qualifications is to be nominated and appointed for the purpose of changing or re-directing the activities or objectives of the Commission.

(5) STATUS AS SPECIAL GOVERNMENT EMPLOYEES.—Members of the Commission are deemed to be special Government employees (as defined in section 202(a) of title 18, United States Code) without regard to the number of days of service during any 365–day period while engaged in the business of the Commission.

(6) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business.

(c) CHAIR.—The President shall designate an individual to serve as Chair of the Commission for a term of 3 years, except that until the Commission has been in operation for 3 full years the term of the individual so designated shall be 1 year. Any individual designated as chair is eligible for redesignation as chair.

(d) MEETINGS—The Commission shall meet at the call of the Chair. A majority of the members shall constitute a quorum, but a lesser number may conduct the business of the Commission.

(e) STAFF.—

(1) IN GENERAL.—The Commission shall appoint and fix the compensation (in accordance with the guidelines prescribed by the Administrator of General Services under section 7(d) of the Federal Advisory Committee Act) of staff comprising—

(A) staff selected by the Chair as permanent staff of the Commission; and

(B) staff selected by each Member as staff of the Member for the duration of the Member's appointment to the Commission.

(2) QUALIFICATIONS.—Staff shall be selected from among employees of business and professional firms in the business of the development of, manufacture and operation for, or use of space, individuals with entrepreneurial experience, employees of research centers and national laboratories, scholars, professionals, and academics whose work and insights are such that their work in support of the Commission will enhance the Nation's ability to guide and direct the space program.

(3) DETAILING OF FEDERAL EMPLOYEES.—At the request of the Commission, the head of a Federal department or agency may assign an employee to serve as a member of the Commission staff while employed by the United States.

(4) EXPERTS AND CONSULTANTS.—

(A) IN GENERAL.—The Commission may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code.

(B) AVAILABLE ARRANGEMENTS.—In obtaining any service described in subparagraph (A), the Commission may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

(C) NOTICE.—The Commission shall give public notice of any such grant, contract, cooperative agreement, or other arrangement before making any such grant or executing any such contract, cooperative agreement, or other arrangement.

**SEC. 4. GENERAL DUTIES.**

(a) IN GENERAL.—The Commission shall—

(1) provide advice and counsel to the President and the Congress of the United States on matters related to the future development and use of space;

(2) address questions of special merit posed by the President or by the Congress to be addressed by the Commission,

(3) conduct studies, assessments, and other methods of evaluation, including market, business, and financial assessments, necessary to reach conclusions and to formulate recommendations about the future of space;

(4) convene and establish public forums, reviews, and other means of public discourse for purposes of gathering and distributing information,facts, opinions, and data related to the future of space;

(5) confer With Federal, State, and local governments and regional organizations, United States corporations, laboratories, research centers and universities, and appropriate departments, agencies, and enterprises of other Nations on questions related to the development and use of space;

(6) make other recommendations as necessary to achieve the expanded development and use of space, including assessments of the status, focus, and effectiveness of government and industry pro grams and efforts designed to achieve that purpose;

(7) propose and establish a national approach for the safety of space flight in support of commercial, military and civilian space and suborbital space programs, including issues related to the commercial licensing and operation of space vehicles, the regulation, management, and control of space flight parts, components, systems, and facilities, and the training and advancement of government and industry personnel necessary, to achieve safe space flight; and

(8) advise the President and the Congress on any changes in Federal law or international agreements necessary to achieve the recommendations, solutions, and outcomes proposed by the Commission.

(b) METHODS OF SPACE FLIGHT.—In carrying out its duties under subsection (a), the Commission shall consider the potential for the future use of space by human and robotic means and the likely contribution of both to the long-term development and use of space.

(c) DISCLAIMER.—Nothing in this Act is intended—

(1) to prejudice the disposition, or outcome of decisions related to the ownership or institutional operation and support, of Federal laboratories, centers, or bases; or

(2) to preclude the use of special classes, de signs, or certification rules and standards peculiar to the use of military space vehicles.

**SEC. 5. SPECIFIC REPORTS AND ADVISORY ACTIVITIES.**

(a) SPACE SHUTTLE; INTERNATIONAL SPACE STATION.—

(1) IN GENERAL.—The Commission shall evaluate the findings, recommendations, and observations of the Columbia Accident Investigation Board and the activities of the National Aeronautics and Space Administration to respond to the Board's report, in eluding issues related to the re-flight of the Space Shuttle, alternative near-term crewed vehicle options, and changes in the agency's organization, management, technical administration, and conduct of safety, operations and engineering, and training, and other changes intended to ensure the safety of space operations and the dignity of human life.

(2) CRITERIA FOR RETURN TO OPERATIONS.—The Commission shall make recommendations to the President and the Congress concerning—

(A) any additional criteria and conditions that the Commission considers critical for the safe operation of the Space Shuttle that war rant demonstration during the initial and subsequent return-to-flight test and demonstration missions; and

(B) longer-term criteria and conditions necessary for a return to sustained operation and management of human space flight following the initial Space Shuttle re-flight and test and demonstration flights.

(3) EVALUATION OF HUMAN SPACE FLIGHT MANAGEMENT REFORMS.— Commission shall assess—

(A) the capability of the National Aeronautic and Space Administration to resolve all findings, recommendations, and observations of the Columbia Accident Investigation Board to the Commission's satisfaction, including management and technical reforms necessary to achieve safe space flight;

(B) the relationship of the National Aeronautic and Space Administration to its Industrial, scientific, and commercial partners and the proper role of each party in the selection, design, development, and operation of high risk space flight systems; and

(C) additional workforce, organization, and management reforms that may be required to enhance further the ability of the National Aeronautic and Space Administration, its partners, or other agencies of the United States to achieve safety of human space flight.

(4) CONSIDERATION OF THE INTERNATIONAL SPACE STATION AND ALTERNATIVE SPACE TRANSPORTATION SOLUTIONS.—In making its evaluation and recommendations under this subsection the Commission shall consider—

(A) the condition of the International

Space Station along with the further risk to or security of human life resulting from any decision to accelerate or slow the return to assembly and operation of the International Space Station and sustained human space flight operations;

(B) alternative space vehicle and crewing options that meet the highest achievable stand and of crew safety and security onboard the international Space Station in the shortest amount of time;

(C) the modification or purchase of existing space vehicles necessary to achieve a higher standard of heightened crew safety or enhanced ability to conduct safe human space flight operations;

(D) the acquisition or development of crewed vehicles on a schedule significantly more aggressive that the proposed schedule of the Orbital Space Plane; and

(E) the contribution of any proposed vehicle options to purposes in space other than servicing and support of the International Space Station.

(4) REPORTS TO CONGRESS.—

(A) ALTERNATIVE MEANS OF CREW TRANSFER.—Within 3 months after the full Commission has taken office, it shall report to the President and the Congress on crewing options for the Space Shuttle during the period of assembly of the International Space Station, alternative interim use of available space vehicles for these operations, and alternative or accelerated United States crewed vehicle modification or development options in lieu of or in addition to the proposed Orbital Space Plane program.

(B) SPACE SHUTTLE RETURN-TO-FLIGHT.—

(i) PREFLIGHT ADVICE.—On a continuous basis from the initial return-to-flight mission of the Space Shuttle through the final such mission, the Commission shall advise the Administrator, the President, and the Congress of the results of its review and assessment of the Space Shuttle return-to-flight, including any additional criteria the

Commission establishes for return-to-flight missions.

(ii) FINAL PREFLIGHT RECOMMENDATION.—Within 60 days before the planned date for the first Space Shuttle return-to-flight, and within 30 days before each subsequent test or demonstration flight of the Space Shuttle, the Commission shall transmit its final recommendations for return-to-flight to the Administrator, the President, and the Congress. In addition, the Commission shall attach to each such transmittal to the President and the Congress a record of its recommendations to the Administrator and a description of the Administrator's responses and actions in response to those recommendations.

(iii) POST-RESUMPTION ANALYSIS.—Within 6 months after the first successful return-to-flight mission of the Space Shuttle, the Commission shall submit a report to the President and the Congress summarizing the Commission's and the National Aeronautics and Space Administration's work on the reflight of the Space Shuttle and addressing further changes that should be accomplished to ensure safe continuous operation of the Space Shuttle and the International Space Station. The report shall address the status of organizational, management, and technical changes in the National Aeronautics and Space Administration, their effectiveness in resolving concerns about the safety, operations, engineering, and management cultures of the agency, and their effectiveness in resolving concerns and risks associated with a return-to-normal operations for the Space Shuttle and the International Space Station.

(b) FUTURE LAUNCH TECHNOLOGY AND THE DEVELOPMENT OF AND USES FOR SPACE.—

(1) IN GENERAL.—The Commission shall—

(A) advise the President and the Congress on the state of the Nation's investment in and development of advanced space launch technology, including advanced space lift propulsion systems;

(B) make recommendations on steps necessary to accelerate the development of technologies and capabilities to advance the economy of space flight and the prospect for the expanded use of space for economic, commercial, and industrial purposes;

(C) assess how State and local governments and regional authorities might benefit from the expanded use of space;

(D) evaluate the ability of the Nation's private research centers, laboratories, and private and public universities to contribute to and benefit from the expanded development and use of space;

(E) assess the future use of space for exploration, science, research, national security, and public safety ensure that such uses are consistent with the long-term economic development of space, and are designed to enhance the industrial and commercial capabilities of space flight whenever possible; and

(F) make detailed recommendations related to the use of budget, regulatory, and licensing powers and authorities of the United States to enhance, to better plan for, and to coordinate the activities of the United States related to the development and use of space.

(2) REPORT TO CONGRESS.—By September 1, 2005 the Commission shall transmit to the Congress a report that—

(A) summarizes its recommendations for future national goals for the development and use of space;

(B) provides a blueprint of capabilities that could and should be achieved by the end of the present decade, by 2015, and by 2025 in order to better position the Nation to achieve those goals; and

(C) addresses potential markets and uses for space and the means of financing the development and use of space.

(c) NATIONAL APPROACH TO THE SAFETY OF SPACE FLIGHT.—

(1) IN GENERAL.—The Commission shall conduct a review and assessment of the Nation's program of safety in space flight as conducted by the United States, the commercial space industry, and other private parties.

(2) CONTENTS.—The review and assessment shall—

(A) assess the current use of inspection, acceptance, and commercial licensing to certify the safety, flight worthiness, and flight readiness of space vehicles and their associated launch and ground control facilities;

(B) evaluate and compare current space launch and flight operations practices, including the promulgation of flight rules and over-flight plans of populated areas;

(C) assess and compare how Federal agencies, private launch operators, and commercial industry make determinations of flight worthiness and ground and flight system readiness, including the use of tests, analyses, demonstrations, and other means whereby the operational readiness of space vehicles, crew, and ground systems are verified to be ready for launch and operation;

(D) address current government and industry practices for conducting and coordinating design and decision rules within and among space management agencies, firms, organizations, and ground control and flight operations management centers before, during, and after flight; and

(E) assess practices and conditions related to the acquisition and sale of parts, components, systems, services, and capabilities among Industry prime and supplier contractors and the Federal Government, including outsourcing, sole source, and other competitive and non-competitive forms of relationship, and their impact upon safety.

(3) REPORT TO CONGRESS.—No later than September 1, 2005, the Commission shall transmit to the Congress a report that—

(A) summarizes the results of the review and assessment required by paragraph (1); and

(B) makes recommendations for a National program of—

(i) management of safe commercial, civil, and military space flight; and

(ii) regulation of the design, certification, or licensing of space flight systems for launch and landing over the United States, or for orbital or suborbital operation using crew or passengers aboard commercial or civil vehicles licensed or operated by the United States.

(c) ANNUAL REPORT.—In addition to other reports required or permitted under this Act, within 60 days after the end of each fiscal year, the Commission shall provide an annual report to the Congress that—

(1) summarizes its activities, reports, findings, conclusions, and recommendations during that fiscal year; and

(2) contains a year-end financial statement of the Commission's operations, including a detailed statement of the purposes for which funds have been expended by the Commission.

(d) OTHER REPORTS.—The Commission may also report to the President and the Congress on other space related questions and issues raised by the Congress, the President, or on its own initiative.

**SEC. 6. DEFINITIONS.**

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration.

(2) COMMISSION.—The term ''Commission'' means the National Space Commission established by section 3.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Commission such sums as may be necessary to carry out its duties under this Act.

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[From the New York Times, Nov. 5, 2003]

NASA SUPPORTERS SEEK NATIONAL DEBATE ON SPACE GOALS

(By Matthew L. Wald)

WASHINGTON, NOV. 4—After the shuttle Columbia disintegrated on Feb. 1, many supporters of NASA expected a renewed national debate on the goals of the space program. But nine months later, supporters of space exploration and the science program say that the subject appears to be in danger of slipping below the national horizon.

''There have been fits and starts of a national debate,'' said Senator Ernest F. Hollings of South Carolina, the ranking Democrat on the Commerce Committee, which has jurisdiction over NASA.

Mr. Hollings plans to introduce a bill on Wednesday to create a national space commission to oversee NASA's progress in fixing the hardware and the ''broken safety culture'' identified in the Columbia investigation, and to help set goals.

Senator Hollings' bill, which has six sponsors, all Democrats, joins a varied flock of measures on the House side, none likely to see major action this year.

''It's not commanding anywhere near the level of attention that the Challenger did,'' said a House staff aide who was on Capitol Hill at the time of that accident, in 1986.

The war in Iraq helps explain the difference, the aide added, but beyond that, ''space is more humdrum now,'' even when astronauts die.

Sean O'Keefe, the NASA administrator, said in testimony last week that the Bush administration would produce a new plan for space, including a replacement vehicle for the shuttle, now more than 20 years old. He said Congress should wait until that plan is released, but he refused to predict how long that would take.

The leisurely pace contrasts with the push by the Columbia Accident Investigation Board to complete its work over the summer so members of Congress could digest the report during their recess and be ready for a vigorous debate when they returned.

The most prominent feature of the debate so far has been a skirmish between NASA and the chairman of the House Science Committee and the ranking Democrat on the panel. The two lawmakers, Representatives Sherwood Boehlert, Republican of New York, and Ralph M. Hall, Democrat of Texas, suggested that NASA hold off on development of an orbital space plane, a crew-transport vehicle that could replace the shuttle, until an ''overall vision for the human spaceflight program'' emerges.

Mr. Boehlert said at a hearing on Oct. 16 that NASA would be successful ''only if it's pursuing a clear and broad national consensus with sustained and adequate funding,'' and he added, ''That hasn't been the case in three decades.''

Mr. O'Keefe, responding to the letter on the orbital space plane, argued that the project was still at a conceptual stage and should proceed.

Beyond establishing a commission to oversee NASA's progress, the Senate bill to be introduced on Wednesday seeks ''to address broader questions about the goals and methods we use,'' with specific concern for public and private investment in spaceflight and use of it. In remarks prepared for delivery on the Senate floor on Wednesday, Mr. Hollings argues that while economics of spaceflight should not take precedence over safety, ''we also know that, in the past, its cost has driven us down pathways that have not resulted in success.''

On the House side, Representative Bart Gordon, Democrat of Tennessee, introduced a bill that would have future accidents investigated by a presidential commission independent of NASA. The Columbia Accident Investigation Board began under a charter written after the Challenger accident, with members selected according to positions they held in the Air Force, Federal Aviation Administration and other agencies.

Mr. Gordon's bill was approved by a subcommittee but has gone no further.

Mr. Hall, the ranking Democrat on the House Science Committee, introduced a bill on Oct. 1, with 24 sponsors, including 3 Republicans, that would have the National Academy of Sciences and the National Academy of Engineering assemble an oversight committee, as was done after the Challenger accident. NASA has generally opposed outside oversight.

Mr. Hall also introduced an amendment to an appropriations bill that would mandate a $15 million study of shuttle crew escape, to be performed by NASA. The House passed the bill, and it is now in a conference committee.

Representative Nick Lampson, Democrat of Texas, has introduced a measure that would require NASA to develop reusable spaceships that could sit for long periods balanced between the gravitational pull of Earth and the Sun or the Moon; ships that could reach an asteroid; and, ultimately, ones that could reach Mars. The bill has 24 sponsors but has not yet been taken up in committee.

Mr. Lampson said in a telephone interview that he was glad that Senator Hollings was focused on the problem, but he added, ''we don't need a commission, we need a commitment for NASA.''

''If the goals get set, we will re-energize the academic community, and the space industrial community,'' he said, predicting that missions to Mars would ''do a great deal to move this country forward.''

Mr. Hollings, in a separate interview, said, ''I want to go to Mars, too, but unless you get the culture changed and fixed, we're not going anywhere.''

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By Mr. AKAKA (for himself, Mr. FITZGERALD, and Mr. LIEBERMAN):

S. 1822. A bill to require disclosure of financial relationships between brokers and mutual fund companies and of certain brokerage commissions paid by mutual fund companies; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce legislation intended to restore public trust in mutual funds, the Mutual Fund Transparency Act of 2003. I thank Senator FITZGERALD and Senator LIEBERMAN for cosponsoring my bill. I greatly appreciate the efforts of Senator FITZGERALD to address this issue. Our Financial Management, Budget, and International Security Subcommittee held a very thorough hearing on mutual fund trading abuses on Monday. I applaud the efforts of Representative RICHARD BAKER for his leadership and his efforts to improve mutual fund governance. I also commend the efforts of New York Attorney General Eliot Spitzer and the Secretary of Massachusetts William Galvin for their efforts to pursue individuals that have harmed mutual fund investors.

Mr. President, 95 million people have placed a significant portion of their future financial security into mutual funds. Mutual funds provide middle-income Americans, blue and white collar workers and their families, with an investment vehicle that offers diversification and professional money management. Mutual funds are what average investors rely on for retirement, savings for children's college education, or other financial goals and dreams.

My legislation will bring about structural reform of mutual fund governance and increase disclosures in order to provide useful and relevant information to mutual fund investors. I ask unanimous consent that a letter of support for my bill from the Consumer Federation of America, Fund Democracy, Consumer Action, U.S. Public Interest Research Group, and Consumers Union be printed in the RECORD.

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

CONSUMER FEDERATION OF AMERICA,
FUND DEMOCRACY, INC., CONSUMER ACTION, U.S. PUBLIC INTEREST RESEARCH GROUP, CONSUMERS UNION,
*October 31, 2003.*

Hon. DANIEL K. AKAKA,
*U.S. Senate, Washington, DC.*

DEAR SENATOR AKAKA: We are writing to express our enthusiastic support for your draft legislation to increase the transparency of mutual disclosures and enhance the independence of fund oversight. Over the last two decades, mutual funds have become firmly established as average Americans' investment vehicle of choice, and investors have for the most part benefitted greatly from the ability mutual funds have offered even those of modest means to diversify their portfolios and obtain professional management. However, fund rules in some areas have not kept pace with industry practices, and the recent scandals embroiling the mutual fund industry have raised serious questions about the quality of corporate governance in this industry.

Given the importance of mutual funds in the financial portfolios of average Americans and the heavy reliance of the least sophisticated investors on these investment vehicles, we applaud your efforts to address key weaknesses in the regulatory structure for mutual funds. Your proposed reforms to improve disclosures about fund costs and strengthen the independence of mutual fund boards, if adopted, should help the fund industry to regain the investor trust that has been the key to its success over the years but has been so severely undermined by recent revelations.

*1. We support requiring disclosure of broker compensation for mutual fund transactions*

The legislation would require disclosure of the compensation brokers receive for selling funds. While funds are currently required to disclose the existence of such payments in fund prospectuses, the actual amount of the broker's compensation for a particular mutual fund transaction does not currently have to be disclosed. This from of compensation creates a conflict of interest between the broker, who may be inclined to recommend the fund that offers him or her the highest compensation, and the investor, whose interest is in obtaining the highest quality fund at the lowest cost. By requiring timely disclosure to investors of the actual dollar amount of these commissions, your bill should help to increase investors' awareness of the existence and extent of this conflict of interest and its potential to induce their broker to place his or her interests ahead of theirs.

Ample evidence that brokers do not always put investors' interests first can be found in the allegations of improper sale of fund B shares at some fund companies. In addition, a recent Consumer Federation of America-Fund Democracy study of excess costs paid by investors in S&P 500 Index funds found that many of the funds with unjustifiably high expense ratios were funds that brokers sold on commission. Since costs subtract directly from fund performance, investors in these funds end up paying a premium for sub-par performance. Had these investors been made aware of the often substantial payments their brokers received on the sale, they might have been encouraged to look more closely at whether the fund or share type being sold was really the best for them.

*2. We support requiring improved disclosure of portfolio transaction costs*

The legislation would also require mutual funds to disclosure in the prospectus the brokerage commissions they pay on portfolio transactions and to include this cost in the fund expense ratio. Portfolio transaction costs vary greatly among funds and can be the single largest fund expense, exceeding all other fund expenses combined. These costs are not, however, currently included in fee information provided in the prospectus. The only public disclosure of portfolio transaction costs is a statement of the dollar amount of the fund's commissions in the Statement of Additional Information, a document never reviewed by the vast majority of mutual fund investors.

Fuller disclosure of portfolio transaction costs would help investors to hold fund advisers accountable for their trading practices. It also would provide a collateral benefit in connection with funds' soft dollar practices. Commissions paid by funds typically pay for both execution and research services. Since soft dollars pay for research that fund advisers would otherwise have to pay for themselves, this creates a significant conflict of interest for fund advisers. Requiring brokerage commission cost disclosure would subject these fund expenditures, including expenditures on soft dollar services, to market forces, and in the process provide a practical solution to the problem of regulating soft dollar practices.

*3. We support reforms to enhance the independence of mutual fund boards.*

The legislation contains a number of provisions to strengthen the independence of fund boards. It would require that 75 percent of board members, including the board chairman, be independent. It would substantially strengthen the definition of independent director by excluding individuals who had served as directors, officers, or employees within the past 10 years of the fund's manager, principal underwriter, or other significant service provider. It would delegate selection of new independent directors exclusively to existing independent directors. And it would establish qualification standards for board members that must be publicly disclosed.

The recent investigation into market timing and late trading at certain mutual funds has raised serious questions about the quality of oversight provided by fund boards. Of particular concern are the allegations that some Putnam fund managers and the CEO of the Strong fund family were timing their own funds—essentially picking the pockets of their own shareholders to the tune of several hundred thousand dollars in each instance. This is an unconscionable violation

of these fund managers' fiduciary duty to their shareholders. It is also strong evidence of the need to end the domination of fund boards by the fund manager. Increasing the representation of independent members on boards, making sure that independent members are truly independent, and ensuring that the boards are led by independent members should go a long way toward advancing that goal.

*4. Other bill provisions would also benefit investors*

The recent mutual fund scandals are not just a corporate governance failure—though they certainly are that. They are also a regulatory failure. The fact is that the SEC was apparently aware of problems related to market timing for years and had drifted along without doing anything about it. Given the lack of clear direction from the SEC, it is hardly surprising that fund boards failed to closely supervise the trading practices at funds they oversaw. Your bill offers an innovative approach to enhancing the quality of fund board oversight. It would direct the SEC to study the benefits of creating a Mutual Fund Oversight Board, generally modeled after the Public Company Accounting Oversight Board, with authority to examine and bring enforcement actions against mutual fund boards of directors. Under this approach, the SEC would retain responsibility for direct oversight of investment adviser, but that responsibility would be supplemented by the new independent agency's supervision of fund boards. We believe this approach is well worth studying.

We also support the bill's provisions requiring disclosure of portfolio managers' compensation and ownership of fund shares (something that might have discouraged market timing by fund managers), as well as its proposed GAO study of mutual fund advertising practices and SEC study of financial literacy. Such a study should look at innovative disclosure methods designed to reach unsophisticated investors—those who fail to take costs into account, for example—with information they understand and act on.

CONCLUSION

Recent events have provided a rude awakening to those who have long trusted mutual funds as the one place where the needs of average investors are generally well protected. Your bill offers a reasonable approach—one that recognizes the continued benefits of mutual fund investing for millions of Americans but also recognizes that reforms are needed to restore investor confidence in the integrity of this industry. Please let us know what we can do to assist in its passage.

Respectfully submitted,

BARBARA ROPER,
*Director of Investor Protection, Consumer Federation of America.*
MERCER BULLARD,
*Executive Director, Fund Democracy.*
KENNETH MCELDOWNEY,
*Executive Director, Consumer Action.*
EDMUND MIERZWINSKI,
*Consumer Program Director, U.S. Public Interest Research Group.*
SALLY GREENBERG,
*Senior Counsel, Consumers Union.*

Mr. AKAKA. I also ask unanimous consent that a letter of support for the legislation from AARP be printed in the RECORD.

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

AARP,
*Washington, DC, November 4, 2003.*

Hon. DANIEL K. AKAKA,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR AKAKA: AARP supports your effort to improve investor awareness of mutual fund costs, and to improve the independent oversight and governance functions of fund boards of directors. The legislation you have introduced, ''the Mutual Fund Transparency Act of 2003,'' would put into effect an overdue upgrade in investor protection for the ordinary saver-investor. These reforms are already warranted by the continuing evolution in market practices and the growth in market choices. They are now more urgently required.

Mounting allegations of illegal—at best unethical—practices by mutual fund management companies, executives and brokers highlight the need for prompt action. We are concerned that lay investor confidence in the mutual fund industry not be allowed to deteriorate further—specifically in its ability to reliably provide fairly priced benefits of investment diversification and expert management.

With regard to initiatives designed to increase fund transparency, we strongly support the bill's provisions to require that: fees be disclosed in dollar amounts; fee disclosures incorporate all fees, including portfolio transaction costs; fee disclosures identify all distribution expenses; and compensation paid to portfolio managers and retail brokers be fully disclosed.

While greater transparency is essential to fair competition among funds for investors, we believe it does not provide a sufficient check on the cost of fund governance. Mutual funds allow investors to share the costs of professional money managers—who under the 1940 Investment Company Act are called ''advisers.'' However, most funds are not established by investors but rather are incorporated by advisory firms, who then contractually provide research, trading, money management and customer support services, and also have some representation on the fund's board. The advisory firms have their own corporate charters and are accountable to their own boards of directors, posing—as we are seeing—a range of potential conflicts of interest in the costs of services provided to the fund.

We support the provisions in the proposal to strengthen the role and independence of boards of directors, which should reduce potential conflicts of interest. Specifically, we support the requirement that: a super-majority (i.e., two-thirds to three-fourths) of fund board members be independent; the board chairman be selected from among the independent members; and the independent directors be responsible for establishing and disclosing the qualification standards of independence, and for nominating and selecting all subsequent independent board members.

We also see merit in the bill's requirements for three separate studies of investor financial literacy, the value of creating a mutual fund oversight board, and mutual fund advertising.

The importance of the mutual fund market as a critical component of the economic security of all Americans—especially order persons—should not be underestimated. Similar—although not identical—legislation (H.R. 2420) is pending before the House financial Services Committee. We look forward to working with you and with the other members of the Senate to enact this measured and important piece of investor protection legislation. Please feel free to contact me, or have your staff call Roy Green of our Federal Affair staff at (202) 434–3800, if you have any questions about our views.

Sincerely,

DAVID CERTNER,
*Director, Federal Affairs.*

Mr. AKAKA. Mr. President, recent revelations of widespread market-timing and late-trading abuses demonstrate the failures of mutual fund boards of directors to fulfill their fiduciary obligations to shareholders. The activities of Canary Capital Partners and Putnam Investments are two deeply troubling examples. However, it is likely that the trading abuses are much more routine. At our hearing, Mr. Stephen Cutler, Director, Division of Enforcement, Securities and Exchange Commission, SEC, testified that preliminary results of an SEC survey show that about ''50 percent of responding fund groups appear to have one or more arrangements with certain shareholders that allow these shareholders to engage in market timing.'' This statistic is just one example of mutual funds having different sets of rules for large and small investors. These differing rules allow the larger investors to profit at the expense of average, ordinary investors who are working toward their long-term financial goals.

The abuses that have been brought to our attention make it clear that the boards of mutual fund companies are not providing sufficient oversight. To be more effective, the boards must be strengthened and more independent. Investment company boards should be required to have an independent chairman, and independent directors must have a dominant presence on the board. My bill strengthens the definition of who is considered to be an independent director. It also requires that mutual fund company boards have 75 percent of their members considered to be independent. To be considered independent, shareholders would have to approve them. My legislation also prohibits the board from making decisions that require a vote of a non-independent director. In addition, a committee of independent members would be responsible for nominating members and adopting qualification standards for board membership. These steps are necessary to add much needed protections to strengthen the ability of mutual fund boards to detect and prevent abuses of the trust of shareholders.

In addition, this bill requires the SEC to develop rules to disclose the compensation of individuals employed by the investment advisor of the company to manage the portfolio of the company and their ownership interest in the company. Consumers deserve to know relevant information about the portfolio manager's incentives and whether they are properly aligned with those of their shareholders. Again, I am referring to ordinary American families patiently working toward their long-term financial goals.

The strengthening of boards to protect shareholders is only one important aspect of my bill. My bill will also increase the transparency of often complex financial relationships between brokers and mutual funds in ways that are meaningful and easy to understand for investors.

Shelf-space payments and revenue-sharing agreements between mutual fund companies and brokers present conflicts of interest that must be addressed. Brokers also compile preferred lists which highlight certain funds, which typically generate more investment than those left off the list. It is not clear to investors that the mutual fund company also may pay a percentage of sales and/or an annual fee on the fund assets held by the broker to obtain a place on the preferred list or to have their shares sold by the broker.

Shelf-space and revenue sharing agreements present risk to investors. Brokers have conflicts of interest, some of which are unavoidable, but these need to be disclosed to investors. Without such disclosure, investors cannot make informed financial decisions. Investors may believe that brokers are recommending funds based on the expectation for solid returns or low volatility, but the broker's recommendation may be influenced by hidden payments.

The SEC has exempted mutual funds from Rule 10b–10, which requires that confirmation notices of securities transactions be sent to customers to indicate how the broker was compensated in the trade. Mutual funds should be subject to this confirmation notice requirement. My legislation will require brokers to disclose in writing, to those who purchase mutual fund company shares, the amount of compensation the broker will receive due to the transaction, instead of simply providing a prospectus. The prospectus fails to include the detailed relevant information that investors need to make informed decisions. Mutual fund investors deserve to know how their broker is being paid.

My bill also will inject a measure of reality into the expenses of mutual funds. In order to increase the transparency of the actual costs of the fund, brokerage commissions must be counted as an expense in filings with the SEC and included in the calculation of the expense ratio, so that investors will have a more realistic view of the expenses of their fund. Consumers often compare the expense ratios of funds when making investment decisions. However, the expense ratios fail to take into account the costs of commissions in the purchase and sale of securities. Therefore, investors are not provided with an accurate idea of the expenses involved. Currently, brokerage commissions have to be disclosed to the SEC, but not to individual investors. Brokerage commissions are only disclosed to the investor upon request. My bill puts teeth into brokerage commission disclosure provisions and ensures that commissions will be included in a document that investors actually have access to and utilize.

This bill also creates a powerful incentive to reduce the use of soft dollars. Soft dollars refer to the bundling of services or products into commissions. Mutual fund companies often pay higher commissions in order to obtain other products and services, typically research on stocks. Soft dollars can be used to lower their expenses by having services and products paid for by soft dollars. Purchases using soft dollars do not count as expenses and are not calculated into the expense ratio. The SEC released a study in September 1998 concluding that soft dollars were used to pay for research, salaries, office rent, telephone services, legal expenses, and entertainment, among other expenses.

At the hearing, Secretary Galvin called for a prohibition of soft dollars. This is a recommendation that needs to be examined. However, my bill provides an immediate alternative, which is to provide an incentive for funds to limit their use of soft dollars by calculating them as expenses. If commissions are disclosed in this manner, the use of soft dollars will be reflected in the higher commission fees and overall expenses. This will make it easier for investors to see the true cost of the fund and compare the expense ratios of funds.

Some may argue that this gives an incomplete picture and fails to account for spreads, market impact, and opportunity costs. However, the SEC has the authority to address the issue further if it can determine an effective way to quantify these additional factors. This bill does not impose an additional reporting requirement that would be burdensome to brokers. It merely uses what is already reported and presents this information in a manner meaningful to investors.

My legislation also directs the SEC to conduct a study to assess financial literacy among mutual fund investors. The SEC will identify the most useful and relevant information that investors need prior to purchasing shares, methods to increase the transparency of expenses and potential conflicts of interest in mutual fund transactions, and a strategy to increase the financial literacy of investors that results in positive change in investor behavior. None of our disclosure provisions will truly work unless investors are effectively given the tools they need to make smart investment decisions.

Finally, my bill requires the General Accounting Office, GAO, to study the current marketing practices for the sale of shares of mutual funds. GAO will provide recommendations to improve investor protections in mutual fund advertising to ensure that investors are able make informed financial decisions when purchasing shares.

Public confidence in mutual funds will not recover if funds continue to employ different sets of rules for large and small investors, engage in ethical misconduct, and enrich themselves at the expense of shareholders. The transgressions brought to light underscore the absence of effective oversight by the boards of mutual funds companies. This legislation will strengthen board independence and enhance the transparency of financial relationships. The American investing public deserves nothing less.

Mr. President, I look forward to working with my colleagues in enacting meaningful reform of the troubled mutual fund industry. We must act to restore trust in this critical investment vehicle that people rely on for their financial future and goals. I ask unanimous consent that the text of the Mutual Fund Transparency Act of 2003 be printed in the RECORD.

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

S. 1822

*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 ''Mutual Fund Transparency Act of 2003''.

**SEC. 2. DISCLOSURE OF FINANCIAL RELATIONSHIPS BETWEEN BROKERS AND MUTUAL FUND COMPANIES.**

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(11) CONFIRMATION OF TRANSACTIONS FOR MUTUAL FUNDS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to customers that purchase the shares of an open-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)—

''(i) the amount of any compensation received or to be received by the broker in connection with such transaction from any sources; and

''(ii) such other information as the Commission determines appropriate.

''(B) TIMING OF DISCLOSURE.—The disclosure required under subparagraph (A) shall be made to a customer not later than as of the date of the completion of the transaction.

''(C) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of an open-end company; or

''(ii) any other filing of an open-end company with the Commission.

''(D) COMMISSION AUTHORITY.—

''(i) IN GENERAL.—The Commission shall promulgate such rules as are necessary to carry out this paragraph not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2003.

''(ii) FORM OF DISCLOSURE.—Disclosures under this paragraph shall be in such form as the Commission, by rule, shall require.

''(E) DEFINITION.—In this paragraph, the term 'open-end company' has the same meaning as in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5).''.

(b) DISCLOSURE OF BROKERAGE COMMISSIONS.—Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following:

''(k) DISCLOSURE OF BROKERAGE COMMISSIONS.—The Commission, by rule, shall require that brokerage commissions as an aggregate dollar amount and percentage of assets paid by an open-end company be included in any disclosure of the amount of fees and expenses that may be payable by the holder of the securities of such company for purposes of—

''(1) the registration statement of that open-end company; and

''(2) any other filing of that open-end company with the Commission, including the calculation of expense ratios.''.

**SEC. 3. MUTUAL FUND GOVERNANCE.**

(a) INDEPENDENT FUND BOARDS.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(1) by striking ''shall have'' and inserting the following: ''shall—

''(1) have'';

(2) by striking ''60 per centum'' and inserting ''25 percent'';

(3) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(2) have as chairman of its board of directors an interested person of such registered company; or

''(3) have as a member of its board of directors any person that is an interested person of such registered investment company—

''(A) who has served without being approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(B) unless such director has been found, on an annual basis, by a majority of the directors who are not interested persons, after reasonable inquiry by such directors, not to have any material business or familial relationship with the registered investment company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that is likely to impair the independence of the director.''.

(b) ACTION BY INDEPENDENT DIRECTORS.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) ACTION BY BOARD OF DIRECTORS.—No action taken by the board of directors of a registered investment company may require the vote of a director who is an interested person of such registered investment company.

''(j) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors; and

''(B) adopting qualification standards for the nomination of directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider;

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission.'';

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason as determined by the Commission.''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 is amended by adding at the end the following:

''(53) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Mutual Fund Transparency Act of 2003, the Securities and Exchange Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

(e) STUDY.—

(1) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to determine whether the best interests of investors in mutual funds would be served by the creation of a Mutual Fund Oversight Board that—

(A) has inspection, examination, and enforcement authority over mutual fund boards of directors;

(B) is funded by assessments against mutual fund assets;

(C) the members of which are selected by the Securities and Exchange Commission; and

(D) has rulemaking authority.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under paragraph (1) to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

**SEC. 4. PORTFOLIO MANAGER COMPENSATION.**

Not later than 270 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules under the Investment Company Act of 1940, requiring that a registered investment company disclose the structure of, or method used to determine, the compensation of—

(1) individuals employed by the investment adviser of the company to manage the portfolio of the company; and

(2) the ownership interest of such individuals in the securities of the registered investment company.

**SEC. 5. FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS STUDY.**

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to identify—

(1) the existing level of financial literacy among investors that purchase shares of open-end companies, as such term is defined under section 5 of the Investment Company Act of 1940, that are registered under section 8 of such Act;

(2) the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;

(3) methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;

(4) the existing private and public efforts to educate investors; and

(5) a strategy to increase the financial literacy of investors that results in a positive change in investor behavior.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

**SEC. 6. STUDY REGARDING MUTUAL FUND ADVERTISING.**

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of unsustainable past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers;

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

Mr. LIEBERMAN. Mr. President, I rise today to join with my colleagues Senator DANIEL AKAKA and Senator PETER FITZGERALD and cosponsor legislation that would begin the crucial process of reforming the mutual fund industry. In the wake of shocking revelations of abusive trading and self-dealing in some of America's largest funds, it is imperative that we act quickly, and I commend my friend Senator AKAKA for his leadership. We must

do two things in order to reassure the 95 million Americans who invest in mutual funds that they have not misplaced their trust. We must find out how this was allowed to happen, and we must put safeguards in place to prevent these widespread abuses from poisoning our markets again.

As the deceptions and conflicts of the Wall Street analysts were uncovered last year in the wake of the Enron scandal, the oft-heard advice to the average investor was to invest in mutual funds. Investors took this advice in droves. Half of all American households own shares in mutual funds, and of the $7 trillion invested in mutual funds, $2.1 trillion of it is invested for retirement.

Perhaps these working families felt comfortable entrusting their precious savings with mutual funds because these funds offer one of the most highly regulated investments available. Mutual funds, their directors and their managers owe their investors a statutory fiduciary duty. Mutual funds are overseen by the SEC through a prescribed registration and reporting process as well as a regular examination and audit process, pursuant to the Investment Company Act of 1940.

Unfortunately, the trust of these American families has been abused. According to a just-released survey conducted by the Securities and Exchange Commission, half of the largest 88 mutual funds have permitted a practice called ''market-timing,'' which allows some investors to trade quickly in and out of the funds, even though many of those funds had explicit policies against such trading because of its detrimental impact on other investors in the fund. Many fund companies admitted providing portfolio information, unavailable publicly, to certain large investors to help them make trading decisions. Also, a full one-quarter of the brokerage firms surveyed indicated that they had allowed certain customers to engage in late-trading, an illegal practice that allows favored investors to execute trades based on that day's price, but after the market close, when new information has come to light. Perhaps most shocking, Stephen Cutler, Director of the SEC's Enforcement Division, has said that there is evidence that officials at fund companies profited personally at the expense of their customers by market-timing their own funds.

The SEC didn't discover these abuses on its own initiative, however. It acted only after the New York State Attorney General and the Massachusetts Secretary of the Commonwealth took steps to investigate and stop this conduct. The SEC didn't discover the abuses through the extensive reporting process mutual funds go through; the SEC didn't discover the abuses through the broad and regular examinations the SEC does of these mutual funds; the SEC didn't even discover the abuses after it received a tip from an insider, who went to the SEC with his attorney, evidence in hand.

Yesterday, I sent a ten-page letter to SEC Chairman William Donaldson, demanding to know how the SEC could have failed to uncover such a sweeping problem in the mutual fund industry. I asked how the SEC planned to change its practices in order to ensure that it is never again caught so unaware. Congress gave the SEC the responsibility to monitor the mutual fund industry, and we must ensure that the SEC does its job.

This is not the first time the SEC has been caught off guard with a scandal on Wall Street. In October 2002, the staff of the Senate Governmental Affairs Committee, of which I was then the Chairman, released a report, Financial Oversight of Enron: The SEC and Private-Sector Watchdogs, detailing the ignored red flags and the missed opportunities that kept the SEC from detecting the problems at Enron before that company collapsed, taking with it the jobs and retirement savings of thousands of Americans. Again, despite being fully aware of the troubling conflicts faced by Wall Street analysts, the SEC turned a blind eye to that problem until this Committee and others held hearings on the issue and New York State Attorney General Eliot Spitzer exposed how deeply deceptive many analyst recommendations truly were. I hope this mutual fund scandal represents the last time the SEC is playing regulatory catch-up.

In addition to holding the SEC accountable, Congress must also act to protect investors by fixing the holes in the statutory scheme for mutual funds. That's why I'm pleased to cosponsor the Mutual Fund Transparency Act of 2003, which enjoys widespread support from consumer groups. It contains many of the policy changes I urged the SEC to consider in my letter to Chairman Donaldson. It would strengthen the independence of mutual fund boards of directors by tightening the definition of independence and by requiring that 75 percent of the directors be independent. The bill would also require that mutual fund boards have nominating committees comprised solely of independent directors, so that directors are not chosen by management.

In my letter to the SEC, I also criticized the opaque or, in some cases, lack of, disclosure to investors about mutual fund fees. The Mutual Fund Transparency Act would significantly improve such disclosure to investors, by including in the fees disclosed to investors the costs the fund incurs when it executes trades of its holdings. Currently, such costs are not included among these more visible fees, which are disclosed in documents provided directly to mutual fund shareholders. Trading costs are currently only disclosed in filings with the SEC, but if this bill became law, trading costs would be included among the fees provided directly to investors. Such information is useful because it can give investors a sense of how often their funds are buying and selling assets and at what expense. The bill would also require funds to tell shareholders how fund advisers are compensated. Public companies are required to tell their shareholders how their managers are paid; mutual fund shareholders should have the same information. Finally, the bill would require that brokers offering mutual funds to investors inform those investors of any fees or incentives those brokers are receiving for making those sales in a sale confirmation.

The bill also mandates that the SEC study three initiatives to improve mutual fund oversight and transparency. The first two ask the SEC and the Comptroller General, respectively, to look at financial literacy among mutual fund investors and at mutual fund advertising, to determine how relevant information can be made clearer and more readily understandable to the average investor. In my letter to the SEC, I suggested the agency consider using consumer research methods in order to achieve such a result. The third study required by the bill relates to the formation of a Mutual Fund Oversight Board to take over the frontline efforts of mutual fund regulation from the SEC, while remaining under that agency's oversight. This may be a good approach, but I have concerns about the costs of such a board being borne by mutual fund investors, which is one of the areas suggested for study. I hope other options would be explored.

The Mutual Fund Transparency Act is clearly an important first step in closing some of the gaps in the laws governing these important investment vehicles. But there is more work to do, and I look forward to working with Senator AKAKA and the other cosponsors of this bill in making further necessary improvements. For example, we should consider strengthening the fiduciary duties owed by mutual fund directors and managers to their shareholders. In addition, as I indicated in my letter to the SEC, guidelines must be developed to prevent mutual fund directors from serving on more boards of funds than they can effectively oversee; at some of the major funds, directors serve on a hundred or more boards. Compliance officers at the funds must be elevated to emphasize their role. I suggested in my letter to the SEC that such a compliance officer should be active at each fund and should report directly to an independent committee of the board.

Moreover, as I pointed out to the SEC in my letter to Chairman Donaldson, we must close the loophole that allowed so many brokers and mutual funds to circumvent the law on late trading. Imposing a hard deadline of a time at which trades must be into the mutual fund may be the solution to this problem. We also must provide even more, clearer information to investors about the fees they are actually paying to participate in mutual funds. In my letter the SEC, I asked

the agency why investors should not receive on their monthly statements detail about the fees they actually paid to the fund during that time period, similar to the finance charge information that credit card consumers get. I also suggested that funds be required to provide comparative fee information. This would help people make better investment decisions, and might also encourage more competition among funds to reduce expenses.

Mutual funds hold the nest eggs, the retirement savings, and the college funds for many of America's working families. Through those investments in their own futures, those families are also feeding capital into today's economy, fueling the engine that creates and maintains American jobs. In a very real sense, these mutual fund investments are investments in the American dream. We must act now to protect them, and to restore the integrity to the mutual fund industry.

Once again, I thank Senator AKAKA for his leadership on this issue, and I urge my colleagues to support this important and timely legislation.

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By Mr. BURNS (for himself and Mr. BAUCUS):

S. 1823. A bill to amend the Act of August 9, 1955, to authorize the Assiniboine and Sioux Tribes of the Fort Peck Reservation to lease tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines; to the Committee on Indian Affairs.

Mr. BURNS. Mr. President, I rise today to introduce the Northern Border Lease Extension legislation. Currently, and since 1981, Northern Border Pipeline Company has leased tribally owned lands on the Fort Peck Indian Reservation for its gas pipeline, which carries gas from Alberta, Canada to consumers in the Midwest. This lease expires in March 2011.

Northern Border wishes to have the right to continue to lease tribal lands for up to fifty years beyond 2011 for its pipeline. They need to be assured as soon as possible their lease can be extended. If not, they must look for other options that would include constructing a new pipeline to go around the Reservation by 2011.

If the lease is not extended, not only will Northern Border be forced to build a new pipeline, but also the Assiniboine and Sioux Tribes of the Fort Peck Reservation will lose over $20 million in payments from Northern Border. Additionally, if extended, the lease would provide tens of millions of dollars in additional payments, with the rental payments increasing at an annual rate of three percent per year every five years. These terms came about after negotiations between Northern Border and the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

This legislation would allow the Tribes to enter into a lease with Northern Border that would give Northern Border the right to continue to lease tribal lands for up to fifty years beyond 2011 for its pipeline. This is one of those great instances when both sides of a situation agree and are of one mind. This provision was included in a bill previously approved by the Senate Indian Affairs Committee, but unfortunately for reasons not associated with this provision, is being held up. Therefore, I wish to introduce this important piece of legislation as a stand-alone bill.

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

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

S. 1823

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

**SECTION 1. LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.**

The first section of the Act of August 9, 1955 (25 U.S.C. 415), is amended by adding at the end the following:

''(g) LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.—

''(1) IN GENERAL.—Notwithstanding subsection (a) and any regulations under part 162 of title 25, Code of Federal Regulations (or any successor regulation), subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

''(2) CONDITIONS.—A lease entered into under paragraph (1)—

''(A) shall commence during fiscal year 2011 for an initial term of 25 years;

''(B) may be renewed for an additional term of 25 years; and

''(C) shall specify in the terms of the lease an annual rental rate—

''(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

''(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations (or any successor regulation).''.

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By Mr. DEWINE:

S. 1825. A bill to amend title 18, United States Code, to provide penalties for the sale and use of unauthorized mobile infrared transmitters; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, I rise today, to introduce the Safe Intersections Act of 2003. This bill would criminalize the unauthorized sale and possession of a mobile infrared transmitter, MIRT.

A MIRT is a remote control for changing traffic signals. These devices have been used for years by ambulances, police cars, and fire trucks, allowing them to reach emergencies faster. As an ambulance approaches an intersection where the light is red, the driver engages the transmitter. That transmitter then sends a signal to a receiver on the traffic light, which changes to green within a few seconds. This is a very useful tool when properly used in emergency situations.

In a 2002 survey, the U.S. Department of Transportation found that in the top 78 metropolitan areas, there are 24,683 traffic lights equipped with the sensors. In my home State of Ohio, there is a joint pilot project underway by the Washington Township Fire Department and the Dublin Police Department to install these devices. Other areas in Ohio where they are in use include Mentor, Twinsburg, Willoughby, and Westerville. Across the country, law enforcement officers, fire departments, and paramedics utilize this technology to make communities safer.

However, recently it has come to light that this technology may be sold to unauthorized individuals—individuals who want to use this technology to bypass red lights during their commute or during their everyday driving. MIRT was never intended for this use. MIRT technology—in the hands of unauthorized users—could result in traffic problems, like gridlock, or even worse, accidents in which people are injured or killed.

Let me quote from an ad that was recently posted on the Internet auction site, ''eBay'':

Tired of sitting at endless red lights? Frustrated by lights that turn from green to red too quickly, trapping you in traffic? The MIRT light changer used by police and other emergency vehicles Change the Traffic Signal Red to Green [for] only $499.00. Traffic Signal Changing Devices—It's every motorist's fantasy to be able to make a red traffic light turn green without so much as easing off the accelerator. The very technology that has for years allowed fire trucks, ambulances and police cars to emergencies faster—a remote control that changes traffic signals—is now much cheaper and potentially accessible.

This ad demonstrates the extent to which the potential widespread sale and possession of MIRT technology by drivers would be a hazard to public safety and must be stopped before it starts. That is why I am introducing the Safe Intersections Act of 2003. I encourage my colleagues to cosponsor this important piece of legislation.

I ask unanimous consent that the legislation I have just introduced be printed in the appropriate place in the RECORD immediately following the conclusion of my remarks.

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By Mr. REID (for himself and Mr. ENSIGN):

S. 1826. A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, sometime, when the opportunity arises, I am going to introduce, for myself and Senator ENSIGN, the Dandini Research Park Transfer Act, which will transfer an important tract of land in Washoe County, Nevada, to the University and Community College System of Nevada.

The University of Nevada holds two patents from the Bureau of Land Management for approximately 467 acres of

public land located north of downtown Reno. In the early 1970s, the land was patented to the university pursuant to the Recreation and Public Purposes Act. Now known as the Dandini Research Park, it is the home of Truckee Meadows Community College and the Desert Research Institute's Northern Nevada Science Center.

Truckee Meadows Community College and its predecessor, Western Nevada Community College, have provided educational programs and opportunities to the residents of Reno, Sparks, and the surrounding communities for over 30 years. Construction of the College's facilities on the Dandini campus began in 1975, shortly after conveyance of the original patents.

For over 25 years the Desert Research Institute has excelled in applied scientific research and the application of technologies to improve people's lives in Nevada and throughout the world. Its three core divisions of Atmospheric, Hydrologic, and Earth and Ecosystem Sciences cooperate with two interdisciplinary centers to provide innovative solutions to pressing environmental problems. The Center for Arid Lands Environmental Management and the Center for Watersheds and Environmental Sustainability apply scientific understanding to the effective management of natural resources while addressing our needs for economic diversification and science-based educational opportunities. In doing so, DRI undertakes fundamental scientific research in Nevada and around the globe. For example, as a key participant in the U.S. Geological Survey Water Research Program, DRI plays a critical role in identifying and helping protect the region's scarce water resources.

DRI shares its facility with the Western Regional Climate Center, one of six regional climate centers operating under the National Oceanic and Atmospheric Administration's climate program. The Western Regional Climate Center conducts applied research and provides high quality climate data and information pertaining to the western United States.

The Desert Research Institute wishes to expand its Northern Nevada Science Center. DRI is considering an innovative means of financing the expansion, which would involve a private developer who would build and finance the expansion and lease it back to DRI. The private developers with whom DRI has discussed the proposal, as well as the Institute's counsel, however, have pointed out that the terms of the patents and the restrictions imposed by the Recreation and Public Purposes Act represent obstacles to such an arrangement.

Truckee Meadows Community College and the Northern Nevada Science Center are exceptional assets to the scientific and educational community in the Truckee Meadows. The Center serves not only the citizens of Washoe County, but the needs of all Nevadans and the western United States as well. It deserves the opportunity to grow and prosper with the community—one of the fastest-growing communities in the Nation.

The bill Senator ENSIGN and I will introduce simply directs the Secretary of the Interior to convey this property from the Bureau of Land Management to the University and Community College System of Nevada. Because of the overwhelming public benefit provided by the Center, we ask that the land be conveyed for free, but that the University cover the costs of the transaction.

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

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

S. 1826

*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 ''Dandini Research Park Conveyance Act''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) BOARD OF REGENTS.—The term ''Board of Regents'' means the Board of Regents of the University and Community College System of Nevada.

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

**SEC. 2. CONVEYANCE TO THE UNIVERSITY AND COMMUNITY COLLEGE SYSTEM OF NEVADA.**

(a) CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall convey to the Board of Regents, without consideration, all right, title, and interest of the United States in and to the approximately 467 acres of land located in Washoe County, Nevada, patented to the University of Nevada under the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act'') (43 U.S.C. 869 et seq.), and described in paragraph (2).

(2) DESCRIPTION OF LAND.—The land referred to in paragraph (1) is—

(A) the parcel of land consisting of approximately 309.11 acres and more particularly described as T. 20 N., R. 19 E., Sec. 25, lots 1, 2, 3, 4, 5, and 11, SE ¼ NW ¼, NE ¼ SW ¼, Mount Diablo Meridian, Nevada; and

(B) the parcel of land consisting of approximately 158.22 acres and more particularly described as T. 20 N., R. 19 E., Sec. 25, lots 6 and 7, SW ¼ NE ¼, NW ¼ SE ¼, Mount Diablo Meridian, Nevada.

(b) COSTS.—The Board of Regents shall pay to the United States an amount equal to the costs of the Secretary associated with the conveyance under subsection (a)(1).

(c) CONDITIONS.—If the Board of Regents sells any portion of the land conveyed to the Board of Regents under subsection (a)(1)—

(1) the amount of consideration for the sale shall reflect fair market value, as determined by an appraisal; and

(2) the Board of Regents shall pay to the Secretary an amount equal to the net proceeds of the sale, for use by the Director of the Bureau of Land Management in the State of Nevada, without further appropriation.

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By Mr. KYL (for himself, Mr. CHAMBLISS, Mr. CRAIG, Mr. NICKLES, Mr. SESSIONS, and Mr. CORNYN):

S. 1828. A bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the ''Advancing Justice Through DNA Technology Act of 2003.'' This bill consists of the President's DNA initiative, which will expand and improve DNA databases used for criminal investigations and authorize additional funds to clear the backlog of untested DNA evidence in the nation's crime labs.

This bill offers several advantages over another version of the President's proposal that recently was introduced in the Senate. Today's bill gives States greater leeway in the use of DNA grants, removes arbitrary and unnecessary restrictions on the testing of criminal suspects' DNA samples, authorizes additional funds to clear the backlog of non-DNA forensics evidence, and—most importantly avoids tying this critical program to unrelated and highly controversial anti-death penalty legislation. I include in the record at the end of this statement a news story that describes the nature of the state counsel and other extraneous provisions that others have sought to attach to the President's proposal.

The bill that I introduce today is an unencumbered—and unabridged—version of the President's DNA initiative: the DNA Sexual Assault Justice Act and the Rape Kits and DNA Evidence Backlog Elimination Act, which authorize the Debbie Smith DNA Backlog Grant Program and provide $755 million over five years to address the DNA backlog crisis in the nation's crime labs.

Today's bill includes the following improvements over other congressional versions of the President's proposal: First, this bill also expands funding for non-DNA forensics funding. Section 211 of the bill authorizes $100 million in new grant programs to eliminate ''the backlog in the analysis of any area of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence.''

Second, this bill increases the authorization for the Paul Coverdell grant program, in recognition of the fact that this program never has been funded at more than a small fraction of its authorization. Other congressional versions of the President's DNA initiative only authorize decreasing Coverdell funding in the coming years. This bill resets the clock on the Coverdell program, authorizing 2004 funding at the level for 2001, and subsequent years accordingly. This will allow sharp increases in Coverdell funding in the coming years.

Third, today's bill allows states to test DNA samples from convicts seeking exoneration against the national DNA database, in order to determine if the convict has committed other rapes or murders. The other congressional versions of the President's DNA initiative would bar such testing; they effectively would give convicts a free roll of the dice to challenge their current convictions while protecting them against the risk that they will be linked to other crimes. There is no reason why states should be prevented from solving such other crimes. If DNA evidence is good enough to test a prisoner's conviction for the crimes that we do know that he committed, it also is good enough to establish the prisoner's involvement in crimes that we do not yet know that he committed.

Fourth, this bill includes all Federal felony arrestees in the federal DNA database. Other versions of this bill exclude arrestees and place other unnecessary and arbitrary limits on the federal DNA index. The federal government already maintains fingerprints for all federal felony arrestees—there is no reason to treat DNA evidence differently. Nor is there any reason to prevent states and the federal government from solving other crimes committed by suspects arrested for a federal felony offense.

The Department of Justice has expressly informed Congress of the benefits of casting a wide net when including criminal suspects in the federal DNA database. During a July 17 hearing on the President's DNA initiative before the Crime Subcommittee of the House Judiciary Committee, Sarah Hart, the Director of the National Institute of Justice, testified that:

> The efficacy of the DNA identification system depends entirely on the profiles entered into it. Experience demonstrates that broad collection and indexing of DNA samples is critical to the effective use of the DNA technology to solve rapes, murders, and other serious crimes.
>
> The DNA sample that enables law enforcement to identify the perpetrator of a rape, for example, often was not collected in connection with an earlier rape. Rather, in a large proportion of such cases, the sample was taken as a result of the perpetrator's prior conviction for a non-violent crime (such as a burglary, theft, or drug offense).
>
> For example, in Virginia, which has authorized the collection of DNA samples from all felons since 1991, a review of cases in which offenders were linked to sex crimes through DNA matching found that almost 40% of the offenders had no prior convictions for sexual or violent offenses. Most serious offenders do not confine themselves to violent crimes. The experience of States with broad DNA collection regimes demonstrates that DNA databases that include all felons dramatically increase law enforcement's ability to solve serious crimes.

Fifth, today's bill tolls the statute of limitations when a perpetrator has been identified through DNA—including in rape cases. Other congressional versions of the President's initiative inexplicably exclude sexual-assault crimes from the initiative's DNA tolling provision. There is no reason to do so. Indeed, it is in sexual-assault cases that DNA evidence is most likely to identify a perpetrator. At the July 17 hearing before the House Judiciary Committee's Crime Subcommittee, the Department of Justice testified in favor of tolling the statute of limitations to the full extent permitted by the Constitution.

Sixth, this bill allows grants for DNA training and research to be made to prosecutors' organizations, universities, and other private entities. Competing bill versions limit such grants to state and local governments, which is inconsistent with the President's DNA initiative.

Finally, the bill that I introduce today does not include the so-called ''Innocence Protection Act'' (IPA), a controversial anti-death penalty bill. The other congressional versions of the President's initiative have incorporated the IPA as a third title to the President's bill. At the July 17 hearing on the President's initiative, the Department of Justice made very clear that it ''do[es] not believe that legislation embodying the important proposals in the President's DNA initiative should be joined to these controversial [IPA] measures, which intrinsically are unrelated to DNA.''

In an October 27 letter to several members of Congress, the National District Attorneys Association also voiced strong objections to the capital-counsel provisions included in the IPA titles of the other bills. The NDAA's letter stated:

> Section 321 [of these bills] attempts to re-establish the old 'death penalty resource centers.' As you no doubt recall, Congress abolished funding for such centers because they devolved into organizations dedicated solely to the abolition of the death penalty and were staffed and controlled by those dedicated to the disruption of the criminal justice system by whatever means available, ethical or otherwise. Section 321 would cause a return to such tactics by removing the ability for the state judiciary to appoint counsel in death penalty cases and giving that authority to a self-appointed group of anti-death penalty attorneys.
>
> . . . NDAA strongly urges deletion of Section 321 from this bill . . . .
>
> Elimination of Section 321 . . . keeps the appointment and control of capital defense counsel in the hands of state court judges who are responsible for insuring that defendants receive quality representation. With Section 321 there is no oversight of those individuals selected to develop state standards for capital defense counsel.

The IPA titles included in the other congressional versions of the President's DNA initiative would authorize $500 million in Federal funding for State public defenders in State capital cases. There is no reason for Congress to finance the States' public-defender systems. The States adequately fund these programs themselves—indeed, many have enacted reforms and substantially increased funding for public defenders in recent years. When the IPA originally was introduced in 2000, it was targeted at the State of Texas. In 2001, the Texas legislature enacted reforms that completely overhauled the State's public-defender system. Yet the IPA provisions of the other Senate bill would declare Texas's reforms ''ineffective,'' and would force the State to again replace its indigent-defense system. Such a mandate makes no sense.

Moreover, there is no reason why States cannot or should not fund their own indigent-defender systems. Basic principles of federalism dictate that each level of government should finance its own operations. Once States become accustomed to and budget for Federal funds, they never are able to reject the money (or its conditions) in the future. And Federal funding inevitably comes with increasing Federal strings. In the long run, the States risk losing control over their own public-defender programs. There is no reason to start down this path.

The IPA proposals in the other congressional versions of the President's initiative begin by placing a number of conditions on the states' receipt of federal funds. Among these conditions is that states transfer control over capital defense to an ''entity'' composed of persons with ''demonstrated knowledge and expertise in capital representation.'' (This means private defense lawyers; public prosecutors likely would be barred by their jobs from serving or would be conflicted out.) This new ''entity'' would be charged with: (1) setting standards for capital-defense counsel; (2) deciding which lawyers meet those standards; and (3) appointing lawyers from the roster of qualifying attorneys to represent defendants in particular cases.

Essentially, the bill's new ''entity'' would completely control staffing of the defense in capital cases. From past experience with the ''capital resource centers,'' which were defunded by Congress in 1996, we know that hard-core death penalty opponents tend to gravitate toward these jobs, and will engage in litigation abuse when not supervised. Congress should not require the states to repeat its own past mistakes. It should not place anti-death penalty partisans in charge of public representation of capital defendants.

The other congressional versions of the President's proposal also include these additional highly problematic provisions:

They allow free DNA testing under very low standards. The competing bills provide that DNA tests shall be available to any prisoners if a negative test match would ''raise a reasonable probability that the applicant did not commit the offense.'' This standard is too low. Not all DNA evidence clearly came from the perpetrator of the crime or had anything to do with the crime—for example, a blood spot near the crime scene may or may not have come from the perpetrator. The ''reasonable probability'' standard means a prisoner could secure a test even if, despite a negative match, the other evidence would still show that the prisoner more likely than not committed the crime.

The bill requires only a chance that the prisoner did not commit the crime. Almost every prisoner with material to test will be able to meet this standard. Reopening old cases forces victims and their families to relive the ordeal of the crime. They should not be put through this unless a negative test result could at least show more likely than not that the prisoner did not commit the crime.

During the July 17 hearing before the House Crime Subcommittee, NIJ Director Sarah Hart expressly warned congress of the consequences of applying unduly low DNA testing standards. Director Hart testified:

[W]hile post-conviction DNA testing is necessary to correct erroneous convictions imposed prior to the ready availability of DNA technology, experience also points to the need to ensure that postconviction DNA testing is appropriately designed so as to benefit actually innocent persons, rather than actually guilty criminals who wish to game the system or retaliate against the victims of their crimes. Frequently, the results of postconviction DNA testing sought by prisoners confirm guilt, rather than establishing innocence. In such cases, justice system resources are squandered and the system has been misused to inflict further harm on the crime victim. The recent experience of a local jurisdiction is instructive:

''Twice last month, DNA tests at the police crime lab in St. Louis confirmed the guilt of convicted rapists. Two other tests, last year and in 2001, also showed the right men were behind bars for brutal rapes committed a decade or more earlier.

''[The St. Louis circuit attorney's] staff spent scores of hours and thousands of dollars on those tests. She personally counseled shaking, sobbing victims who were distraught to learn that their traumas were being aired again.

''One victim, she said, became suicidal and then vanished; her family has not heard from her for months. Another, a deaf elderly woman, grew so despondent that her son has not been able to tell her the results of the DNA tests. Every time he raises the issue, she squeezes her eyes shut so that she will not be able to read his lips.

'''She finally seemed to have some peace about the rape, and now she's gone back to being angry,' the woman's son said.

''DNA tests confirmed that she was raped by Kenneth Charron in 1985, when she was 59. To get that confirmation, however, investigators had to collect a swab of saliva from her so that they could analyze her DNA. They also had to inquire about her sexual past, so they could be sure the semen found in her home was not that of a consensual partner.

''The questioning sent the woman into such depression that she's now on medication. 'None of this needed to happen,' her son said.''

Post-conviction DNA testing is not without its costs. It should be allowed only in carefully measured circumstances.

Another problematic provision in the other congressional versions of the President's DNA initiative would employ an unduly low standard to authorize new trials for very old cases. This provision of these bills is designed to allow new trials for prisoners who may have been convicted 20 or more years ago. But it is very often impossible to retry a case this old—key witnesses die or disappear or their memories simply fade, and other evidence deteriorates or is lost. For many such cases, ordering a new trial effectively means that the prisoner walks free.

Congress should make sure that there is compelling evidence of innocence before ordering new trials in old cases. Unfortunately, these other bills would allow a new trial if test results simply ''establish by a preponderance of the evidence that a new trial would result in an acquittal.'' The key language here is ''result in acquittal.'' It means a test result would not even have to indicate actual innocence; it need only conflict with other evidence of guilt so as to undermine the jury's ability to convict beyond a reasonable doubt. Prisoners could win new trials—and go free—even if, despite the negative DNA match, other evidence still shows the prisoner very likely committed the crime. Current law, Federal Rule 33, uses the liberal ''result in acquittal'' standard to allow new trials based on new evidence, but only within three years of trial. It usually is not difficult to retry a case within three years. But for older cases, Congress should insist on a showing of actual innocence before ordering an often-impossible new trial.

There are other problems with the IPA titles in the various congressional versions of the President's DNA initiative. These titles would vastly expand DNA testing by authorizing tests even for prisoners who pleaded guilty. According to the Department of Justice, 90 percent of Federal prisoners pleaded guilty. Extending free tests to these prisoners literally expands the pool of potential test seekers by an order of magnitude. A guilty plea also means that there is no trial record, which makes it much more difficult to assess the potential relevance of DNA-test evidence.

These other bills also impose broad and potentially costly new evidence-retention requirements on the States—requirements that appear to require States to preserve all potential DNA evidence in all cases, indefinitely. And these bills also would give the newly created capital-counsel ''entities'' an unwarranted degree of control over defense attorneys' budgets. States traditionally have charged courts and other responsible agencies with monitoring budgets for capital representation. Prosecutors do not have unlimited budgets. There is no reason to allow the capital-counsel entity to draw a blank check on State treasuries.

There are other problems with the IPA titles of the competing bills. Suffice it to say that these titles are unrelated to the President's DNA initiative and both the Department of Justice and the NDAA oppose adding them to the President's bill. We should not weigh down the President's DNA initiative with the IPA. For this reason, my colleagues and I today introduce the President's proposal—important, consensus legislation that should be enacted by Congress without delay.

Mr. President, I ask unanimous consent that the text of the bill, the following letter, and the following article all be printed in the RECORD.

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

S. 1828

*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 ''Advancing Justice Through DNA Technology Act of 2003''.

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



## TITLE I—RAPE KITS AND DNA EVIDENCE BACKLOG ELIMINATION ACT OF 2003

**SEC. 101. SHORT TITLE.**

This title may be cited as the ''Rape Kits and DNA Evidence Backlog Elimination Act of 2003''.

**SEC. 102. DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.**

(a) DESIGNATION OF PROGRAM; ELIGIBILITY OF LOCAL GOVERNMENTS AS GRANTEES.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) by amending the heading to read as follows:

**''SEC. 2. THE DEBBIE SMITH DNA BACKLOG GRANT PROGRAM.'';**

(2) in subsection (a)—

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

(i) by inserting ''or units of local government'' after ''eligible States''; and

(ii) by inserting ''or unit of local government'' after ''State'';

(B) in paragraph (2), by inserting before the period at the end the following: '', including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect''; and

(C) in paragraph (3), by striking ''within the State'';

(3) in subsection (b)—

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

(i) by inserting ''or unit of local government'' after ''State'' both places that term appears; and

(ii) by inserting '', as required by the Attorney General'' after ''application shall'';

(B) in paragraph (1), by inserting ''or unit of local government'' after ''State'';

(C) in paragraph (3), by inserting ''or unit of local government'' after ''State'' the first place that term appears;

(D) in paragraph (4)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking ''and'' at the end;

(E) in paragraph (5)—

(i) by inserting ''or unit of local government'' after ''State''; and

(ii) by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(6) if submitted by a unit of local government, certify that the unit of local government has taken, or is taking, all necessary steps to ensure that it is eligible to include, directly or through a State law enforcement agency, all analyses of samples for which it has requested funding in the Combined DNA Index System; and'';

(4) in subsection (d)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''The plan'' and inserting ''A plan pursuant to subsection (b)(1)'';

(ii) in subparagraph (A), by striking ''within the State''; and

(iii) in subparagraph (B), by striking ''within the State''; and

(B) in paragraph (2)(A), by inserting ''and units of local government'' after ''States'';

(5) in subsection (e)—

(A) in paragraph (1), by inserting ''or local government'' after ''State'' both places that term appears; and

(B) in paragraph (2), by inserting ''or unit of local government'' after ''State'';

(6) in subsection (f), in the matter preceding paragraph (1), by inserting ''or unit of local government'' after ''State'';

(7) in subsection (g)—

(A) in paragraph (1), by inserting ''or unit of local government'' after ''State''; and

(B) in paragraph (2), by inserting ''or units of local government'' after ''States''; and

(8) in subsection (h), by inserting ''or unit of local government'' after ''State'' both places that term appears.

(b) REAUTHORIZATION AND EXPANSION OF PROGRAM.—Section 2 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by inserting ''(1) or'' before ''(2)''; and

(B) by inserting at the end the following:

''(4) To collect DNA samples specified in paragraph (1).

''(5) To ensure that DNA testing and analysis of samples from crimes, including sexual assault and other serious violent crimes, are carried out in a timely manner.'';

(2) in subsection (b), as amended by this section, by inserting at the end the following:

''(7) specify that portion of grant amounts that the State or unit of local government shall use for the purpose specified in subsection (a)(4).'';

(3) by amending subsection (c) to read as follows:

''(c) FORMULA FOR DISTRIBUTION OF GRANTS.—

''(1) IN GENERAL.—The Attorney General shall distribute grant amounts, and establish appropriate grant conditions under this section, in conformity with a formula or formulas that are designed to effectuate a distribution of funds among eligible States and units of local government that—

''(A) maximizes the effective utilization of DNA technology to solve crimes and protect public safety; and

''(B) allocates grants among eligible entities fairly and efficiently to address areas where significant backlogs exist, by considering—

''(i) the number of offender and casework samples awaiting DNA analysis in a jurisdiction;

''(ii) the population in the jurisdiction; and

''(iii) the number of part I violent crimes in the jurisdiction.

''(2) MINIMUM AMOUNT.—The Attorney General shall allocate to each State not less than 0.50 percent of the total amount appropriated in a fiscal year for grants under this section, except that the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands shall each be allocated 0.125 percent of the total appropriation.

''(3) LIMITATION.—Grant amounts distributed under paragraph (1) shall be awarded to conduct DNA analyses of samples from casework or from victims of crime under subsection (a)(2) in accordance with the following limitations:

''(A) For fiscal year 2004, not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(B) For fiscal year 2005 not less than 50 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(C) For fiscal year 2006, not less than 45 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(D) For fiscal year 2007, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).

''(E) For fiscal year 2008, not less than 40 percent of the grant amounts shall be awarded for purposes under subsection (a)(2).'';

(4) in subsection (g)—

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

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

(C) by adding at the end the following:

''(3) a description of the priorities and plan for awarding grants among eligible States and units of local government, and how such plan will ensure the effective use of DNA technology to solve crimes and protect public safety.'';

(5) in subsection (j), by striking paragraphs (1) and (2) and inserting the following:

''(1) $151,000,000 for fiscal year 2004;

''(2) $151,000,000 for fiscal year 2005;

''(3) $151,000,000 for fiscal year 2006;

''(4) $151,000,000 for fiscal year 2007; and

''(5) $151,000,000 for fiscal year 2008.''; and

(6) by adding at the end the following:

''(k) USE OF FUNDS FOR ACCREDITATION AND AUDITS.—The Attorney General may distribute not more than 1 percent of the grant amounts under subsection (j)—

''(1) to States or units of local government to defray the costs incurred by laboratories operated by each such State or unit of local government in preparing for accreditation or reaccreditation;

''(2) in the form of additional grants to States, units of local government, or nonprofit professional organizations of persons actively involved in forensic science and nationally recognized within the forensic science community—

''(A) to defray the costs of external audits of laboratories operated by such State or unit of local government, which are participating in the National DNA Index System in order to ensure compliance with quality assurance standards;

''(B) to assess compliance with any plans submitted to the National Institute of Justice, which detail the use of funds received by States or units of local government under this Act; and

''(C) to support future capacity building efforts; and

''(3) in the form of additional grants to nonprofit professional associations actively involved in forensic science and nationally recognized within the forensic science community to defray the costs of training persons who conduct external audits of laboratories operated by States and units of local government and which participate in the National DNA Index System.

''(l) EXTERNAL AUDITS AND REMEDIAL EFFORTS.—In the event that a laboratory operated by a State or unit of local government which has received funds under this Act, has undergone an external audit conducted in order to demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation, and, as a result of such audit, identifies measures to remedy deficiencies with respect to the compliance by the laboratory with such standards, the State or unit of local government shall implement any such remediation as soon as practicable.''.

**SEC. 103. EXPANSION OF COMBINED DNA INDEX SYSTEM.**

(a) INCLUSION OF ALL DNA SAMPLES FROM STATES.—Section 210304 of the DNA Identification Act of 1994 (42 U.S.C. 14132) is amended—

(1) in subsection (a)(1), by striking ''of persons convicted of crimes;'' and inserting the following: ''of—

''(A) persons convicted of crimes; and

''(B) other persons whose DNA samples are collected under applicable legal authorities;''; and

(2) by striking subsection (d).

(b) FELONS CONVICTED OF FEDERAL CRIMES.—Section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)) is amended to read as follows:

''(d) QUALIFYING FEDERAL OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying Federal offenses are the following offenses, as determined by the Attorney General:

''(1) Any felony.

''(2) Any offense under chapter 109A of title 18, United States Code.

''(3) Any crime of violence (as that term is defined in section 16 of title 18, United States Code).

''(4) Any attempt or conspiracy to commit any of the offenses in paragraphs (1) through (3).''.

(c) MILITARY OFFENSES.—Section 1565 of title 10, United States Code, is amended—

(1) by amending subsection (d) to read as follows:

''(d) QUALIFYING MILITARY OFFENSES.—The offenses that shall be treated for purposes of this section as qualifying military offenses are the following offenses, as determined by the Secretary of Defense, in consultation with the Attorney General:

''(1) Any offense under the Uniform Code of Military Justice for which a sentence of confinement for more than one year may be imposed.

''(2) Any other offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a(d)).'';

(2) by striking subsection (e); and

(3) by redesignating subsection (f) as subsection (e).

(d) COLLECTION OF DNA IDENTIFICATION INFORMATION FROM PERSONS ARRESTED FOR QUALIFYING FEDERAL OFFENSES.—

(1) IN GENERAL.—Section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''The Director'', and inserting the following:

''(A) The Attorney General shall collect a DNA sample from each individual who is arrested for, or accused by information or indictment of, a qualifying Federal offense (as determined under subsection (d)). The Attorney General may delegate this function within the Department of Justice as provided in section 510 of title 28, United States Code, and may also authorize and direct any other agency that makes arrests for such offenses or supervises persons facing charges of such offenses to carry out any function and exercise any power of the Attorney General under this section.

''(B) The Director''; and

(ii) in paragraphs (3) and (4), by striking ''Director of the Bureau of Prisons'' each place it appears and inserting ''Attorney General, the Director of the Bureau of Prisons,''; and

(B) in subsection (b), by striking ''Director of the Bureau of Prisons'' and inserting ''Attorney General, the Director of the Bureau of Prisons,''.

(2) CONDITIONS OF RELEASE.—

(A) SECTION 3142 AMENDMENTS.—Subsections (b) and (c)(1)(A) of section 3142 of title 18, United States Code, are each amended by inserting ''and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a)'' after ''period of release''.

(B) BACKLOG ELIMINATION ACT AMENDMENT.—Section 7(d) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135c) is amended by inserting '', or on release under chapter 207 of title 18, United States Code,'' before ''is authorized''.

**SEC. 104. TOLLING OF STATUTE OF LIMITATIONS.**

(a) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

**''§ 3297. Cases involving DNA evidence**

''In a case in which DNA testing implicates a person in the commission of a felony, no statute of limitations that would otherwise preclude prosecution of the offense shall preclude such prosecution until a period of time following the implication of the person by DNA testing has elapsed that is equal to the otherwise applicable limitation period.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by adding at the end the following:

''3297. Cases involving DNA evidence.''.

(c) APPLICATION.—The amendments made by this section shall apply to the prosecution of any offense committed before, on, or after the date of the enactment of this section to the full extent permitted by the Constitution.

**SEC. 105. LEGAL ASSISTANCE FOR VICTIMS OF VIOLENCE.**

Section 1201 of the Violence Against Women Act of 2000 (42 U.S.C. 3796gg–6) is amended—

(1) in subsection (a), by inserting ''dating violence,'' after ''domestic violence,'';

(2) in subsection (b)—

(A) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;

(B) by inserting before paragraph (2), as redesignated by subparagraph (A), the following:

''(1) DATING VIOLENCE.—The term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of—

''(A) the length of the relationship;

''(B) the type of relationship; and

''(C) the frequency of interaction between the persons involved in the relationship.''; and

(C) in paragraph (3), as redesignated by subparagraph (A), by inserting ''dating violence,'' after ''domestic violence,'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting '', dating violence,'' after ''between domestic violence''; and

(ii) by inserting ''dating violence,'' after ''victims of domestic violence,'';

(B) in paragraph (2), by inserting ''dating violence,'' after ''domestic violence,''; and

(C) in paragraph (3), by inserting ''dating violence,'' after ''domestic violence,'';

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', dating violence,'' after ''domestic violence'';

(B) in paragraph (2), by inserting '', dating violence,'' after ''domestic violence'';

(C) in paragraph (3), by inserting '', dating violence,'' after ''domestic violence''; and

(D) in paragraph (4), by inserting ''dating violence,'' after ''domestic violence,'';

(5) in subsection (e), by inserting ''dating violence,'' after ''domestic violence,''; and

(6) in subsection (f)(2)(A), by inserting ''dating violence,'' after ''domestic violence,''.

**SEC. 106. ENSURING PRIVATE LABORATORY ASSISTANCE IN ELIMINATING DNA BACKLOG.**

Section 2(d)(3) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135(d)(3)) is amended to read as follows:

''(3) USE OF VOUCHERS OR CONTRACTS FOR CERTAIN PURPOSES.—

''(A) IN GENERAL.—A grant for the purposes specified in paragraph (1), (2), or (5) of subsection (a) may be made in the form of a voucher or contract for laboratory services, even if the laboratory makes a reasonable profit for the services.

''(B) REDEMPTION.—A voucher or contract under subparagraph (A) may be redeemed at a laboratory operated on a non-profit or for-profit basis by a private entity that satisfies quality assurance standards and has been approved by the Attorney General.

''(C) PAYMENTS.—The Attorney General may use amounts authorized under subsection (j) to make payments to a laboratory described under subparagraph (B).''.

## TITLE II—DNA SEXUAL ASSAULT JUSTICE ACT OF 2003

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''DNA Sexual Assault Justice Act of 2003''.

**SEC. 202. ENSURING PUBLIC CRIME LABORATORY COMPLIANCE WITH FEDERAL STANDARDS.**

Section 210304(b)(2) of the DNA Identification Act of 1994 (42 U.S.C. 14132(b)(2)), is amended to read as follows:

''(2) prepared by laboratories that—

''(A) not later than 2 years after the date of enactment of the DNA Sexual Assault Justice Act of 2003, have been accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community; and

''(B) undergo external audits, not less than once every 2 years, that demonstrate compliance with standards established by the Director of the Federal Bureau of Investigation; and''.

**SEC. 203. DNA TRAINING AND EDUCATION FOR LAW ENFORCEMENT, CORRECTIONAL PERSONNEL, AND COURT OFFICERS.**

(a) IN GENERAL.—The Attorney General shall make grants to provide training, technical assistance, education, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by—

(1) law enforcement personnel, including police officers and other first responders, evidence technicians, investigators, and others who collect or examine evidence of crime;

(2) court officers, including State and local prosecutors, defense lawyers, and judges;

(3) forensic science professionals; and

(4) corrections personnel, including prison and jail personnel, and probation, parole, and other officers involved in supervision.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $12,500,000 for each of the fiscal years 2004 through 2008 to carry out this section.

**SEC. 204. SEXUAL ASSAULT FORENSIC EXAM PROGRAM GRANTS.**

(a) IN GENERAL.—The Attorney General shall make grants to eligible entities to provide training, technical assistance, education, equipment, and information relating to the identification, collection, preservation, analysis, and use of DNA samples and DNA evidence by medical personnel and other personnel, including doctors, medical examiners, coroners, nurses, victim service providers, and other professionals involved in treating victims of sexual assault and sexual assault examination programs, including SANE (Sexual Assault Nurse Examiner), SAFE (Sexual Assault Forensic Examiner), and SART (Sexual Assault Response Team).

(b) ELIGIBLE ENTITY.—For purposes of this section, the term ''eligible entity'' includes—

(1) States;

(2) units of local government; and

(3) sexual assault examination programs, including—

(A) sexual assault nurse examiner (SANE) programs;

(B) sexual assault forensic examiner (SAFE) programs;

(C) sexual assault response team (SART) programs; and

(D) State sexual assault coalitions.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $30,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

**SEC. 205. DNA RESEARCH AND DEVELOPMENT.**

(a) IMPROVING DNA TECHNOLOGY.—The Attorney General shall make grants for research and development to improve forensic DNA technology, including increasing the identification accuracy and efficiency of DNA analysis, decreasing time and expense, and increasing portability.

(b) DEMONSTRATION PROJECTS.—The Attorney General shall conduct research through grants for demonstration projects involving coordinated training and commitment of resources to law enforcement agencies and key criminal justice participants to demonstrate and evaluate the use of forensic DNA technology in conjunction with other forensic tools. The demonstration projects shall include scientific evaluation of the public safety benefits, improvements to law enforcement operations, and cost-effectiveness of increased collection and use of DNA evidence.

(c) NATIONAL FORENSIC SCIENCE COMMISSION.—

(1) APPOINTMENT.—The Attorney General shall appoint a National Forensic Science Commission (in this section referred to as

the ''Commission''), composed of persons experienced in criminal justice issues, including persons from the forensic science and criminal justice communities, to carry out the responsibilities under paragraph (2).

(2) RESPONSIBILITIES.—The Commission shall—

(A) assess the present and future resource needs of the forensic science community;

(B) make recommendations to the Attorney General for maximizing the use of forensic technologies and techniques to solve crimes and protect the public;

(C) identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;

(D) make recommendations to the Attorney General for programs that will increase the number of qualified forensic scientists available to work in public crime laboratories;

(E) disseminate, through the National Institute of Justice, best practices concerning the collection and analyses of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes and protect the public;

(F) examine additional issues pertaining to forensic science as requested by the Attorney General;

(G) examine Federal, State, and local privacy protection statutes, regulations, and practices relating to access to, or use of, stored DNA samples or DNA analyses, to determine whether such protections are sufficient;

(H) make specific recommendations to the Attorney General, as necessary, to enhance the protections described in subparagraph (G) to ensure—

(i) the appropriate use and dissemination of DNA information;

(ii) the accuracy, security, and confidentiality of DNA information;

(iii) the timely removal and destruction of obsolete, expunged, or inaccurate DNA information; and

(iv) that any other necessary measures are taken to protect privacy; and

(I) provide a forum for the exchange and dissemination of ideas and information in furtherance of the objectives described in subparagraphs (A) through (H).

(3) PERSONNEL; PROCEDURES.—The Attorney General shall—

(A) designate the Chair of the Commission from among its members;

(B) designate any necessary staff to assist in carrying out the functions of the Commission; and

(C) establish procedures and guidelines for the operations of the Commission.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $15,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

**SEC. 206. FBI DNA PROGRAMS.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Bureau of Investigation $42,100,000 for each of the fiscal years 2004 through 2008 to carry out the DNA programs and activities described under subsection (b).

(b) PROGRAMS AND ACTIVITIES.—The Federal Bureau of Investigation may use any amounts appropriated pursuant to subsection (a) for—

(1) nuclear DNA analysis;

(2) mitochondrial DNA analysis;

(3) regional mitochondrial DNA laboratories;

(4) the Combined DNA Index System;

(5) the Federal Convicted Offender DNA Program; and

(6) DNA research and development.

**SEC. 207. DNA IDENTIFICATION OF MISSING PERSONS.**

(a) IN GENERAL.—The Attorney General shall make grants to promote the use of forensic DNA technology to identify missing persons and unidentified human remains.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 for each of the fiscal years 2004 through 2008 to carry out this section.

**SEC. 208. ENHANCED CRIMINAL PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE OF DNA INFORMATION.**

Section 10(c) of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135e(c)) is amended to read as follows:

''(c) CRIMINAL PENALTY.—A person who knowingly discloses a sample or result described in subsection (a) in any manner to any person not authorized to receive it, or obtains or uses, without authorization, such sample or result, shall be fined not more than $100,000. Each instance of disclosure, obtaining, or use shall constitute a separate offense under this subsection.''.

**SEC. 209. TRIBAL COALITION GRANTS.**

Section 2001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg) is amended by adding at the end the following:

''(d) TRIBAL COALITION GRANTS.—

''(1) PURPOSE.—The Attorney General shall award grants to tribal domestic violence and sexual assault coalitions for purposes of—

''(A) increasing awareness of domestic violence and sexual assault against Indian women;

''(B) enhancing the response to violence against Indian women at the tribal, Federal, and State levels; and

''(C) identifying and providing technical assistance to coalition membership and tribal communities to enhance access to essential services to Indian women victimized by domestic and sexual violence.

''(2) GRANTS TO TRIBAL COALITIONS.—The Attorney General shall award grants under paragraph (1) to—

''(A) established nonprofit, nongovernmental tribal coalitions addressing domestic violence and sexual assault against Indian women; and

''(B) individuals or organizations that propose to incorporate as nonprofit, nongovernmental tribal coalitions to address domestic violence and sexual assault against Indian women.

''(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by tribal domestic violence and sexual assault coalitions shall not preclude the coalition from receiving additional grants under this title to carry out the purposes described in subsection (b).''.

**SEC. 210. EXPANSION OF PAUL COVERDELL FORENSIC SCIENCES IMPROVEMENT GRANT PROGRAM.**

(a) FORENSIC BACKLOG ELIMINATION GRANTS.—Section 2804 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797m) is amended—

(1) in subsection (a)—

(A) by striking ''shall use the grant to carry out'' and inserting ''shall use the grant to—

''(1) carry out'';

(B) by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(2) eliminate a backlog in the analysis of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence; and

''(3) train, assist, and employ forensic laboratory personnel, as needed, to eliminate a forensic evidence backlog.'';

(2) in subsection (b), by striking ''under this part'' and inserting ''for the purpose set forth in subsection (a)(1)''; and

(3) by adding at the end the following:

''(e) DEFINED TERM.—As used in this section, the term 'forensic evidence backlog' means forensic evidence that—

''(1) has been stored in a laboratory, medical examiner's office, or coroner's office; and

''(2) has not been subjected to all appropriate forensic testing because of a lack of resources or personnel.''.

(b) EXTERNAL AUDITS.—Section 2802 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797k) is amended—

(1) in paragraph (2), by striking the ''and'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(4) a certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, or coroner's office in the State that will receive a portion of the grant amount.''.

(c) THREE-YEAR EXTENSION OF AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (24) and inserting the following:—

''(24) There are authorized to be appropriated to carry out part BB of this Act, to remain available until expended—

''(A) $35,000,000 for fiscal year 2004;

''(B) $85,400,000 for fiscal year 2005;

''(C) $134,733,000 for fiscal year 2006;

''(D) $128,067,000 for fiscal year 2007;

''(E) $56,733,000 for fiscal year 2008; and

''(F) $42,067,000 for fiscal year 2009.''.

**SEC. 211. CREATION OF NEW FORENSIC BACKLOG ELIMINATION GRANT PROGRAM.**

(a) GRANTS AUTHORIZED.—The Attorney General is authorized to award grants to States, units of local government, and tribal governments to eliminate forensic science backlogs.

(b) PURPOSE.—The purpose of the grant program established under this section is to—

(1) eliminate the backlog in the analysis of any area of forensic science evidence, including firearms examination, latent prints, toxicology, controlled substances, forensic pathology, questionable documents, and trace evidence; and

(2) train, assist, and employ forensic laboratory personnel as needed to eliminate a forensic evidence backlog.

(c) USE OF FUNDS.—

(1) SUPPLANTING PROHIBITED.—Grant funds made available to applicants under this section shall be used to supplement and not supplant other Federal or State funds.

(2) ADMINISTRATIVE COSTS.—An applicant may use not more than 5 percent of the funds received through grants awarded under this section for administrative costs.

(d) APPLICATION.—

(1) IN GENERAL.—A State, local government, or tribal government desiring a grant under this section, shall submit to the Attorney General an application in such form and containing such information as the Attorney General may require.

(2) ASSURANCES AND CERTIFICATION.—The application submitted under paragraph (1) shall—

(A) provide assurances that the applicant has implemented, or will implement not later than 120 days after the submission date

of such application, a comprehensive plan for the expeditious analysis of the forensic evidence currently backlogged; and

(B) certify that the forensic science laboratory—

(i) employs generally accepted practices and procedures; and

(ii) is accredited by the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors or the National Association of Medical Examiners or any other nonprofit professional organization that may be recognized within the forensic science community as competent to award such accreditation.

(e) DEFINED TERM.—As used in this section, the term ''forensic evidence backlog'' means—

(1) particular forensic evidence has been admitted to the laboratory faster than it can be analyzed; or

(2) pertinent testing has been curtailed or not performed due to lack of resources.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $20,000,000 for each of the fiscal years 2005 through 2009 for grants under this section.

**SEC. 212. REPORT TO CONGRESS.**

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the implementation of this Act.

(b) CONTENTS.—The report submitted under subsection (a) shall include a description of—

(1) the progress made by Federal, State, and local entities in—

(A) collecting and entering DNA samples from offenders convicted of qualifying offenses for inclusion in the Combined DNA Index System (referred to in this subsection as ''CODIS'');

(B) analyzing samples from crime scenes, including evidence collected from sexual assaults and other serious violent crimes, and entering such DNA analyses in CODIS; and

(C) increasing the capacity of forensic laboratories to conduct DNA analyses;

(2) the priorities and plan for awarding grants among eligible States and units of local government to ensure that the purposes of this Act are carried out;

(3) the distribution of grant amounts under this Act among eligible States and local governments, and whether the distribution of such funds has served the purposes of the Debbie Smith DNA Backlog Grant Program;

(4) grants awarded and the use of such grants by eligible entities for DNA training and education programs for law enforcement, correctional personnel, court officers, medical personnel, victim service providers, and other personnel authorized under sections 203 and 204;

(5) grants awarded and the use of such grants by eligible entities to conduct DNA research and development programs to improve forensic DNA technology, and implement demonstration projects under section 205;

(6) the steps taken to establish the National Forensic Science Commission, and the activities of the Commission under section 205(c);

(7) the use of funds by the Federal Bureau of Investigation under section 206;

(8) grants awarded and the use of such grants by eligible entities to promote the use of forensic DNA technology to identify missing persons and unidentified human remains under section 207;

(9) grants awarded and the use of such grants by eligible entities to eliminate forensic science backlogs under sections 210 and 211; and

(10) any other matters considered relevant by the Attorney General.

CRIMINAL JUSTICE LEGAL FOUNDATION,
*Sacramento, CA, November 5, 2003.*

Hon. JON KYL,
*U.S. Senate,*
*Washington, DC.*

DEAR MR. KYL: Recently, the Judiciary Committee approved H.R. 3214, the ''Advancing Justice Through DNA Technology Act of 2003.'' Although the goals of this bill are laudable, one provision in particular is extremely ill-considered, and it will actually operate to obstruct the system rather than improve it. Section 321 should be deleted from the bill.

Section 321 authorizes grants ''for the purpose of improving the quality of legal representation provided to indigent defendants in State capital cases.'' That is certainly a worthy purpose, but this bill will not achieve it. Instead, it is a giant step backward in the direction of the discredited ''resource centers'' which Congress defunded years ago, after finding that they had become taxpayer-funded nests of saboteurs.

A condition for the grant is that a state establish an ''effective system'' for capital representation. However, ''effective system'' is nonsensically defined as one that removes the authority to appoint trial counsel from the trial judge and gives it to a central authority composed of capital defense lawyers.

We saw with the ''resource centers'' how these capital representation organizations were invariably staffed by hard-core, anti-death-penalty fanatics who saw it as their mission to bring the system to a screeching halt. In an unusual moment of candor, the head of one of the resource centers wrote in a published article that it was the duty of the lawyer to file motions just to ''make trouble,'' Lyon, Defending the Capital Case: What Makes Death Different? 42 Mercer L. Rev. 695, 700 (1991). Such conduct is, of course, clearly unethical. In 1996, Congress finally woke up to what was being done with taxpayer money and defunded the resource centers.

Appointment authority is one of the few checks available against unethical conduct by defense lawyers. The attorney discipline system is toothless. The prosecution cannot appeal on defense misconduct, the way the defense does on prosecutor misconduct. The trial judge's refusal to appoint lawyers who are notorious for obstructionism and other unethical behavior is the most effective deterrent. To remove the appointment authority to an entity full of people who actually encourage such misconduct is a recipe for chaos.

Congress has not removed the appointment authority from federal district judges, for good reason. A number of states have recently implemented improvements to their capital representation systems. These reforms have taken different shapes in different states, as is appropriate for a federal system. Instead of evaluating the different approaches to see which one works best in the real world, section 321 would declare most, if not all, of them ''ineffective,'' and deny defense grants to states that have chosen a different and possibly better path. Section 326 effectively makes a state ineligible for the prosecution grants if it chooses not to change its appointment system to qualify for the defense grants.

Congress should not mandate a single solution without the most careful consideration of the reforms the states have already enacted. The problem of effective counsel is a complex one. It requires more study and more debate before Congress endorses a particular solution. Section 321 of H.R. 3214 is half-baked, and it should be deleted.

Sincerely,

KENT S. SCHEIDEGGER,
*Legal Director.*

[From National Review Online, Oct. 29, 2003]

PROTECTION RACKET—CONGRESS PREPARES TO FUND THE ANTI-DEATH-PENALTY LOBBY

(By Ramesh Ponnuru)

Why is a Republican Congress considering a bill to fund anti-death-penalty activists? A bill that could result in murderers going free? A bill that was initially introduced to hurt George W. Bush? Beats me. But that's exactly what Congress is doing.

In early 2000, Democrats were portraying George W. Bush's Texas as a third-world hellhole where the water was dirty, the churches were filled with guns, and the streets ran red with blood of unlucky defendants. A few anecdotes in which public defenders really had been lax in capital murder cases were extrapolated into a critique of law enforcement in the state. At around this time, Senator Patrick Leahy of Vermont and Representative William Delahunt of Massachusetts, both Democrats, introduced the ''Innocence Protection Act.'' Supposedly, the bill was going to keep innocents from getting put on death row by, among other things, providing for better legal defenses for accused capital murderers.

In a modified form, the bill has been made part of the ''Advancing Justice Through DNA Technology Act of 2003.'' Sponsors of the bill include Orrin Hatch and James Sensenbrenner, the chairmen of the House and Senate judiciary committees. The House Judiciary Committee voted for the bill 28–1. Conservative Jeff Flake was the only dissenter.

There are two major problems with the bill. First, its low standard for requiring new trials makes it likely that murderers will go free. The bill says that federal prisoners have a right to a new trial if a DNA test ''establish[es] by a preponderance of evidence that a new trial would result in acquittal.'' This standard is very different from a requirement that the DNA test establish that the prisoner probably did not commit the crime. DNA at a murder scene can, of course, come from a variety of sources. It may be that the jury in the original trial, faced with a negative DNA result, would have found the defendant guilty anyway based on other evidence. But witnesses die and evidence deteriorates. Wait long enough to get a DNA test, and a new trial may be unlikely to yield a conviction even if the defendant actually committed the crime. The ''result in acquittal'' standard is used to allow new trials based on new evidence—but only within three years of the original trial. This bill has no such time limit. The result is not a reduced sentence, but the defendant's walking.

The second problem is that the bill bribes states to give up control of their public-defender systems. Essentially, the bill would funnel taxpayer dollars to the ''capital resource centers'' that Congress defunded in 1996, having found that they frequently abused the appeals process. (See pages 53–57 of this report for a long list of examples of such abuses.) Abuses would be likely since state courts, and other branches of state and local government, would no longer have supervisory authority over publicly funded defense counsel. Indeed, supporters of the Innocence Protection Act have been positively enthusiastic about one form of abuse. When Leahy ran the Judiciary Committee last year, it issued a report that said that capital resource centers ''may legitimately assert a large number of claims'' based on a ''reversal of existing law.'' In other words, it's legitimate for tax-funded public defenders to file a ''large number of claims'' that are precluded by current law.

Is federal intervention necessary? States have been busy reforming their own capital-

defense systems. But the same Leahy report mentioned earlier identified five cases in which ineffective counsel had led innocent people to be sentenced to death. But as the dissenting Republican report pointed out, the five cases Leahy discussed established no such thing. In one of the cases, the defendent was never actually sentenced to death. In three of the cases, it is not at all clear that the defendant was innocent. (Prosecutors declined to retry them because evidence had deteriorated. In one case, for example, the building in which the murder took place had been demolished.) The cases are marked more, in any case, by prosecutorial misconduct than by sloppy defenses.

That's true, by the way, of cases in which actually innocent people have been put on death row. It has generally been because prosecutors relied too much on unreliable evidence, such as the testimony of jailhouse informants, or because police and prosecutors acted in grossly improper ways. (Say hello to our friends in Cook County.) When prosecutors suppress evidence, the most competent defense attorneys will be at a disadvantage. The Innocence Protection Act's capital-defense provisions will not ameliorate that problem. But then, it's more about funneling tax money to opponents of the death penalty than springing truly innocent people from death row.

''What's disgusting is we're actually wasting time fighting this in a Republican Congress,'' says one Republican Senate staffer.

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By Mr. CORNYN:

S.J. Res. 23. A joint resolution proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated; to the Committee on the Judiciary

S.J. RES. 23

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

''ARTICLE—

''The Congress may by law provide for the case of death or inability of members of the House of Representatives, and the case of inability of members of the Senate, in the event that one-fourth of either House are killed or incapacitated, declaring who shall serve until the disability is removed, or a new member is elected. Any procedures established pursuant to such a law shall expire not later than 120 days after the death or inability of one-fourth of the House of Representatives or the Senate, but may be extended for additional 120-day periods if one-fourth of either the House of Representatives or the Senate remains vacant or occupied by members unable to serve.''.

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## SUBMITTED RESOLUTIONS

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### SENATE RESOLUTION 259—TO AUTHORIZE LEGAL REPRESENTATION IN BELL AVIATION, INC., ET AL. V. SINO SWEARINGEN AIRCRAFT CO., L.P., ET AL

Mr. FRIST (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 259

Whereas, in the case of Bell Aviation, Inc., et al. v. Sino Swearingen Aircraft, Co., L.P., et al., Cause No. 03–02532, pending in the District Court of Dallas County, Texas, the plaintiffs have obtained from the Superior Court of the District of Columbia subpoenas for deposition testimony and document production by Senator John D. Rockefeller IV and Terri Giles, a staff member in the office of Senator Rockefeller;

Whereas, pursuant to section 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate; and

Whereas, by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave: Now, therefore, be it

*Resolved,* That the Senate Legal Counsel is authorized to represent Senator Rockefeller and Terri Giles in connection with the subpoenas issued at this action.

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## AMENDMENTS SUBMITTED AND PROPOSED

SA 2072. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes.

SA 2073. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2074. Mr. DASCHLE (for himself and Mr. FRIST) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2075. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2076. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2077. Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2078. Mr. DASCHLE (for himself, Mr. ENZI, Mr. THOMAS, Mr. JOHNSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BURNS, Mr. BINGAMAN, Mr. BAUCUS, Mr. DORGAN, Mr. CONRAD, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2079. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2080. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra.

SA 2081. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2082. Mr. NELSON, of Florida (for himself and Mr. GRAHAM, of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2083. Mrs. FEINSTEIN (for herself, Mr. LUGAR, Mr. LEVIN, Mr. HARKIN, Ms. CANTWELL, Mrs. BOXER, Mr. LEAHY, Mr. WYDEN, Mr. DURBIN, and Mr. HOLLINGS) proposed an amendment to the bill H.R. 2673, supra.

SA 2084. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2085. Mr. HARKIN submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2086. Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra; which was ordered to lie on the table.

SA 2087. Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. HOLLINGS, Mr. JEFFORDS, Mr. DORGAN, and Mr. FEINGOLD) proposed an amendment to the bill H.R. 2673, supra.

SA 2088. Mr. AKAKA (for himself, Mr. LEVIN, Mr. LIEBERMAN, and Ms. CANTWELL) proposed an amendment to the bill H.R. 2673, supra.

SA 2089. Mr. DAYTON proposed an amendment to the bill H.R. 2673, supra.

SA 2090. Mr. HATCH (for himself, Mr. HARKIN, and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 2673, supra.

SA 2091. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2092. Mr. BENNETT (for Mr. DURBIN) proposed an amendment to the bill H.R. 2673, supra.

SA 2093. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2094. Mr. BENNETT (for Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. INOUYE, and Mr. AKAKA)) proposed an amendment to the bill H.R. 2673, supra.

SA 2095. Mr. BENNETT (for Ms. SNOWE (for herself, Mr. DORGAN, and Ms. COLLINS)) proposed an amendment to the bill H.R. 2673, supra.

SA 2096. Mr. BENNETT (for Mr. LEVIN (for himself and Ms. STABENOW)) proposed an amendment to the bill H.R. 2673 , supra.

SA 2097. Mr. BENNETT (for Mr. INHOFE) proposed an amendment to the bill H.R. 2673, supra.

SA 2098. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2099. Mr. BENNETT (for Mr. INOUYE) proposed an amendment to the bill H.R. 2673, supra.

SA 2100. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2101. Mr. BENNETT (for Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2102. Mr. BENNETT (for Mr. BROWNBACK) proposed an amendment to the bill H.R. 2673, supra.

SA 2103. Mr. BENNETT proposed an amendment to the bill H.R. 2673, supra.

SA 2104. Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, supra.

SA 2105. Mr. BENNETT (for Mr. GRASSLEY (for himself and Mr. DORGAN)) proposed an amendment to the bill H.R. 2673, supra.

SA 2106. Mr. BENNETT (for Mr. CRAIG) proposed an amendment to the bill H.R. 2673, supra.

SA 2107. Mr. BENNETT (for Mr. GRAHAM, OF FLORIDA (for himself and Mr. NELSON, of Florida)) proposed an amendment to the bill H.R. 2673, supra.

SA 2108. Mr. BENNETT (for Mr. BURNS (for himself and Mrs. CLINTON)) proposed an amendment to the bill H.R. 2673 , supra.

SA 2109. Mr. BENNETT (for Mr. DURBIN) proposed an amendment to the bill H.R. 2673, supra.

SA 2110. Mr. BENNETT (for Mr. SCHUMER (for himself and Mrs. CLINTON)) proposed an amendment to the bill H.R. 2673 , supra.

SA 2111. Mr. BENNETT (for Mr. MILLER) proposed an amendment to the bill H.R. 2673, supra.

SA 2112. Mr. BENNETT (for Mr. FRIST (for himself and Mr. DASCHLE)) proposed an amendment to the bill H.R. 2673, supra.

SA 2113. Mr. BENNETT (for Mr. THOMAS (for himself, Mr. BINGAMAN, and Mr. HAGEL)) proposed an amendment to the bill H.R. 1442, to authorize the design and construction of a visitor center for the Vietnam Veterans Memorial.

SA 2114. Mr. BENNETT (for Ms. COLLINS) proposed an amendment to the bill S. 589, to strengthen and improve the management of national security, encourage Government service in areas of critical national security, and to assist government agencies in addressing deficiencies in personnel possessing specialized skills important to national security and incorporating the goals and strategies for recruitment and retention for such skilled personnel into the strategic and performance management systems of Federal agencies.

## TEXT OF AMENDMENTS

**SA 2072.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2004, and for other purposes, namely:

### TITLE I

### AGRICULTURAL PROGRAMS

#### PRODUCTION, PROCESSING, AND MARKETING

#### OFFICE OF THE SECRETARY

For necessary expenses of the Office of the Secretary of Agriculture, $10,046,000: *Provided,* That not to exceed $11,000 of this amount shall be available for official reception and representation expenses, not otherwise provided for, as determined by the Secretary.

#### EXECUTIVE OPERATIONS

#### CHIEF ECONOMIST

For necessary expenses of the Chief Economist, including economic analysis, risk assessment, cost-benefit analysis, energy and new uses, and the functions of the World Agricultural Outlook Board, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1622g), $8,707,000.

#### NATIONAL APPEALS DIVISION

For necessary expenses of the National Appeals Division, $13,997,000.

#### OFFICE OF BUDGET AND PROGRAM ANALYSIS

For necessary expenses of the Office of Budget and Program Analysis, $7,544,000.

#### HOMELAND SECURITY STAFF

For necessary expenses of the Homeland Security Staff, $910,000.

#### OFFICE OF THE CHIEF INFORMATION OFFICER

For necessary expenses of the Office of the Chief Information Officer, $15,710,000.

#### COMMON COMPUTING ENVIRONMENT

For necessary expenses to acquire a Common Computing Environment for the Natural Resources Conservation Service, the Farm and Foreign Agricultural Service and Rural Development mission areas for information technology, systems, and services, $119,289,000, to remain available until expended, for the capital asset acquisition of shared information technology systems, including services as authorized by 7 U.S.C. 6915–16 and 40 U.S.C. 1421–28: *Provided,* That obligation of these funds shall be consistent with the Department of Agriculture Service Center Modernization Plan of the county-based agencies, and shall be with the concurrence of the Department's Chief Information Officer.

#### OFFICE OF THE CHIEF FINANCIAL OFFICER

For necessary expenses of the Office of the Chief Financial Officer, $5,496,000: *Provided,* That the Chief Financial Officer shall actively market and expand cross-servicing activities of the National Finance Center.

#### OFFICE OF THE ASSISTANT SECRETARY FOR CIVIL RIGHTS

For necessary salaries and expenses of the Office of the Assistant Secretary for Civil Rights, $794,000.

#### OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, $15,445,000.

#### OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION

For necessary salaries and expenses of the Office of the Assistant Secretary for Administration, $673,000.

#### AGRICULTURE BUILDINGS AND FACILITIES AND RENTAL PAYMENTS

#### (INCLUDING TRANSFERS OF FUNDS)

For payment of space rental and related costs pursuant to Public Law 92–313, including authorities pursuant to the 1984 delegation of authority from the Administrator of General Services to the Department of Agriculture under 40 U.S.C. 486, for programs and activities of the Department which are included in this Act, and for alterations and other actions needed for the Department and its agencies to consolidate unneeded space into configurations suitable for release to the Administrator of General Services, and for the operation, maintenance, improvement, and repair of Agriculture buildings and facilities, and for related costs, $188,022,000, to remain available until expended: *Provided,* That the Secretary of Agriculture may transfer a share of that agency's appropriation made available by this Act to this appropriation, or may transfer a share of this appropriation to that agency's appropriation to cover the costs of new or replacement space for such agency, but such transfers shall not exceed 5 percent of the funds made available for space rental and related costs to or from this account.

#### HAZARDOUS MATERIALS MANAGEMENT

#### (INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Department of Agriculture, to comply with the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.) and the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), $15,611,000, to remain available until expended: *Provided,* That appropriations and funds available herein to the Department for Hazardous Materials Management may be transferred to any agency of the Department for its use in meeting all requirements pursuant to the above Acts on Federal and non-Federal lands.

#### DEPARTMENTAL ADMINISTRATION

#### (INCLUDING TRANSFERS OF FUNDS)

For Departmental Administration, $23,031,000, to provide for necessary expenses for management support services to offices of the Department and for general administration security, repairs and alterations, and other miscellaneous supplies and expenses not otherwise provided for and necessary for the practical and efficient work of the Department: *Provided,* That this appropriation shall be reimbursed from applicable appropriations in this Act for travel expenses incident to the holding of hearings as required by 5 U.S.C. 551–558.

#### OFFICE OF THE ASSISTANT SECRETARY FOR CONGRESSIONAL RELATIONS

#### (INCLUDING TRANSFERS OF FUNDS)

For necessary salaries and expenses of the Office of the Assistant Secretary for Congressional Relations to carry out the programs funded by this Act, including programs involving intergovernmental affairs and liaison within the executive branch, $3,825,000: *Provided,* That these funds may be transferred to agencies of the Department of Agriculture funded by this Act to maintain personnel at the agency level: *Provided further,* That no other funds appropriated to the Department by this Act shall be available to the Department for support of activities of congressional relations.

#### OFFICE OF COMMUNICATIONS

For necessary expenses to carry out services relating to the coordination of programs involving public affairs, for the dissemination of agricultural information, and the coordination of information, work, and programs authorized by Congress in the Department, $9,228,000: *Provided,* That not to exceed $2,000,000 may be used for farmers' bulletins.

#### OFFICE OF THE INSPECTOR GENERAL

For necessary expenses of the Office of the Inspector General, including employment pursuant to the Inspector General Act of 1978, $75,781,000, including such sums as may be necessary for contracting and other arrangements with public agencies and private persons pursuant to section 6(a)(9) of the Inspector General Act of 1978, and including not to exceed $125,000 for certain confidential operational expenses, including the payment of informants, to be expended under the direction of the Inspector General pursuant to Public Law 95–452 and section 1337 of Public Law 97–98.

#### OFFICE OF THE GENERAL COUNSEL

For necessary expenses of the Office of the General Counsel, $35,343,000.

#### OFFICE OF THE UNDER SECRETARY FOR RESEARCH, EDUCATION AND ECONOMICS

For necessary salaries and expenses of the Office of the Under Secretary for Research, Education and Economics to administer the laws enacted by the Congress for the Economic Research Service, the National Agricultural Statistics Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service, $596,000.

#### ECONOMIC RESEARCH SERVICE

For necessary expenses of the Economic Research Service in conducting economic research and analysis, as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) and other laws, $69,902,000.

#### NATIONAL AGRICULTURAL STATISTICS SERVICE

For necessary expenses of the National Agricultural Statistics Service in conducting statistical reporting and service work, including crop and livestock estimates, statistical coordination and improvements, marketing surveys, and the Census of Agriculture, as authorized by 7 U.S.C. 1621–1627 and 2204g, and other laws, $128,922,000, of which up to $25,279,000 shall be available until expended for the Census of Agriculture.

AGRICULTURAL RESEARCH SERVICE

SALARIES AND EXPENSES

For necessary expenses to enable the Agricultural Research Service to perform agricultural research and demonstration relating to production, utilization, marketing, and distribution (not otherwise provided for); home economics or nutrition and consumer use including the acquisition, preservation, and dissemination of agricultural information; and for acquisition of lands by donation, exchange, or purchase at a nominal cost not to exceed $100, and for land exchanges where the lands exchanged shall be of equal value or shall be equalized by a payment of money to the grantor which shall not exceed 25 percent of the total value of the land or interests transferred out of Federal ownership, $1,045,533,000: *Provided,* That appropriations hereunder shall be available for the operation and maintenance of aircraft and the purchase of not to exceed one for replacement only: *Provided further,* That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for the construction, alteration, and repair of buildings and improvements, but unless otherwise provided, the cost of constructing any one building shall not exceed $375,000, except for headhouses or greenhouses which shall each be limited to $1,200,000, and except for 10 buildings to be constructed or improved at a cost not to exceed $750,000 each, and the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building or $375,000, whichever is greater: *Provided further,* That the limitations on alterations contained in this Act shall not apply to modernization or replacement of existing facilities at Beltsville, Maryland: *Provided further,* That appropriations hereunder shall be available for granting easements at the Beltsville Agricultural Research Center: *Provided further,* That the foregoing limitations shall not apply to replacement of buildings needed to carry out the Act of April 24, 1948 (21 U.S.C. 113a): *Provided further,* That funds may be received from any State, other political subdivision, organization, or individual for the purpose of establishing or operating any research facility or research project of the Agricultural Research Service, as authorized by law: *Provided further,* That all rights and title of the United States in the 1.0664-acre parcel of land including improvements, as recorded at Book 1320, Page 253, records of Larimer County, State of Colorado, shall be conveyed to the Board of Governors of the Colorado State University for the benefit of Colorado State University.

None of the funds appropriated under this heading shall be available to carry out research related to the production, processing or marketing of tobacco or tobacco products.

BUILDINGS AND FACILITIES

For acquisition of land, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities as necessary to carry out the agricultural research programs of the Department of Agriculture, where not otherwise provided, $46,000,000, to remain available until expended.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

RESEARCH AND EDUCATION ACTIVITIES

For payments to agricultural experiment stations, for cooperative forestry and other research, for facilities, and for other expenses, $617,575,000, as follows: to carry out the provisions of the Hatch Act of 1887 (7 U.S.C. 361a–i), $178,977,000; for grants for cooperative forestry research (16 U.S.C. 582a through a–7), $21,742,000; for payments to the 1890 land-grant colleges, including Tuskegee University and West Virginia State College (7 U.S.C. 3222), $35,411,000, of which $1,507,496 shall be made available only for the purpose of ensuring that each institution shall receive no less than $1,000,000; for special grants for agricultural research (7 U.S.C. 450i(c)), $101,637,000; for special grants for agricultural research on improved pest control (7 U.S.C. 450i(c)), $14,976,000; for competitive research grants (7 U.S.C. 450i(b)), $180,000,000; for the support of animal health and disease programs (7 U.S.C. 3195), $5,065,000; for supplemental and alternative crops and products (7 U.S.C. 3319d), $840,000; for grants for research pursuant to the Critical Agricultural Materials Act (7 U.S.C. 178 et seq.), $1,242,000, to remain available until expended; for research grants for 1994 institutions pursuant to section 536 of Public Law 103–382 (7 U.S.C. 301 note), $1,093,000, to remain available until expended; for higher education graduate fellowship grants (7 U.S.C. 3152(b)(6)), $3,222,000, to remain available until expended (7 U.S.C. 2209b); for higher education challenge grants (7 U.S.C. 3152(b)(1)), $4,888,000; for a higher education multicultural scholars program (7 U.S.C. 3152(b)(5)), $992,000, to remain available until expended (7 U.S.C. 2209b); for an education grants program for Hispanic-serving Institutions (7 U.S.C. 3241), $4,073,000; for noncompetitive grants for the purpose of carrying out all provisions of 7 U.S.C. 3242 (section 759 of Public Law 106–78) to individual eligible institutions or consortia of eligible institutions in Alaska and in Hawaii, with funds awarded equally to each of the States of Alaska and Hawaii, $3,500,000; for a secondary agriculture education program and 2-year post-secondary education (7 U.S.C. 3152(j)), $994,000; for aquaculture grants (7 U.S.C. 3322), $4,471,000; for sustainable agriculture research and education (7 U.S.C. 5811), $13,661,000; for a program of capacity building grants (7 U.S.C. 3152(b)(4)) to colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321–326 and 328), including Tuskegee University and West Virginia State College, $11,404,000, to remain available until expended (7 U.S.C. 2209b); for payments to the 1994 Institutions pursuant to section 534(a)(1) of Public Law 103–382, $1,689,000; and for necessary expenses of Research and Education Activities, $26,698,000.

None of the funds in the foregoing paragraph shall be available to carry out research related to the production, processing or marketing of tobacco or tobacco products: *Provided,* That this paragraph shall not apply to research on the medical, biotechnological, food, and industrial uses of tobacco.

NATIVE AMERICAN INSTITUTIONS ENDOWMENT FUND

For the Native American Institutions Endowment Fund authorized by Public Law 103–382 (7 U.S.C. 301 note), $9,000,000.

EXTENSION ACTIVITIES

For payments to States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, Micronesia, Northern Marianas, and American Samoa, $450,084,000, as follows: payments for cooperative extension work under the Smith-Lever Act, to be distributed under sections 3(b) and 3(c) of said Act, and under section 208(c) of Public Law 93–471, for retirement and employees' compensation costs for extension agents and for costs of penalty mail for cooperative extension agents and State extension directors, $279,390,000; payments for extension work at the 1994 Institutions under the Smith-Lever Act (7 U.S.C. 343(b)(3)), $3,273,000; payments for the nutrition and family education program for low-income areas under section 3(d) of the Act, $58,185,000; payments for the pest management program under section 3(d) of the Act, $10,689,000; payments for the farm safety program under section 3(d) of the Act, $5,489,000; payments to upgrade research, extension, and teaching facilities at the 1890 land-grant colleges, including Tuskegee University and West Virginia State College, as authorized by section 1447 of Public Law 95–113 (7 U.S.C. 3222b), $14,903,000, to remain available until expended; payments for youth-at-risk programs under section 3(d) of the Smith-Lever Act, $8,426,000; for youth farm safety education and certification extension grants, to be awarded competitively under section 3(d) of the Act, $496,000; payments for carrying out the provisions of the Renewable Resources Extension Act of 1978 (16 U.S.C. 1671 et seq.), $4,516,000; payments for Indian reservation agents under section 3(d) of the Smith-Lever Act, $1,983,000; payments for sustainable agriculture programs under section 3(d) of the Act, $4,843,000; payments for rural health and safety education as authorized by section 502(i) of Public Law 92–419 (7 U.S.C. 2662(i)), $2,605,000; payments for cooperative extension work by the colleges receiving the benefits of the second Morrill Act (7 U.S.C. 321–326 and 328) and Tuskegee University and West Virginia State College, $31,908,000, of which $1,724,884 shall be made available only for the purpose of ensuring that each institution shall receive no less than $1,000,000; for grants to youth organizations pursuant to section 7630 of title 7, United States Code, $2,981,000; and for necessary expenses of extension activities, $20,397,000.

INTEGRATED ACTIVITIES

For the integrated research, education, and extension competitive grants programs, including necessary administrative expenses, as authorized under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626), $46,711,000, as follows: payments for the water quality program, $12,887,000; payments for the food safety program, $14,870,000; payments for the regional pest management centers program, $4,502,000; payments for the Food Quality Protection Act risk mitigation program for major food crop systems, $4,857,000; payments for the crops affected by Food Quality Protection Act implementation, $1,487,000; payments for the methyl bromide transition program, $3,500,000; payments for the organic transition program, $2,111,000; payments for the international science and education grants program under 7 U.S.C. 3291, to remain available until expended, $497,000; payments for the critical issues program under 7 U.S.C. 450i(c): *Provided,* That of the funds made available under this heading, $497,000 shall be for payments for the critical issues program under 7 U.S.C. 450i(c) and $1,503,000 shall be for payments for the regional rural development centers program under 7 U.S.C. 450i(c).

OUTREACH FOR SOCIALLY DISADVANTAGED FARMERS

For grants and contracts pursuant to section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), $3,470,000, to remain available until expended.

OFFICE OF THE UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS

For necessary salaries and expenses of the Office of the Under Secretary for Marketing and Regulatory Programs to administer programs under the laws enacted by the Congress for the Animal and Plant Health Inspection Service; the Agricultural Marketing Service; and the Grain Inspection, Packers and Stockyards Administration; $736,000.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For expenses, not otherwise provided for, necessary to prevent, control, and eradicate pests and plant and animal diseases; to carry out inspection, quarantine, and regulatory activities; and to protect the environment, as authorized by law, $705,552,000, of which $4,112,000 shall be available for the control of outbreaks of insects, plant diseases, animal diseases and for control of pest animals and birds to the extent necessary to meet emergency conditions; of which $51,720,000 shall be used for the boll weevil eradication program for cost share purposes or for debt retirement for active eradication zones: *Provided,* That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 percent: *Provided further,* That this appropriation shall be available for the operation and maintenance of aircraft and the purchase of not to exceed four, of which two shall be for replacement only: *Provided further,* That, in addition, in emergencies which threaten any segment of the agricultural production industry of this country, the Secretary may transfer from other appropriations or funds available to the agencies or corporations of the Department such sums as may be deemed necessary, to be available only in such emergencies for the arrest and eradication of contagious or infectious disease or pests of animals, poultry, or plants, and for expenses in accordance with sections 10411 and 10417 of the Animal Health Protection Act (7 U.S.C. 8310 and 8316) and sections 431 and 442 of the Plant Protection Act (7 U.S.C. 7751 and 7772), and any unexpended balances of funds transferred for such emergency purposes in the preceding fiscal year shall be merged with such transferred amounts: *Provided further,* That appropriations hereunder shall be available pursuant to law (7 U.S.C. 2250) for the repair and alteration of leased buildings and improvements, but unless otherwise provided the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

In fiscal year 2004, the agency is authorized to collect fees to cover the total costs of providing technical assistance, goods, or services requested by States, other political subdivisions, domestic and international organizations, foreign governments, or individuals, provided that such fees are structured such that any entity's liability for such fees is reasonably based on the technical assistance, goods, or services provided to the entity by the agency, and such fees shall be credited to this account, to remain available until expended, without further appropriation, for providing such assistance, goods, or services.

BUILDINGS AND FACILITIES

For plans, construction, repair, preventive maintenance, environmental support, improvement, extension, alteration, and purchase of fixed equipment or facilities, as authorized by 7 U.S.C. 2250, and acquisition of land as authorized by 7 U.S.C. 428a, $4,996,000, to remain available until expended.

AGRICULTURAL MARKETING SERVICE

MARKETING SERVICES

For necessary expenses to carry out services related to consumer protection, agricultural marketing and distribution, transportation, and regulatory programs, as authorized by law, and for administration and coordination of payments to States, $75,263,000, including funds for the wholesale market development program for the design and development of wholesale and farmer market facilities for the major metropolitan areas of the country: *Provided,* That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

Fees may be collected for the cost of standardization activities, as established by regulation pursuant to law (31 U.S.C. 9701).

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $62,577,000 (from fees collected) shall be obligated during the current fiscal year for administrative expenses: *Provided,* That if crop size is understated and/or other uncontrollable events occur, the agency may exceed this limitation by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

FUNDS FOR STRENGTHENING MARKETS, INCOME, AND SUPPLY (SECTION 32)

(INCLUDING TRANSFERS OF FUNDS)

Funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be used only for commodity program expenses as authorized therein, and other related operating expenses, except for: (1) transfers to the Department of Commerce as authorized by the Fish and Wildlife Act of August 8, 1956; (2) transfers otherwise provided in this Act; and (3) not more than $15,392,000 for formulation and administration of marketing agreements and orders pursuant to the Agricultural Marketing Agreement Act of 1937 and the Agricultural Act of 1961.

PAYMENTS TO STATES AND POSSESSIONS

For payments to departments of agriculture, bureaus and departments of markets, and similar agencies for marketing activities under section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1623(b)), $3,338,000, of which not less than $2,000,000 shall be used to make noncompetitive grants under this heading.

GRAIN INSPECTION, PACKERS AND STOCKYARDS ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses to carry out the provisions of the United States Grain Standards Act, for the administration of the Packers and Stockyards Act, for certifying procedures used to protect purchasers of farm products, and the standardization activities related to grain under the Agricultural Marketing Act of 1946, $35,638,000: *Provided,* That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

LIMITATION ON INSPECTION AND WEIGHING SERVICES EXPENSES

Not to exceed $42,463,000 (from fees collected) shall be obligated during the current fiscal year for inspection and weighing services: *Provided,* That if grain export activities require additional supervision and oversight, or other uncontrollable factors occur, this limitation may be exceeded by up to 10 percent with notification to the Committees on Appropriations of both Houses of Congress.

OFFICE OF THE UNDER SECRETARY FOR FOOD SAFETY

For necessary salaries and expenses of the Office of the Under Secretary for Food Safety to administer the laws enacted by the Congress for the Food Safety and Inspection Service, $611,000.

FOOD SAFETY AND INSPECTION SERVICE

For necessary expenses to carry out services authorized by the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act, including not to exceed $50,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), $783,761,000, of which no less than $701,103,000 shall be available for Federal food safety inspection; and in addition, $1,000,000 may be credited to this account from fees collected for the cost of laboratory accreditation as authorized by section 1327 of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 138f): *Provided,* That no fewer than 50 full time equivalent positions above the fiscal year 2002 level shall be employed during fiscal year 2004 for purposes dedicated solely to inspections and enforcement related to the Humane Methods of Slaughter Act: *Provided further,* That this appropriation shall be available pursuant to law (7 U.S.C. 2250) for the alteration and repair of buildings and improvements, but the cost of altering any one building during the fiscal year shall not exceed 10 percent of the current replacement value of the building.

OFFICE OF THE UNDER SECRETARY FOR FARM AND FOREIGN AGRICULTURAL SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Farm and Foreign Agricultural Services to administer the laws enacted by Congress for the Farm Service Agency, the Foreign Agricultural Service, the Risk Management Agency, and the Commodity Credit Corporation, $635,000.

FARM SERVICE AGENCY

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs administered by the Farm Service Agency, $988,768,000: *Provided,* That the Secretary is authorized to use the services, facilities, and authorities (but not the funds) of the Commodity Credit Corporation to make program payments for all programs administered by the Agency: *Provided further,* That other funds made available to the Agency for authorized activities may be advanced to and merged with this account.

STATE MEDIATION GRANTS

For grants pursuant to section 502(b) of the Agricultural Credit Act of 1987, as amended (7 U.S.C. 5101–5106), $3,974,000.

DAIRY INDEMNITY PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses involved in making indemnity payments to dairy farmers and manufacturers of dairy products under a dairy indemnity program, $100,000, to remain available until expended: *Provided,* That such program is carried out by the Secretary in the same manner as the dairy indemnity program described in Public Law 106–387 (114 Stat. 1549A–12).

AGRICULTURAL CREDIT INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed farm ownership (7 U.S.C. 1922 et seq.) and operating (7 U.S.C. 1941 et seq.) loans, Indian tribe land acquisition loans (25 U.S.C. 488), and boll weevil loans (7 U.S.C. 1989), to be available from funds in the Agricultural Credit Insurance Fund, as follows: farm ownership loans, $1,079,158,000, of which $950,000,000 shall be for guaranteed loans and $129,158,000 shall be for direct loans; operating loans, $2,067,317,000, of which $1,200,000,000 shall be for unsubsidized guaranteed loans, $266,249,000 shall be for subsidized guaranteed loans and $601,068,000 shall be for direct loans; Indian tribe land acquisition loans, $2,000,000; and for boll weevil eradication program loans, $100,000,000: *Provided,* That the Secretary shall deem the

pink bollworm to be a boll weevil for the purpose of boll weevil eradication program loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, as follows: farm ownership loans, $33,648,000, of which $5,130,000 shall be for guaranteed loans, and $28,518,000 shall be for direct loans; operating loans, $160,634,000, of which $39,960,000 shall be for unsubsidized guaranteed loans, $34,000,000 shall be for subsidized guaranteed loans, and $86,674,000 shall be for direct loans.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $290,968,000, of which $283,020,000 shall be transferred to and merged with the appropriation for ''Farm Service Agency, Salaries and Expenses''.

Funds appropriated by this Act to the Agricultural Credit Insurance Program Account for farm ownership and operating direct loans and guaranteed loans may be transferred among these programs: *Provided,* That the Committees on Appropriations of both Houses of Congress are notified at least 15 days in advance of any transfer.

RISK MANAGEMENT AGENCY

For administrative and operating expenses, as authorized by section 226A of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6933), $71,422,000: *Provided,* That not to exceed $1,000 shall be available for official reception and representation expenses, as authorized by 7 U.S.C. 1506(i).

CORPORATIONS

The following corporations and agencies are hereby authorized to make expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act as may be necessary in carrying out the programs set forth in the budget for the current fiscal year for such corporation or agency, except as hereinafter provided.

FEDERAL CROP INSURANCE CORPORATION FUND

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), such sums as may be necessary, to remain available until expended.

COMMODITY CREDIT CORPORATION FUND

REIMBURSEMENT FOR NET REALIZED LOSSES

For the current fiscal year, such sums as may be necessary to reimburse the Commodity Credit Corporation for net realized losses sustained, but not previously reimbursed, pursuant to section 2 of the Act of August 17, 1961 (15 U.S.C. 713a–11).

HAZARDOUS WASTE MANAGEMENT

(LIMITATION ON EXPENSES)

For the current fiscal year, the Commodity Credit Corporation shall not expend more than $5,000,000 for site investigation and cleanup expenses, and operations and maintenance expenses to comply with the requirement of section 107(g) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(g)), and section 6001 of the Resource Conservation and Recovery Act (42 U.S.C. 6961).

TITLE II

CONSERVATION PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR NATURAL RESOURCES AND ENVIRONMENT

For necessary salaries and expenses of the Office of the Under Secretary for Natural Resources and Environment to administer the laws enacted by the Congress for the Forest Service and the Natural Resources Conservation Service, $761,000.

NATURAL RESOURCES CONSERVATION SERVICE

CONSERVATION OPERATIONS

For necessary expenses for carrying out the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), including preparation of conservation plans and establishment of measures to conserve soil and water (including farm irrigation and land drainage and such special measures for soil and water management as may be necessary to prevent floods and the siltation of reservoirs and to control agricultural related pollutants); operation of conservation plant materials centers; classification and mapping of soil; dissemination of information; acquisition of lands, water, and interests therein for use in the plant materials program by donation, exchange, or purchase at a nominal cost not to exceed $100 pursuant to the Act of August 3, 1956 (7 U.S.C. 428a); purchase and erection or alteration or improvement of permanent and temporary buildings; and operation and maintenance of aircraft, $826,635,000, to remain available until expended, of which not less than $9,500,000 is for snow survey and water forecasting, and not less than $11,269,000 is for operation and establishment of the plant materials centers, and of which not less than $23,500,000 shall be for the grazing lands conservation initiative: *Provided,* That appropriations hereunder shall be available pursuant to 7 U.S.C. 2250 for construction and improvement of buildings and public improvements at plant materials centers, except that the cost of alterations and improvements to other buildings and other public improvements shall not exceed $250,000: *Provided further,* That when buildings or other structures are erected on non-Federal land, that the right to use such land is obtained as provided in 7 U.S.C. 2250a: *Provided further,* That this appropriation shall be available for technical assistance and related expenses to carry out programs authorized by section 202(c) of title II of the Colorado River Basin Salinity Control Act of 1974 (43 U.S.C. 1592(c)): *Provided further,* That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED SURVEYS AND PLANNING

For necessary expenses to conduct research, investigation, and surveys of watersheds of rivers and other waterways, and for small watershed investigations and planning, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009), $10,000,000: *Provided,* That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED AND FLOOD PREVENTION OPERATIONS

For necessary expenses to carry out preventive measures, including but not limited to research, engineering operations, methods of cultivation, the growing of vegetation, rehabilitation of existing works and changes in use of land, in accordance with the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1005 and 1007–1009), the provisions of the Act of April 27, 1935 (16 U.S.C. 590a–f), and in accordance with the provisions of laws relating to the activities of the Department, $55,000,000, to remain available until expended (of which up to $5,000,000 may be available for the watersheds authorized under the Flood Control Act (33 U.S.C. 701 and 16 U.S.C. 1006a)): *Provided,* That not to exceed $20,000,000 of this appropriation shall be available for technical assistance: *Provided further,* That not to exceed $1,000,000 of this appropriation is available to carry out the purposes of the Endangered Species Act of 1973 (Public Law 93–205), including cooperative efforts as contemplated by that Act to relocate endangered or threatened species to other suitable habitats as may be necessary to expedite project construction: *Provided further,* That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

WATERSHED REHABILITATION PROGRAM

For necessary expenses to carry out rehabilitation of structural measures, in accordance with section 14 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012), and in accordance with the provisions of laws relating to the activities of the Department, $29,805,000, to remain available until expended: *Provided,* That qualified local engineers may be temporarily employed at per diem rates to perform the technical planning work of the Service: *Provided further,* That none of the funds made available under this paragraph by this or any other appropriations Act may be used to provide technical assistance with respect to programs listed in section 1241(a) of the Food Security Act of 1985 (16 U.S.C. 3841(a)).

RESOURCE CONSERVATION AND DEVELOPMENT

For necessary expenses in planning and carrying out projects for resource conservation and development and for sound land use pursuant to the provisions of sections 31 and 32 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011; 76 Stat. 607); the Act of April 27, 1935 (16 U.S.C. 590a–f); and subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451–3461), $51,000,000, to remain available until expended.

TITLE III

RURAL DEVELOPMENT PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR RURAL DEVELOPMENT

For necessary salaries and expenses of the Office of the Under Secretary for Rural Development to administer programs under the laws enacted by the Congress for the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service of the Department of Agriculture, $651,000.

RURAL COMMUNITY ADVANCEMENT PROGRAM

(INCLUDING TRANSFERS OF FUNDS)

For the cost of direct loans, loan guarantees, and grants, as authorized by 7 U.S.C. 1926, 1926a, 1926c, 1926d, and 1932, except for sections 381E–H and 381N of the Consolidated Farm and Rural Development Act, $769,479,000, to remain available until expended, of which $79,838,000 shall be for rural community programs described in section 381E(d)(1) of such Act; of which $610,641,000 shall be for the rural utilities programs described in sections 381E(d)(2), 306C(a)(2), and 306D of such Act; and of which $79,000,000 shall be for the rural business and cooperative development programs described in sections 381E(d)(3) and 310B(f) of such Act: *Provided,* That of the amount appropriated for rural business and cooperative development programs, $100,000 shall be for a pilot program in the State of Alaska to assist communities with community planning: *Provided*

*further,* That of the total amount appropriated in this account, $24,000,000 shall be for loans and grants to benefit Federally Recognized Native American Tribes, including grants for drinking water and waste disposal systems pursuant to section 306C of such Act, of which $4,000,000 shall be available for community facilities grants to tribal colleges, as authorized by section 306(a)(19) of the Consolidated Farm and Rural Development Act, and of which $250,000 shall be available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development: *Provided further,* That of the amount appropriated for rural community programs, $6,000,000 shall be available for a Rural Community Development Initiative: *Provided further,* That such funds shall be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, low-income rural communities, and Federally Recognized Native American Tribes to undertake projects to improve housing, community facilities, community and economic development projects in rural areas: *Provided further,* That such funds shall be made available to qualified private, nonprofit and public intermediary organizations proposing to carry out a program of financial and technical assistance: *Provided further,* That such intermediary organizations shall provide matching funds from other sources, including Federal funds for related activities, in an amount not less than funds provided: *Provided further,* That of the amount appropriated for the rural business and cooperative development programs, not to exceed $500,000 shall be made available for a grant to a qualified national organization to provide technical assistance for rural transportation in order to promote economic development; $2,000,000 shall be for grants to the Delta Regional Authority (7 U.S.C. 1921 et seq.); and not less than $5,000,000 shall be available for grants in accordance with section 310B(f) of the Consolidated Farm and Rural Development Act: *Provided further,* That of the amount appropriated for rural utilities programs, not to exceed $25,000,000 shall be for water and waste disposal systems to benefit the Colonias along the United States/Mexico border, including grants pursuant to section 306C of such Act; not to exceed $30,000,000 shall be for water and waste disposal systems for rural and native villages in Alaska pursuant to section 306D of such Act, with up to 1 percent available to administer the program and up to 1 percent available to improve interagency coordination may be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses'', of which 25 percent shall be provided for water and sewer projects in regional hubs and $100,000 shall be provided to develop a regional system for centralized billing, operation, and management of rural water and sewer utilities through regional cooperatives, and the State of Alaska shall provide a 25 percent cost share; not to exceed $18,000,000 shall be for technical assistance grants for rural water and waste systems pursuant to section 306(a)(14) of such Act, of which $5,513,000 shall be for Rural Community Assistance Programs; and not to exceed $13,000,000 shall be for contracting with qualified national organizations for a circuit rider program to provide technical assistance for rural water systems: *Provided further,* That of the amount appropriated for the circuit rider program, Alaska shall receive no less than five percent and not less than $750,000 shall be for contracting with qualified national organizations to establish a Native American circuit rider program to provide technical assistance for rural water systems: *Provided further,* That not less than $2,000,000 shall be available to carry out Section 6012 of Public Law 107–171: *Provided further,* That of the total amount appropriated, not to exceed $22,132,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones; of which $1,000,000 shall be for the rural community programs described in section 381E(d)(1) of such Act, of which $12,582,000 shall be for the rural utilities programs described in section 381E(d)(2) of such Act, and of which $8,550,000 shall be for the rural business and cooperative development programs described in section 381E(d)(3) of such Act: *Provided further,* That of the amount appropriated for rural community programs, not to exceed $25,000,000 shall be to provide grants for facilities in rural communities with extreme unemployment and severe economic depression (Public Law 106–387), with 5 percent for administration and capacity building in the State rural development offices: *Provided further,* That of the amount appropriated, $30,000,000 shall be transferred to and merged with the ''Rural Utilities Service, High Energy Cost Grants Account'' to provide grants authorized under section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 918a): *Provided further,* That of the amount made available for high energy cost grants, up to $3,000,000 shall be available to a not-for-profit consumer-owned cooperative utility provider serving an island community in a non-contiguous State for the purpose of defraying transaction, transition, organizational, and other fair and reasonable costs, as determined by the Secretary, incurred during the period July 1, 1999 through December 31, 2002, and directly related to the successful acquisition by such provider of the investor-owned electric utility facilities (including generation, transmission, distribution, and other related assets) formerly serving ratepayers on the island: *Provided further,* That any prior year balances for high cost energy grants authorized by section 19 of the Rural Electrification Act of 1936 (7 U.S.C. 901(19)) shall be transferred to and merged with the ''Rural Utilities Service, High Energy Costs Grants'' account.

RURAL DEVELOPMENT SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses for carrying out the administration and implementation of programs in the Rural Development mission area, including activities with institutions concerning the development and operation of agricultural cooperatives; and for cooperative agreements; $140,922,000: *Provided,* That notwithstanding any other provision of law, funds appropriated under this section may be used for advertising and promotional campaigns, including souvenirs, that support activities conducted by agencies of the Rural Development mission area: *Provided further,* That not more than $10,000 may be expended to provide modest nonmonetary awards to non-USDA employees: *Provided further,* That any balances available from prior years for the Rural Utilities Service, Rural Housing Service, and the Rural Business-Cooperative Service salaries and expenses accounts shall be transferred to and merged with this appropriation.

RURAL HOUSING SERVICE

RURAL HOUSING INSURANCE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For gross obligations for the principal amount of direct and guaranteed loans as authorized by title V of the Housing Act of 1949, to be available from funds in the rural housing insurance fund, as follows: $4,084,589,000 for loans to section 502 borrowers, as determined by the Secretary, of which $1,359,417,000 shall be for direct loans, and of which $2,725,172,000 shall be for unsubsidized guaranteed loans; $35,004,000 for section 504 housing repair loans; $115,052,000 for section 515 rental housing; $100,000,000 for section 538 guaranteed multi-family housing loans; $5,045,000 for section 524 site loans; $11,500,000 for credit sales of acquired property, of which up to $1,500,000 may be for multi-family credit sales; and $1,623,000 for section 523 self-help housing land development loans.

For the cost of direct and guaranteed loans, including the cost of modifying loans, as defined in section 502 of the Congressional Budget Act of 1974, as follows: section 502 loans, $165,921,000, of which $126,018,000 shall be for direct loans, and of which $39,903,000, to remain available until expended, shall be for unsubsidized guaranteed loans; section 504 housing repair loans, $9,612,000; section 515 rental housing, $49,484,000; section 538 multi-family housing guaranteed loans, $5,950,000; multi-family credit sales of acquired property, $663,000; and section 523 self-help housing land development loans, $50,000: *Provided,* That of the total amount appropriated in this paragraph, $7,100,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $439,453,000, which shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

RENTAL ASSISTANCE PROGRAM

For rental assistance agreements entered into or renewed pursuant to the authority under section 521(a)(2) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Housing Act of 1949, $721,281,000; and, in addition, such sums as may be necessary, as authorized by section 521(c) of the Act, to liquidate debt incurred prior to fiscal year 1992 to carry out the rental assistance program under section 521(a)(2) of the Act: *Provided,* That of this amount, not more than $5,900,000 shall be available for debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D) of the Act, and not to exceed $20,000 per project for advances to nonprofit organizations or public agencies to cover direct costs (other than purchase price) incurred in purchasing projects pursuant to section 502(c)(5)(C) of the Act: *Provided further,* That agreements entered into or renewed during the current fiscal year shall be funded for a 5-year period, although the life of any such agreement may be extended to fully utilize amounts obligated.

MUTUAL AND SELF-HELP HOUSING GRANTS

For grants and contracts pursuant to section 523(b)(1)(A) of the Housing Act of 1949 (42 U.S.C. 1490c), $34,000,000, to remain available until expended: *Provided,* That of the total amount appropriated, $1,000,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

RURAL HOUSING ASSISTANCE GRANTS

For grants and contracts for very low-income housing repair, supervisory and technical assistance, compensation for construction defects, and rural housing preservation made by the Rural Housing Service, as authorized by 42 U.S.C. 1474, 1479(c), 1490e, and

1490m, $46,222,000, to remain available until expended, of which $5,000,000 shall be available for a processing and/or fishery workers housing demonstration project in Alaska, Mississippi, and Wisconsin: *Provided,* That of the total amount appropriated, $1,800,000 shall be available through June 30, 2004, for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

FARM LABOR PROGRAM ACCOUNT

For the cost of direct loans, grants, and contracts, as authorized by 42 U.S.C. 1484 and 1486, $33,015,000, to remain available until expended, for direct farm labor housing loans and domestic farm labor housing grants and contracts.

RURAL BUSINESS—COOPERATIVE SERVICE

RURAL DEVELOPMENT LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the principal amount of direct loans, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), $40,000,000.

For the cost of direct loans, $17,308,000, as authorized by the Rural Development Loan Fund (42 U.S.C. 9812(a)), of which $1,724,000 shall be available through June 30, 2004, for Federally Recognized Native American Tribes and of which $3,449,000 shall be available through June 30, 2004, for Delta Regional Authority (7 U.S.C. 1921 et seq.): *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further,* That of the total amount appropriated, $2,447,000 shall be available through June 30, 2004, for the cost of direct loans for authorized empowerment zones and enterprise communities and communities designated by the Secretary of Agriculture as Rural Economic Area Partnership Zones.

In addition, for administrative expenses to carry out the direct loan programs, $4,283,000 shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

RURAL ECONOMIC DEVELOPMENT LOANS PROGRAM ACCOUNT

(INCLUDING RESCISSION OF FUNDS)

For the principal amount of direct loans, as authorized under section 313 of the Rural Electrification Act, for the purpose of promoting rural economic development and job creation projects, $15,002,000.

For the cost of direct loans, including the cost of modifying loans as defined in section 502 of the Congressional Budget Act of 1974, $2,792,000.

Of the funds derived from interest on the cushion of credit payments in the current fiscal year, as authorized by section 313 of the Rural Electrification Act of 1936, $3,000,000 shall not be obligated and $3,000,000 are rescinded.

RURAL COOPERATIVE DEVELOPMENT GRANTS

For rural cooperative development grants authorized under section 310B(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932), $8,967,000, of which $2,500,000 shall be for cooperative agreements for the appropriate technology transfer for rural areas program: *Provided,* That not to exceed $1,500,000 of the total amount appropriated shall be made available to cooperatives or associations of cooperatives whose primary focus is to provide assistance to small, minority producers and whose governing board and/or membership is comprised of at least 75 percent minority.

RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES GRANTS

For grants in connection with second and third rounds of empowerment zones and enterprise communities, $14,370,000, to remain available until expended, for designated rural empowerment zones and rural enterprise communities, as authorized by the Taxpayer Relief Act of 1997 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277): *Provided,* That of the funds appropriated, $1,000,000 shall be made available to third round empowerment zones, as authorized by the Community Renewal Tax Relief Act (Public Law 106–554).

RENEWABLE ENERGY PROGRAM

For the cost of a program of direct loans and grants, under the same terms and conditions as authorized by section 9006 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8106), $23,000,000 for direct renewable energy loans and grants: *Provided,* That the cost of direct loans and loan guarantees, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974.

RURAL UTILITIES SERVICE

RURAL ELECTRIFICATION AND TELECOMMUNICATIONS LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

Insured loans pursuant to the authority of section 305 of the Rural Electrification Act of 1936 (7 U.S.C. 935) shall be made as follows: 5 percent rural electrification loans, $240,000,000; municipal rate rural electric loans, $1,000,000,000; loans made pursuant to section 306 of that Act, rural electric, $2,000,000,000; Treasury rate direct electric loans, $750,000,000; 5 percent rural telecommunications loans, $145,000,000; cost of money rural telecommunications loans, $250,000,000; loans made pursuant to section 306 of that Act, rural telecommunications loans, $120,000,000; and for guaranteed underwriting loans pursuant to section 313A, $1,000,000,000.

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, including the cost of modifying loans, of direct and guaranteed loans authorized by sections 305 and 306 of the Rural Electrification Act of 1936 (7 U.S.C. 935 and 936), as follows: cost of rural electric loans, $60,000, and the cost of telecommunication loans, $125,000: *Provided,* That notwithstanding section 305(d)(2) of the Rural Electrification Act of 1936, borrower interest rates may exceed 7 percent per year.

In addition, for administrative expenses necessary to carry out the direct and guaranteed loan programs, $37,920,000 which shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

RURAL TELEPHONE BANK PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

The Rural Telephone Bank is hereby authorized to make such expenditures, within the limits of funds available to such corporation in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as may be necessary in carrying out its authorized programs. During fiscal year 2004 and within the resources and authority available, gross obligations for the principal amount of direct loans shall be $173,503,000.

In addition, for administrative expenses, including audits, necessary to carry out the loan programs, $3,182,000, which shall be transferred to and merged with the appropriation for ''Rural Development, Salaries and Expenses''.

DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM

For the principal amount of direct distance learning and telemedicine loans, $300,000,000; and for the principal amount of broadband telecommunications loans, $335,963,000, in areas that meet the definition of ''rural area'' used for the Distance Learning and Telemedicine Program authorized by 7 U.S.C. 950aaa.

For grants for telemedicine and distance learning services in rural areas, as authorized by 7 U.S.C. 950aaa et seq., $40,000,000, to remain available until expended: *Provided,* That $15,000,000 shall be made available to convert analog to digital operation those noncommercial educational television broadcast stations that serve rural areas and are qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934, including associated translators, repeaters, and studio-to-transmitter links.

For the cost of direct and guaranteed broadband loans, as authorized by 7 U.S.C. 901, et seq., $9,116,000: *Provided,* That the cost of direct loans shall be as defined in section 502 of the Congressional Budget Act of 1974.

In addition, $10,000,000, to remain available until expended, for a grant program to finance broadband transmission in areas that meet the definition of ''rural area'' used for the Broadband Loan Program authorized by 7 U.S.C. 901.

## TITLE IV

## DOMESTIC FOOD PROGRAMS

OFFICE OF THE UNDER SECRETARY FOR FOOD, NUTRITION AND CONSUMER SERVICES

For necessary salaries and expenses of the Office of the Under Secretary for Food, Nutrition and Consumer Services to administer the laws enacted by the Congress for the Food and Nutrition Service, $611,000.

FOOD AND NUTRITION SERVICE

CHILD NUTRITION PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out the National School Lunch Act (42 U.S.C. 1751 et seq.), except section 21, and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), except sections 17 and 21; $11,418,441,000, to remain available through September 30, 2005, of which $6,718,780,000 is hereby appropriated and $4,699,661,000 shall be derived by transfer from funds available under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c): *Provided,* That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further,* That up to $5,235,000 shall be available for independent verification of school food service claims.

SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

For necessary expenses to carry out the special supplemental nutrition program as authorized by section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), $4,639,232,000, to remain available through September 30, 2005, of which $10,000,000 shall be for a breastfeeding support initiative in addition to the activities specified in section 17(h)(3)(A) and $30,000,000 shall be for a management information system initiative: *Provided,* That of the total amount available, the Secretary shall obligate $25,000,000 for the farmers' market nutrition program: *Provided further,* That notwithstanding section 17(h)(10)(A) of such Act, $14,000,000 shall be available for the purposes specified in section 17(h)(10)(B): *Provided further,* That notwithstanding section 17(g)(5) of such Act, $5,000,000 shall be available for pilot projects to prevent childhood obesity: *Provided further,* That none of the funds in this Act shall be available to pay administrative expenses of WIC clinics except those that have an announced policy of prohibiting smoking within the space used to carry out the program: *Provided further,* That none of the funds provided in this account shall be available for

the purchase of infant formula except in accordance with the cost containment and competitive bidding requirements specified in section 17 of such Act: *Provided further,* That none of the funds provided shall be available for activities that are not fully reimbursed by other Federal Government departments or agencies unless authorized by section 17 of such Act.

FOOD STAMP PROGRAM

For necessary expenses to carry out the Food Stamp Act (7 U.S.C. 2011 et seq.), $27,745,981,000, of which $2,000,000,000 shall be placed in reserve for use only in such amounts and at such times as may become necessary to carry out program operations: *Provided,* That none of the funds made available under this heading shall be used for studies and evaluations: *Provided further,* That of the funds made available under this heading and not already appropriated to the Food Distribution Program on Indian Reservations (FDPIR) established under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)), not to exceed $4,000,000 shall be used to purchase bison meat for the FDPIR from Native American bison producers as well as from producer-owned cooperatives of bison ranchers: *Provided further,* That funds provided herein shall be expended in accordance with section 16 of the Food Stamp Act: *Provided further,* That this appropriation shall be subject to any work registration or workfare requirements as may be required by law: *Provided further,* That funds made available for Employment and Training under this heading shall remain available until expended, as authorized by section 16(h)(1) of the Food Stamp Act.

COMMODITY ASSISTANCE PROGRAM

For necessary expenses to carry out disaster assistance and the commodity supplemental food program as authorized by section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); the Emergency Food Assistance Act of 1983; and special assistance for the nuclear affected islands, as authorized by Section 103(h)(2) of the Compacts of Free Association Act of 1985, $145,740,000, to remain available through September 30, 2005: *Provided,* That none of these funds shall be available to reimburse the Commodity Credit Corporation for commodities donated to the program.

NUTRITION PROGRAMS ADMINISTRATION

For necessary administrative expenses of the domestic nutrition assistance programs funded under this Act, $138,304,000, of which $5,000,000 shall be available only for simplifying procedures, reducing overhead costs, tightening regulations, improving food stamp benefit delivery, and assisting in the prevention, identification, and prosecution of fraud and other violations of law; and of which not less than $4,000,000 shall be available to improve integrity in the Food Stamp and Child Nutrition programs.

## TITLE V

## FOREIGN ASSISTANCE AND RELATED PROGRAMS

FOREIGN AGRICULTURAL SERVICE

SALARIES AND EXPENSES

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses of the Foreign Agricultural Service, including carrying out title VI of the Agricultural Act of 1954 (7 U.S.C. 1761–1769), market development activities abroad, and for enabling the Secretary to coordinate and integrate activities of the Department in connection with foreign agricultural work, including not to exceed $158,000 for representation allowances and for expenses pursuant to section 8 of the Act approved August 3, 1956 (7 U.S.C. 1766), $131,648,000: *Provided,* That the Service may utilize advances of funds, or reimburse this appropriation for expenditures made on behalf of Federal agencies, public and private organizations and institutions under agreements executed pursuant to the agricultural food production assistance programs (7 U.S.C. 1737) and the foreign assistance programs of the United States Agency for International Development.

PUBLIC LAW 480 TITLE I PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost, as defined in section 502 of the Congressional Budget Act of 1974, of agreements under the Agricultural Trade Development and Assistance Act of 1954, and the Food for Progress Act of 1985, including the cost of modifying credit arrangements under said Acts, $103,887,000, to remain available until expended.

In addition, for administrative expenses to carry out the credit program of title I, Public Law 83–480, and the Food for Progress Act of 1985, to the extent funds appropriated for Public Law 83–480 are utilized, $2,134,000, of which $1,075,000 may be transferred to and merged with the appropriation for ''Foreign Agricultural Service, Salaries and Expenses'', and of which $1,059,000 may be transferred to and merged with the appropriation for ''Farm Service Agency, Salaries and Expenses''.

PUBLIC LAW 480 TITLE I OCEAN FREIGHT DIFFERENTIAL GRANTS

(INCLUDING TRANSFER OF FUNDS)

For ocean freight differential costs for the shipment of agricultural commodities under title I of the Agricultural Trade Development and Assistance Act of 1954 and under the Food for Progress Act of 1985, $28,000,000, to remain available until expended: *Provided,* That funds made available for the cost of agreements under title I of the Agricultural Trade Development and Assistance Act of 1954 and for title I ocean freight differential may be used interchangeably between the two accounts with prior notice to the Committees on Appropriations of both Houses of Congress.

PUBLIC LAW 480 TITLE II GRANTS

For expenses during the current fiscal year, not otherwise recoverable, and unrecovered prior years' costs, including interest thereon, under the Agricultural Trade Development and Assistance Act of 1954, for commodities supplied in connection with dispositions abroad under title II of said Act, $1,192,000,000, to remain available until expended.

MCGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM GRANTS

For necessary expenses to carry out the provisions of section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), $25,000,000, to remain available until expended: *Provided,* That the Commodity Credit Corporation is authorized to provide the services, facilities, and authorities for the purpose of implementing such section, subject to reimbursement from amounts provided herein.

COMMODITY CREDIT CORPORATION EXPORT LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For administrative expenses to carry out the Commodity Credit Corporation's export guarantee program, GSM 102 and GSM 103, $4,152,000; to cover common overhead expenses as permitted by section 11 of the Commodity Credit Corporation Charter Act and in conformity with the Federal Credit Reform Act of 1990, of which $3,306,000 may be transferred to and merged with the appropriation for ''Foreign Agricultural Service, Salaries and Expenses'', and of which $846,000 may be transferred to and merged with the appropriation for ''Farm Service Agency, Salaries and Expenses''.

## TITLE VI

## RELATED AGENCIES AND FOOD AND DRUG ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses of the Food and Drug Administration, including hire and purchase of passenger motor vehicles; for payment of space rental and related costs pursuant to Public Law 92–313 for programs and activities of the Food and Drug Administration which are included in this Act; for rental of special purpose space in the District of Columbia or elsewhere; and for miscellaneous and emergency expenses of enforcement activities, authorized and approved by the Secretary and to be accounted for solely on the Secretary's certificate, not to exceed $25,000; $1,663,228,000, of which not to exceed $249,825,000 to be derived from prescription drug user fees authorized by 21 U.S.C. 379h, including any such fees assessed prior to the current fiscal year but credited during the current year, in accordance with section 736(g)(4), shall be credited to this appropriation and remain available until expended; and of which not to exceed $29,190,000 to be derived from medical device user fees authorized by 21 U.S.C. 379j shall be credited to this appropriation, to remain available until expended: *Provided,* That fees derived from applications received during fiscal year 2004 shall be subject to the fiscal year 2004 limitation: *Provided further,* That none of these funds shall be used to develop, establish, or operate any program of user fees authorized by 31 U.S.C. 9701: *Provided further,* That of the total amount appropriated: (1) $412,020,000 shall be for the Center for Food Safety and Applied Nutrition and related field activities in the Office of Regulatory Affairs; (2) $475,655,000 shall be for the Center for Drug Evaluation and Research and related field activities in the Office of Regulatory Affairs, of which no less than $13,270,000 shall be available for grants and contracts awarded under section 5 of the Orphan Drug Act (21 U.S.C. 360ee); (3) $168,836,000 shall be for the Center for Biologics Evaluation and Research and for related field activities in the Office of Regulatory Affairs; (4) $84,646,000 shall be for the Center for Veterinary Medicine and for related field activities in the Office of Regulatory Affairs; (5) $207,686,000 shall be for the Center for Devices and Radiological Health and for related field activities in the Office of Regulatory Affairs; (6) $39,887,000 shall be for the National Center for Toxicological Research; (7) $40,851,000 shall be for Rent and Related activities, other than the amounts paid to the General Services Administration for rent; (8) $119,152,000 shall be for payments to the General Services Administration for rent; and (9) $114,495,000 shall be for other activities, including the Office of the Commissioner; the Office of Management and Systems; the Office of External Relations; the Office of Policy, Legislation, and Planning; and central services for these offices: *Provided further,* That funds may be transferred from one specified activity to another with the prior approval of the Committees on Appropriations of both Houses of Congress.

In addition, mammography user fees authorized by 42 U.S.C. 263b may be credited to this account, to remain available until expended.

In addition, export certification user fees authorized by 21 U.S.C. 381 may be credited

to this account, to remain available until expended.

BUILDINGS AND FACILITIES

For plans, construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of or used by the Food and Drug Administration, where not otherwise provided, $7,948,000, to remain available until expended.

INDEPENDENT AGENCIES

COMMODITY FUTURES TRADING COMMISSION

For necessary expenses to carry out the provisions of the Commodity Exchange Act (7 U.S.C. 1 et seq.), including the purchase and hire of passenger motor vehicles, and the rental of space (to include multiple year leases) in the District of Columbia and elsewhere, $90,435,000, including not to exceed $3,000 for official reception and representation expenses.

FARM CREDIT ADMINISTRATION

LIMITATION ON ADMINISTRATIVE EXPENSES

Not to exceed $40,900,000 (from assessments collected from farm credit institutions and from the Federal Agricultural Mortgage Corporation) shall be obligated during the current fiscal year for administrative expenses as authorized under 12 U.S.C. 2249: *Provided,* That this limitation shall not apply to expenses associated with receiverships.

TITLE VII—GENERAL PROVISIONS

SEC. 701. Within the unit limit of cost fixed by law, appropriations and authorizations made for the Department of Agriculture for the current fiscal year under this Act shall be available for the purchase, in addition to those specifically provided for, of not to exceed 398 passenger motor vehicles, of which 396 shall be for replacement only, and for the hire of such vehicles.

SEC. 702. Funds in this Act available to the Department of Agriculture shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).

SEC. 703. Funds appropriated by this Act shall be available for employment pursuant to the second sentence of section 706(a) of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 2225) and 5 U.S.C. 3109.

SEC. 704. The Secretary of Agriculture may transfer unobligated balances of discretionary funds appropriated by this Act or other available unobligated discretionary balances of the Department of Agriculture to the Working Capital Fund for the acquisition of plant and capital equipment necessary for the delivery of financial, administrative, and information technology services of primary benefit to the agencies of the Department of Agriculture: *Provided,* That none of the funds made available by this Act or any other Act shall be transferred to the Working Capital Fund without the prior approval of the agency administrator: *Provided further,* That none of the funds transferred to the Working Capital Fund pursuant to this section shall be available for obligation without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 705. New obligational authority provided for the following appropriation items in this Act shall remain available until expended: Animal and Plant Health Inspection Service, the contingency fund to meet emergency conditions, information technology infrastructure, fruit fly program, emerging plant pests, boll weevil program, and up to 25 percent of the screwworm program; Food Safety and Inspection Service, field automation and information management project; Cooperative State Research, Education, and Extension Service, funds for competitive research grants (7 U.S.C. 450i(b)), funds for the Research, Education and Economics Information System (REEIS), and funds for the Native American Institutions Endowment Fund; Farm Service Agency, salaries and expenses funds made available to county committees; Foreign Agricultural Service, middle-income country training program and up to $2,000,000 of the Foreign Agricultural Service appropriation solely for the purpose of offsetting fluctuations in international currency exchange rates, subject to documentation by the Foreign Agricultural Service.

SEC. 706. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 707. Not to exceed $50,000 of the appropriations available to the Department of Agriculture in this Act shall be available to provide appropriate orientation and language training pursuant to section 606C of the Act of August 28, 1954 (7 U.S.C. 1766b).

SEC. 708. No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of 10 percent of the total direct cost of the agreement when the purpose of such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

SEC. 709. None of the funds in this Act shall be available to restrict the authority of the Commodity Credit Corporation to lease space for its own use or to lease space on behalf of other agencies of the Department of Agriculture when such space will be jointly occupied.

SEC. 710. None of the funds in this Act shall be available to pay indirect costs charged against competitive agricultural research, education, or extension grant awards issued by the Cooperative State Research, Education, and Extension Service that exceed 19 percent of total Federal funds provided under each award: *Provided,* That notwithstanding section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310), funds provided by this Act for grants awarded competitively by the Cooperative State Research, Education, and Extension Service shall be available to pay full allowable indirect costs for each grant awarded under section 9 of the Small Business Act (15 U.S.C. 638).

SEC. 711. Notwithstanding any other provision of this Act, all loan levels provided in this Act shall be considered estimates, not limitations.

SEC. 712. Appropriations to the Department of Agriculture for the cost of direct and guaranteed loans made available in the current fiscal year shall remain available until expended to cover obligations made in the current fiscal year for the following accounts: the Rural Development Loan Fund program account, the Rural Telephone Bank program account, the Rural Electrification and Telecommunications Loans program account, the Rural Housing Insurance Fund program account, and the Rural Economic Development Loans program account.

SEC. 713. None of the funds in this Act may be used to retire more than 5 percent of the Class A stock of the Rural Telephone Bank or to maintain any account or subaccount within the accounting records of the Rural Telephone Bank the creation of which has not specifically been authorized by statute: *Provided,* That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available in this Act may be used to transfer to the Treasury or to the Federal Financing Bank any unobligated balance of the Rural Telephone Bank telephone liquidating account which is in excess of current requirements and such balance shall receive interest as set forth for financial accounts in section 505(c) of the Federal Credit Reform Act of 1990.

SEC. 714. Of the funds made available by this Act, not more than $1,800,000 shall be used to cover necessary expenses of activities related to all advisory committees, panels, commissions, and task forces of the Department of Agriculture, except for panels used to comply with negotiated rule makings and panels used to evaluate competitively awarded grants.

SEC. 715. None of the funds appropriated by this Act may be used to carry out section 410 of the Federal Meat Inspection Act (21 U.S.C. 679a) or section 30 of the Poultry Products Inspection Act (21 U.S.C. 471).

SEC. 716. No employee of the Department of Agriculture may be detailed or assigned from an agency or office funded by this Act to any other agency or office of the Department for more than 30 days unless the individual's employing agency or office is fully reimbursed by the receiving agency or office for the salary and expenses of the employee for the period of assignment.

SEC. 717. None of the funds appropriated or otherwise made available to the Department of Agriculture shall be used to transmit or otherwise make available to any non-Department of Agriculture employee questions or responses to questions that are a result of information requested for the appropriations hearing process.

SEC. 718. None of the funds made available to the Department of Agriculture by this Act may be used to acquire new information technology systems or significant upgrades, as determined by the Office of the Chief Information Officer, without the approval of the Chief Information Officer and the concurrence of the Executive Information Technology Investment Review Board: *Provided,* That notwithstanding any other provision of law, none of the funds appropriated or otherwise made available by this Act may be transferred to the Office of the Chief Information Officer without the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 719. (a) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds which: (1) creates new programs; (2) eliminates a program, project, or activity; (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted; (4) relocates an office or employees; (5) reorganizes offices, programs, or activities; or (6) contracts out or privatizes any functions or activities presently performed by Federal employees; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(b) None of the funds provided by this Act, or provided by previous Appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in the current fiscal year, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure for activities, programs, or projects through a reprogramming of funds in excess of $500,000

or 10 percent, whichever is less, that: (1) augments existing programs, projects, or activities; (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress; unless the Committees on Appropriations of both Houses of Congress are notified 15 days in advance of such reprogramming of funds.

(c) The Secretary of Agriculture, the Secretary of Health and Human Services, or the Chairman of the Commodity Futures Trading Commission shall notify the Committees on Appropriations of both Houses of Congress before implementing a program or activity not carried out during the previous fiscal year unless the program or activity is funded by this Act or specifically funded by any other Act.

SEC. 720. With the exception of funds needed to administer and conduct oversight of grants awarded and obligations incurred in prior fiscal years, none of the funds appropriated or otherwise made available by this or any other Act may be used to pay the salaries and expenses of personnel to carry out the provisions of section 401 of Public Law 105–185, the Initiative for Future Agriculture and Food Systems (7 U.S.C. 7621).

SEC. 721. None of the funds made available to the Food and Drug Administration by this Act shall be used to reduce the Detroit, Michigan, Food and Drug Administration District Office below the operating and full-time equivalent staffing level of July 31, 1999; or to change the Detroit District Office to a station, residence post or similarly modified office; or to reassign residence posts assigned to the Detroit District Office: *Provided*, That this section shall not apply to Food and Drug Administration field laboratory facilities or operations currently located in Detroit, Michigan, except that field laboratory personnel shall be assigned to locations in the general vicinity of Detroit, Michigan, pursuant to cooperative agreements between the Food and Drug Administration and other laboratory facilities associated with the State of Michigan.

SEC. 722. None of the funds appropriated by this Act or any other Act shall be used to pay the salaries and expenses of personnel who prepare or submit appropriations language as part of the President's Budget submission to the Congress of the United States for programs under the jurisdiction of the Appropriations Subcommittees on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies that assumes revenues or reflects a reduction from the previous year due to user fees proposals that have not been enacted into law prior to the submission of the Budget unless such Budget submission identifies which additional spending reductions should occur in the event the user fees proposals are not enacted prior to the date of the convening of a committee of conference for the fiscal year 2005 appropriations Act.

SEC. 723. None of the funds made available by this Act or any other Act may be used to close or relocate a State Rural Development office unless or until cost effectiveness and enhancement of program delivery have been determined.

SEC. 724. Of any shipments of commodities made pursuant to section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), the Secretary of Agriculture shall, to the extent practicable, direct that tonnage equal in value to not more than $25,000,000 shall be made available to foreign countries to assist in mitigating the effects of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome on communities, including the provision of—

(1) agricultural commodities to—

(A) individuals with Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome in the communities; and

(B) households in the communities, particularly individuals caring for orphaned children; and

(2) agricultural commodities monetized to provide other assistance (including assistance under microcredit and microenterprise programs) to create or restore sustainable livelihoods among individuals in the communities, particularly individuals caring for orphaned children.

SEC. 725. In addition to amounts otherwise appropriated or made available by this Act, $2,981,000 is appropriated for the purpose of providing Bill Emerson and Mickey Leland Hunger Fellowships through the Congressional Hunger Center.

SEC. 726. Notwithstanding section 412 of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f), any balances available to carry out title III of such Act as of the date of enactment of this Act, and any recoveries and reimbursements that become available to carry out title III of such Act, may be used to carry out title II of such Act.

SEC. 727. Section 375(e)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j(e)(6)(B)) is amended by striking ''$26,499,000'' and inserting ''$26,998,000''.

SEC. 728. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 729. None of the funds made available to the Food and Drug Administration by this Act shall be used to close or relocate, or to plan to close or relocate, the Food and Drug Administration Division of Pharmaceutical Analysis in St. Louis, Missouri, outside the city or county limits of St. Louis, Missouri.

SEC. 730. Notwithstanding any other provision of law, of the funds made available in this Act for competitive research grants (7 U.S.C. 450i(b)), the Secretary may use up to 20 percent of the amount provided to carry out a competitive grants program under the same terms and conditions as those provided in section 401 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7621).

SEC. 731. Notwithstanding any other provision of law, the Natural Resources Conservation Service shall provide financial and technical assistance through the Watershed and Flood Prevention Operations program to carry out the Upper Tygart Valley Watershed project, West Virginia: *Provided*, That the Natural Resources Conservation Service is authorized to provide 100 percent of the engineering assistance and 75 percent cost share for installation of the water supply component of this project.

SEC. 732. Agencies and offices of the Department of Agriculture may utilize any unobligated salaries and expenses funds to reimburse the Office of the General Counsel for salaries and expenses of personnel, and for other related expenses, incurred in representing such agencies and offices in the resolution of complaints by employees or applicants for employment, and in cases and other matters pending before the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, or the Merit Systems Protection Board with the prior approval of the Committees on Appropriations of both Houses of Congress.

SEC. 733. None of the funds appropriated or made available by this Act or any other Act may be used to pay the salaries and expenses of personnel to carry out section 14(h)(1) of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1012(h)(1)).

SEC. 734. None of the funds appropriated or made available by this Act, or any other Act, may be used to pay the salaries and expenses of personnel to carry out subtitle I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009dd through dd–7).

SEC. 735. None of the funds appropriated or made available by this Act or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6405 of Public Law 107–171 (7 U.S.C. 2655).

SEC. 736. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide financial and technical assistance through the Watershed and Flood Prevention Operations program for the Kuhn Bayou and Ditch 26 Improvement projects in Arkansas, the Matanuska River erosion control project in Alaska, the DuPage County Sawmill Creek Watershed project in Illinois, and the Coal Creek project in Utah.

SEC. 737. None of the funds made available in fiscal year 2004 or preceding fiscal years for programs authorized under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.) in excess of $20,000,000 shall be used to reimburse the Commodity Credit Corporation for the release of eligible commodities under section 302(f)(2)(A) of the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f–1): *Provided*, That any such funds made available to reimburse the Commodity Credit Corporation shall only be used pursuant to section 302(b)(2)(B)(i) of the Bill Emerson Humanitarian Trust Act.

SEC. 738. Notwithstanding any other provision of law, the Natural Resources Conservation Service may provide from appropriated funds financial and technical assistance to the Dry Creek project, Utah.

SEC. 739. The Secretary of Agriculture is authorized to permit employees of the United States Department of Agriculture to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties.

SEC. 740. None of the funds appropriated or otherwise made available by this Act shall be used to pay the salaries and expenses of personnel to carry out the provisions of sections 7404(a)(1) and 7404(c)(1) of Public Law 107–171.

SEC. 741. Of the funds made available under section 27(a) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), the Secretary may use up to $10,000,000 for costs associated with the distribution of commodities.

SEC. 742. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to enroll in excess of 189,144 acres in the calendar year 2004 wetlands reserve program as authorized by 16 U.S.C. 3837.

SEC. 743. Notwithstanding subsections (c) and (e)(2) of section 313A of the Rural Electrification Act (7 U.S.C. 940c(c) and (e)(2)) in implementing section 313A of that Act, the Secretary shall, with the consent of the lender, structure the schedule for payment of the annual fee, not to exceed an average of 30 basis points per year for the term of the loan, to ensure that sufficient funds are available to pay the subsidy costs for note guarantees under that section.

SEC. 744. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out a ground and surface water conservation program authorized by section 2301 of Public

Law 107–171, the Farm Security and Rural Investment Act of 2002, in excess of $51,000,000.

SEC. 745. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2502 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002, in excess of $42,000,000.

SEC. 746. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 2503 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002, in excess of $112,044,000.

SEC. 747. There is hereby appropriated $3,000,000 to carry out section 6028 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002: *Provided*, That notwithstanding section 383B(g)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb–1(g)(1)), the Federal share of the administrative expenses of the Northern Great Plains Regional Authority for fiscal year 2004 shall be 100 percent.

SEC. 748. None of the funds appropriated or made available by this Act or any other Act may be used to pay the salaries and expenses of personnel to carry out section 6029 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002: *Provided*, That this section shall not apply to activities related to the promulgation of regulations or the receipt and review of applications for the Rural Business Investment Program.

SEC. 749. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 6103 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

SEC. 750. None of the funds appropriated or otherwise made available by this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out section 9006 of Public Law 107–171, the Farm Security and Rural Investment Act of 2002.

SEC. 751. Agencies and offices of the Department of Agriculture may utilize any available discretionary funds to cover the costs of preparing, or contracting for the preparation of, final agency decisions regarding complaints of discrimination in employment or program activities arising within such agencies and offices.

SEC. 752. Notwithstanding any other provision of law, for any fiscal year, in the case of a high cost isolated rural area that is not connected to a road system in Alaska, the maximum level for the single family housing assistance shall be 150 percent of the average income level in the metropolitan areas of the State and 115 percent of all other eligible areas of the State.

SEC. 753. Any unobligated balances in the Alternative Agricultural Research and Commercialization Revolving Fund are hereby rescinded.

SEC. 754. There is hereby appropriated $2,000,000, to remain available until expended, for the Denali Commission to address deficiencies in solid waste disposal sites which threaten to contaminate rural drinking water supplies.

SEC. 755. Notwithstanding any other provision of law, the Secretary shall consider the City of Vicksburg, Mississippi; the City of Aberdeen, South Dakota; and the City of Starkville, Mississippi as meeting the requirements of a rural area contained in section 520 of the Housing Act of 1949 (42 U.S.C. 1490) until receipt of the decennial Census for the year 2010.

SEC. 756. Notwithstanding any other provision of law, the Secretary shall consider the City of Berlin, New Hampshire, to be eligible for loans and grants provided through the Rural Community Advancement Program until receipt of the decennial Census in the year 2010.

SEC. 757. None of the funds made available in this Act or any other Act may be used to study or enter into a contract with a private party to carry out, without specific authorization in a subsequent Act of Congress, a competitive sourcing activity of the Secretary of Agriculture, including support personnel of the Department of Agriculture, relating to rural development or farm loan programs, animal disease research, or grant review or management activities.

SEC. 758. Section 501(b)(5)(B) of the Housing Act of 1949 (42 U.S.C. 1471(b)(5)(B) is amended by striking ''for fiscal years 2002 and 2003,''.

SEC. 759. AGRICULTURAL MANAGEMENT ASSISTANCE. Section 524(b)(1) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)(1)) is amended—

(1) by striking ''financial assistance to producers in'' and inserting ''grants to''; and

(2) by inserting before the period at the end the following: ''which shall use the grants to provide financial assistance to producers for uses described in paragraph (2)''.

SEC. 760. TRAVEL RELATING TO COMMERCIAL SALES OF AGRICULTURAL AND MEDICAL GOODS. Section 910(a) of the Trade Sanctions Reform And Export Enhancement Act of 2000 (22 U.S.C. 7209(a)) is amended to read as follows:

''(a) AUTHORIZATION OF TRAVEL RELATING TO COMMERCIAL SALES OF AGRICULTURAL AND MEDICAL GOODS.—The Secretary of the Treasury shall promulgate regulations under which the travel-related transactions listed in paragraph (c) of section 515.560 of title 31, Code of Federal Regulations, are authorized by general license for travel to, from, or within Cuba for the purpose of conferring, exhibiting, marketing, planning, sales negotiation, delivery, expediting, facilitating, or servicing commercial export sale of agricultural and medical goods pursuant to the provisions of this title.''.

This Act may be cited as the ''Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2004''.

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**SA 2073.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 47, line 13, insert a period after ''$335,963,000'' and striker the remainder of the sentence, and on page 48, lines 7 through 9, strike all after ''transmission in'' and insert in lieu thereof the following: ''rural areas eligible for Distance Learning and Telemedicine Program benefits authorized by 7 U.S.C. 950aaa.''.

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**SA 2074.** Mr. DASCHLE (for himself and Mr. FRIST) submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. SUN GRANT RESEARCH INITIATIVE.**

(a) SHORT TITLE.—This section may be cited as the ''Sun Grant Research Initiative Act of 2003''.

(b) RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.—Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding at the end the following:

**''SEC. 9011. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.**

''(a) PURPOSES.—The purposes of the programs established under this section are—

''(1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

''(2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

''(3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

''(4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration between the Department of Agriculture, the Department of Energy, and the land-grant colleges and universities.

''(b) DEFINITIONS.—In this section:

''(1) LAND-GRANT COLLEGES AND UNIVERSITIES.—The term 'land-grant colleges and universities' means—

''(A) 1862 Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

''(B) 1890 Institutions (as defined in section 2 of that Act) and West Virginia State College; and

''(C) 1994 Institutions (as defined in section 2 of that Act).

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

''(c) ESTABLISHMENT.—To carry out the purposes described in subsection (a), the Secretary shall establish programs under which—

''(1) the Secretary shall provide grants to sun grant centers specified in subsection (d); and

''(2) the sun grant centers shall use the grants in accordance with this section.

''(d) GRANTS TO CENTERS.—The Secretary shall use amounts made available for a fiscal year under subsection (j) to provide a grants in equal amounts to each of the following sun grant centers:

''(1) NORTH-CENTRAL CENTER.—A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

''(2) SOUTHEASTERN CENTER.—A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

''(A) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

''(B) the Commonwealth of Puerto Rico; and

''(C) the United States Virgin Islands.

''(3) SOUTH-CENTRAL CENTER.—A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

''(4) WESTERN CENTER.—A western sun grant center at Oregon State University for the region composed of—

''(A) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

''(B) territories and possessions of the United States (other than the territories referred to in subparagraphs (B) and (C) of paragraph (2)).

''(5) NORTHEASTERN CENTER.—A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

''(e) USE OF FUNDS.—

''(1) CENTERS OF EXCELLENCE.—Of the amount of funds that are made available for a fiscal year to a sun grant center under subsection (d), the center shall use not more than 25 percent of the amount for administration to support excellence in science, engineering, and economics at the center to promote the purposes described in subsection (a) through the State agricultural experiment station, cooperative extension services, and relevant educational programs of the university.

''(2) GRANTS TO LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(A) IN GENERAL.—The sun grant center established for a region shall use the funds that remain available for a fiscal year after expenditures made under paragraph (1) to provide competitive grants to land-grant colleges and universities in the region of the sun grant center to conduct, consistent with the purposes described in subsection (a), multiinstitutional and multistate—

''(i) research, extension, and educational programs on technology development; and

''(ii) integrated research, extension, and educational programs on technology implementation.

''(B) PROGRAMS.—Of the amount of funds that are used to provide grants for a fiscal year under subparagraph (A), the center shall use—

''(i) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(i); and

''(ii) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(ii).

''(3) INDIRECT COSTS.—A sun grant center may not recover the indirect costs of making grants under paragraph (2) to other land-grant colleges and universities.

''(f) PLAN.—

''(1) IN GENERAL.—Subject to the availability of funds under subsection (j), in cooperation with other land-grant colleges and universities and private industry in accordance with paragraph (2), the sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for addressing at the State and regional levels the bioenergy, biomass, and gasification research priorities of the Department of Agriculture and the Department of Energy for the making of grants under paragraphs (1) and (2) of subsection (e).

''(2) GASIFICATION COORDINATION.—

''(A) IN GENERAL.—In developing the plan under paragraph (1) with respect to gasification research, the sun grant centers identified in paragraphs (1) and (2) of subsection (d) shall coordinate with land grant colleges and universities in their respective regions that have ongoing research activities with respect to the research.

''(B) FUNDING.—Funds made available under subsection (d) to the sun grant center identified in subsection (e)(2) shall be available to carry out planning coordination under paragraph (1) of this subsection.

''(g) GRANTS TO OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(1) PRIORITY FOR GRANTS.—In making grants under subsection (e)(2), a sun grant center shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (f).

''(2) TERM OF GRANTS.—The term of a grant provided by a sun grant center under subsection (e)(2) shall not exceed 5 years.

''(h) GRANT INFORMATION ANALYSIS CENTER.—The sun grant centers shall maintain a Sun Grant Information Analysis Center at the sun grant center specified in subsection (d)(1) to provide sun grant centers analysis and data management support.

''(i) ANNUAL REPORTS.—Not later than 90 days after the end of a year for which a sun grant center receives a grant under subsection (d), the sun grant center shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center during the year, including a description of progress made in facilitating the priorities described in subsection (f).

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $25,000,000 for fiscal year 2005;

''(B) $50,000,000 for fiscal year 2006; and

''(C) $75,000,000 for each of fiscal years 2007 through 2010.

''(2) GRANT INFORAMTION ANALYSIS CENTER.—Of amounts made available under paragraph (1), not more than $4,000,000 for each fiscal year shall be made available to carry out subsection (h).''.

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**SA 2075.** Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 42, between lines 13 and 14, insert the following:

HISTORIC BARN PRESERVATION PROGRAM

For the historic barn preservation program established under section 379A of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008*o*), $2,000,000.

On page 58, line 19, strike ''$90,435,000'' and insert ''$88,435,000''.

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**SA 2076.** Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 42, between lines 13 and 14, insert the following:

HISTORIC BARN PRESERVATION PROGRAM

For the Vermont Division for Historic Preservation, to carry out activities under the historic barn preservation program established under section 379A of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008*o*), $500,000.

On page 58, line 19, strike ''$90,435,000'' and insert ''$899,350,000''.

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**SA 2077.** Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. PEST INFESTATION OF HASS AVOCADOS.**

None of the funds appropriated or otherwise made available by this Act shall be used—

(1) to carry out any provision of law (including rules and regulations) relating to the expansion of imports of Mexican avocados until a scientific study by qualified independent researchers for a continuous 12-month period is completed on the susceptibility of Hass avocados to pest infestation as a result of the expansion of Mexican avocado imports; or

(2) to take any action that would expand imports into avocado-producing States as long as avocado-specific quarantine pests continue to be found in Michoacan, Mexico.

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**SA 2078.** Mr. DASCHLE (for himself, Mr. ENZI, Mr. THOMAS, Mr. JOHNSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BURNS, Mr. BINGAMAN, Mr. BAUCUS, Mr. DORGAN, Mr. CONRAD, and Mr. KERRY) submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 79, between lines 7 and 8, insert:

**SEC. ___. SENSE OF SENATE REGARDING COUNTRY OF ORIGIN LABELING REQUIREMENTS.**

It is the sense of the Senate that the conferees on the part of the Senate on this bill shall insist that no limits on the use of funds to enforce country of origin labeling requirements for meat or meat products be included in the conference report accompanying the bill.

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**SA 2079.** Mr. CORNYN submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. PROHIBITION OF USE OF FUNDS TO IMPLEMENT COUNTRY OF ORIGIN LABELING FOR MEAT OR MEAT PRODUCTS.**

None of the funds appropriated or otherwise made available by this Act shall be used to implement or enforce subtitle D of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638 et seq.) with respect to a covered commodity described in clause (i) or (ii) of section 281(2)(A) of that Act (7 U.S.C. 1638(2)(A)).

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**SA 2080.** Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. LIMITATION ON ALLOCATION OF PURCHASE PRICES FOR BUTTER AND NONFAT DRY MILK.**

None of the funds made available by this Act may be used to pay the salaries or expenses of employees of the Department of Agriculture to allocate the rate of price support between the purchase prices for nonfat dry milk and butter in a manner does not support the price of milk in accordance with section 1501(b) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7981(b)).

**SA 2081.** Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. CITRUS CANKER ASSISTANCE.**

Section 211 of the Agricultural Assistance Act of 2003 (117 Stat. 545) is amended—

(1) in the section heading, by inserting ''**TREE REPLACEMENT AND**'' after ''**FOR**''; and

(2) in subsection (a), by inserting ''tree replacement and'' after ''Florida for''.

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**SA 2082.** Mr. NELSON of Florida (for himself and Mr. GRAHAM of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. ASSISTANCE TO CITRUS AND LIME GROWERS FOR LOST INCOME AND TREE REPLACEMENT FROM TREES REMOVED TO CONTROL CITRUS CANKER.**

The Secretary of Agriculture shall use not more than $15,000,000 of the funds of the Commodity Credit Corporation to compensate commercial citrus and lime growers in the State of Florida for lost income and tree replacement with respect to trees removed to control citrus canker, to remain available until expended.

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**SA 2083.** Mrs. FEINSTEIN (for herself, Mr. LUGAR, Mr. LEVIN, Mr. HARKIN, Ms. CANTWELL, Mrs. BOXER, Mr. LEAHY, Mr. WYDEN, Mr. DURBIN, and Mr. HOLLINGS) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

**TITLE ___—TRANSPARENCY IN WHOLESALE ELECTRICITY MARKETS**

**SEC. ___01. MARKET TRANSPARENCY.**

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

**''SEC. 215. MARKET TRANSPARENCY.**

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate regulations establishing an electronic information system to provide the Commission and the public with access to such information as is appropriate to facilitate price transparency and participation in markets subject to the jurisdiction of the Commission.

''(b) INFORMATION TO BE MADE AVAILABLE.—

''(1) IN GENERAL.—The system under subsection (a) shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.

''(2) PROTECTION OF CONSUMERS AND COMPETITIVE MARKETS.—In determining the information to be made available under the system and the time at which to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from false or misleading information and from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

''(c) AUTHORITY TO OBTAIN INFORMATION.—The Commission shall have authority to obtain information described in subsections (a) and (b) from any electric utility or transmitting utility (including any entity described in section 201(f)).

''(d) EXEMPTION.—The Commission shall exempt from disclosure information that the Commission determines would, if disclosed—

''(1) be detrimental to the operation of an effective market; or

''(2) jeopardize system security.

''(e) APPLICABILITY.—The system under subsection (a) shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A).''.

**SEC. ___02. ROUND TRIP TRADING.**

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) (as amended by section ___01) is amended by adding at the end the following:

**''SEC. 216. ROUND TRIP TRADING.**

''(a) PROHIBITION.—It shall be unlawful for any person or entity (including an entity described in section 201(f)) knowingly to enter into any contract or other arrangement to execute a round trip trade.

''(b) DEFINITION OF ROUND TRIP TRADE.—In this section, the term 'round trip trade' means a transaction (or combination of transactions) in which a person or entity, with the intent to affect reported revenues, trading volumes, or prices—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or entity electric energy at wholesale; and

''(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with the other person or entity for the same electric energy at substantially the same location, price, quantity, and terms so that, collectively, the purchase and sale transactions in themselves result in a de minimis or no financial gain or loss.''.

**SEC. ___03. ENFORCEMENT.**

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended—

(1) in the first sentence—

(A) by inserting ''(including an electric utility)'' after ''Any person''; and

(B) by inserting '', transmitting utility,'' after ''licensee''; and

(2) in the second sentence, by inserting '', transmitting utility,'' after ''licensee''.

(b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended in the first sentence by inserting ''(including a transmitting utility)'' after ''any person''.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 825*l*) is amended in the first sentence by inserting ''(including an electric utility)'' after ''Any person''.

(d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825*o*) is amended—

(1) in subsection (a)—

(A) by striking ''$5,000'' and inserting ''$1,000,000''; and

(B) by striking ''two years'' and inserting ''5 years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended—

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

(f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''5 years''; and

(2) in subsection (b), by striking ''$500'' and inserting ''$50,000''.

**SEC. ___04. REFUND EFFECTIVE DATE.**

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended—

(1) in the second sentence, by striking ''the date 60 days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' and inserting ''the date of the filing of the complaint nor later than 5 months after the filing of the complaint'';

(2) in the third sentence—

(A) by striking ''60 days after the'' and inserting ''of''; and

(B) by striking ''expiration of such 60-day period'' and inserting ''publication date''; and

(3) by striking the fifth sentence and inserting the following: ''If no final decision is rendered by the conclusion of the 180-day period that begins on the date of institution of a proceeding under this section, the Commission shall state the reasons why the Commission has failed to do so and shall state its best estimate as to when the Commission reasonably expects to render a final decision.''.

**SEC. ___05. DISCOVERY AND EVIDENTIARY HEARINGS UNDER THE FEDERAL POWER ACT.**

The Federal Power Act is amended—

(1) in section 206 (16 U.S.C. 824e), by adding at the end the following:

''(e) DISCOVERY AND EVIDENTIARY HEARINGS.—On receipt of a complaint by a State or a State Commission under subsection (a), the Commission shall provide—

''(1) an opportunity for the State or the State Commission to conduct reasonable discovery; and

''(2) on request of the State or the State Commission and a showing of a dispute as to material facts, an evidentiary hearing.''; and

(2) in section 306 (16 U.S.C. 825e)—

(A) by inserting ''(a) IN GENERAL.—'' before ''Any person''; and

(B) by adding at the end the following:

''(b) DISCOVERY AND EVIDENTIARY HEARINGS.—On receipt of a complaint by a State or State Commission under this section, the Commission shall provide—

''(1) an opportunity for the State or the State Commission to conduct reasonable discovery; and

''(2) on request of the State or the State Commission and a showing of dispute as to material facts, an evidentiary hearing.''.

**TITLE ___—MARKET MANIPULATION**

**SEC. ___01. PROHIBITION OF MARKET MANIPULATION.**

(a) IN GENERAL.—Part II of the Federal Power Act (as amended by section ___02) is amended by adding at the end the following:

**''SEC. 217. PROHIBITION OF MARKET MANIPULATION.**

''(a) IN GENERAL.—It shall be unlawful for any person, directly or indirectly, to knowingly use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance to affect the price, availability, or reliability of the electric energy or transmission services.

''(b) REGULATIONS.—The Commission may promulgate regulations as appropriate in the public interest or for the protection of electric ratepayers to enforce this section.''.

(b) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

''(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of this Act (including a regulation promulgated under this Act), the Commission may, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates.''.

**TITLE ___—ENERGY MARKET OVERSIGHT**

**SEC. ___01. OVER-THE-COUNTER TRANSACTIONS IN ENERGY COMMODITIES.**

(a) DEFINITIONS.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended by adding at the end the following:

''(34) INCLUDED ENERGY TRANSACTION.—The term 'included energy transaction' means a contract, agreement, or transaction in an energy commodity that is—

''(A)(i) executed or traded on an electronic trading facility; and

''(ii) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; or

''(B)(i) executed or traded not on or through a trading facility; and

''(ii) entered into solely between persons that are eligible contract participants at the time the persons enter into the agreement, contract, or transaction, regardless of the means of execution of the agreement, contract, or transaction.

''(35) ENERGY COMMODITY.—

''(A) IN GENERAL.—The term 'energy commodity' means a commodity (other than an excluded commodity, a metal, or an agricultural commodity) that is used as a source of energy.

''(B) INCLUSIONS.—The term 'energy commodity' includes—

''(i) coal;

''(ii) crude oil, gasoline, heating oil, and propane;

''(iii) electricity; and

''(iv) natural gas.

''(36) ELECTRONIC ENERGY TRADING FACILITY.—The term 'electronic energy trading facility' means an electronic trading facility on or through which included energy transactions are traded or executed.''.

(b) OFF-EXCHANGE TRANSACTIONS IN ENERGY COMMODITIES.—Section 2(g) of the Commodity Exchange Act (7 U.S.C. 2(g)) is amended—

(1) by inserting ''or an energy commodity'' after ''agricultural commodity'';

(2) by redesignating paragraphs (1) through (3) as subparagraphs (A) through (C), respectively;

(3) by striking ''No provision'' and inserting the following:

''(1) IN GENERAL.—No provision''; and

(4) by adding at the end the following:

''(2) TRANSACTIONS IN ENERGY COMMODITIES.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C) and subsection (h)(7), nothing in this Act applies to an included energy transaction.

''(B) PROHIBITED CONDUCT.—

''(i) IN GENERAL.—An included energy transaction shall be subject to—

''(I) sections 5b, 12(e)(2)(B), and 22(a)(4); and

''(II) the prohibitions in sections 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6c, 6d, 8a, and 9(a)(2).

''(ii) TRANSACTIONS EXEMPTED BY COMMISSION ACTION.—Notwithstanding any exemption by the Commission under section 4(c), an included energy transaction shall be subject to the sections specified in clause (i) of this subparagraph, subparagraph (C), and subsection (h)(7).

''(C) REPORTING AND RECORDKEEPING REQUIREMENTS.—

''(i) IN GENERAL.—An eligible contract participant that enters into or executes an included energy transaction that performs, or together with other such transactions performs, a significant price discovery function in the cash market for an energy commodity or in any other market for agreements, contracts, or transactions relating to an energy commodity, or an eligible commercial entity that enters into or executes an included energy transaction described in section 1a(34)(A) shall—

''(I) provide to the Commission on a timely basis the information required under clause (ii); and

''(II)(aa) consistent with section 4i, maintain books and records relating to each included energy transaction, for a period of at least 5 years after the date of the transaction, in such form as the Commission shall require; and

''(bb) keep the books and records open to inspection by any representative of the Commission or the Attorney General.

''(ii) REQUIRED INFORMATION.—

''(I) IN GENERAL.—The Commission shall require that such information regarding included energy transactions be provided to the Commission as the Commission considers necessary to assist in detecting and preventing price manipulation.

''(II) INFORMATION TO BE INCLUDED.—Such information shall include information regarding large trading positions obtained through 1 or more included energy transactions that involve—

''(aa) substantial quantities of the commodity in the cash market; or

''(bb) substantial positions, investments, or trades in agreements or contracts related to energy commodities.

''(III) MANNER OF COMPLIANCE.—The Commission shall specify when and how such information shall be provided and maintained by eligible contract participants and eligible commercial entities.

''(IV) PRICE DISCOVERY TRANSACTIONS.—

''(aa) IN GENERAL.—In specifying the information to be provided under this paragraph, the Commission shall identify the transactions or class of transactions that the Commission considers to perform a significant price discovery function.

''(bb) CONSIDERATIONS.—In determining which included energy transactions perform a significant price discovery function, the Commission shall consider the extent to which—

''(AA) standardized agreements are used to execute the transactions;

''(BB) the transactions involve standardized types or measures of a commodity;

''(CC) the prices of the transactions are reported to third parties, published, or disseminated;

''(DD) the prices of the transactions are referenced in other transactions; and

''(EE) other factors considered appropriate by the Commission.

''(V) PERSONS FILING.—

''(aa) IN GENERAL.—The Commission, in its discretion, may allow large trader position reports required to be provided by an eligible commercial entity to be provided by an electronic energy trading facility if the eligible commercial entity authorizes the facility to provide such information on its behalf.

''(bb) INFORMATION AND ENFORCEMENT.—Nothing in an authorization under item (aa) shall impair the ability of the Commission to obtain information from an eligible commercial entity or otherwise enforce this Act.

''(VI) REGULATIONS.—Not later than 180 days after the date of enactment of this paragraph, the Commission shall issue a notice of proposed rulemaking, and not later than 1 year after the date of enactment of this paragraph, the Commission shall promulgate final regulations, specifying the information to be provided and maintained under this subparagraph.''.

**SEC. ___02. ELECTRONIC TRADING FACILITIES FOR ENERGY COMMODITIES.**

Section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) is amended—

(1) in paragraph (1), by inserting after ''an exempt commodity'' the following: ''other than an energy commodity'';

(2) in paragraph (3), by inserting after ''an exempt commodity'' the following: ''other than an energy commodity''; and

(3) by adding at the end the following:

''(7) ENERGY TRANSACTIONS.—

''(A) IN GENERAL.—To the extent that the Commission determines to be appropriate under subparagraph (C), an electronic energy trading facility shall—

''(i) be subject to the requirements of section 5a, to the extent provided in sections 5a(g) and 5d;

''(ii)(I) consistent with section 4i, maintain books and records relating to the business of the electronic energy trading facility, including books and records relating to each transaction in such form as the Commission may require; and

''(II) make the books and records required under this section available to representatives of the Commission and the Attorney General for inspection for a period of at least 5 years after the date of each included energy transaction;

''(iii) make available to the public information on trading volumes, settlement prices, open interest (where applicable), and opening and closing ranges (or daily highs and lows, as appropriate) for included energy transactions; and

''(iv) provide the information to the Commission in such form and at such times as the Commission may require.

''(B) APPLICABILITY OF OTHER PROVISIONS.—

''(i) PARAGRAPH 5.—An electronic energy trading facility shall comply with paragraph (5).

''(ii) PARAGRAPH 6.—Paragraph (6) shall apply with respect to a subpoena issued to any foreign person that the Commission believes is conducting or has conducted transactions on or through an electronic energy trading facility.

''(C) REGULATIONS.—Not later than 180 days after the date of enactment of this paragraph, the Commission shall issue a notice of proposed rulemaking, and not later than 1 year after the date of enactment of this paragraph, the Commission shall promulgate final regulations, specifying the information to be provided, maintained, or made available to the public under subparagraphs (A) and (B).

''(8) NONDISCLOSURE OF PROPRIETARY INFORMATION.—In carrying out paragraph (7) and subsection (g)(2), the Commission shall not—

''(A) require the real-time publication of proprietary information;

''(B) prohibit the commercial sale or licensing of real-time proprietary information; or

''(C) publicly disclose information regarding market positions, business transactions, trade secrets, or names of customers, except as provided in section 8.''.

**SEC. ___03. NO EFFECT ON OTHER AUTHORITY.**

(a) NO EFFECT ON FERC AUTHORITY.—Nothing contained in this title shall affect the jurisdiction of the Federal Energy Regulatory Commission with respect to the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or other law to obtain information or otherwise carry out the responsibilities of the Federal Energy Regulatory Commission.''.

(b) NO EFFECT ON EXCLUDED COMMODITIES.—The amendments made by this title have no effect on the regulation of excluded commodities under the Commodity Exchange Act (7 U.S.C. 1a et seq.).

(c) NO EFFECT ON METALS.—The amendments made by this title have no effect on the regulation of metals under the Commodity Exchange Act (7 U.S.C. 1a et seq.).

**SEC. ___04. PROHIBITION OF FRAUDULENT TRANSACTIONS.**

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by striking subsection (a) and inserting the following:

''(a) PROHIBITIONS.—

''(1) IN GENERAL.—It shall be unlawful (A) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or in interstate commerce, that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person, or (B) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g), that is made, or to be made, for or on behalf of or with, any other person, other than on or subject to the rules of a designated contract market—

''(i) to cheat or defraud or attempt to cheat or defraud the other person;

''(ii) willfully to make or cause to be made to such other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

''(iii) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for (or, in the case of a contract described in subparagraph (B), with the other person); or

''(iv)(I) to bucket an order represented by the person as an order to be executed, for or on behalf of the other person, on an organized exchange; or

''(II) to—

''(aa) fill an order by offset against the order or orders of the other person; or

''(bb) willfully and knowingly and without the prior consent of the other person, to—

''(AA) become the buyer in respect to any selling order of the other person; or

''(BB) become the seller in respect to any buying order of the other person;

if the order is to be executed on or subject to the rules of a designated contract market.

''(2) LIMITATION.—This subsection does not obligate any person, in connection with a transaction in a contract of sale of a commodity for future delivery with another person, to disclose to any other person nonpublic information that may be material to the market price of the commodity or transaction, except as necessary to make any statement made to the other person in connection with the transaction not misleading in any material respect.''.

**SEC. ___05. CRIMINAL AND CIVIL PENALTIES.**

(a) ENFORCEMENT POWERS OF COMMISSION.—Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9, 15) is amended in paragraph (3) of the tenth sentence—

(1) by inserting ''(A)'' after ''assess such person''; and

(2) by inserting after ''each such violation'' the following: '', or (B) in any case of manipulation of, or attempt to manipulate, the price of any commodity, a civil penalty of not more than the greater of $1,000,000 or triple the monetary gain to such person for each such violation,''.

(b) MANIPULATIONS AND OTHER VIOLATIONS.—Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence—

(1) by striking ''paragraph (a) or (b) of section 9 of this Act'' and inserting ''subsection (a), (b), or (f) of section 9''; and

(2) by striking ''said paragraph 9(a) or 9(b)'' and inserting ''subsection (a), (b), or (f) of section 9''.

(c) NONENFORCEMENT OF RULES OF GOVERNMENT OR OTHER VIOLATIONS.—Section 6b of the Commodity Exchange Act (7 U.S.C. 13a) is amended—

(1) in the first sentence, by inserting before the period at the end the following: '', or, in any case of manipulation of, or an attempt to manipulate, the price of any commodity, a civil penalty of not more than $1,000,000 for each such violation''; and

(2) in the second sentence, by inserting before the period at the end the following: '', except that if the failure or refusal to obey or comply with the order involved any offense under section 9(f), the registered entity, director, officer, agent, or employee shall be guilty of a felony and, on conviction, shall be subject to penalties under section 9(f)''.

(d) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—Section 6c(d) of the Commodity Exchange Act (7 U.S.C. 13a–1(d)) is amended by striking ''(d)'' and all that follows through the end of paragraph (1) and inserting the following:

''(d) CIVIL PENALTIES.—In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation—

''(1) a civil penalty in the amount of not more than the greater of $100,000 or triple the monetary gain to the person for each violation; or

''(2) in any case of manipulation of, or an attempt to manipulate, the price of any commodity, a civil penalty in the amount of not more than the greater of $1,000,000 or triple the monetary gain to the person for each violation.''.

(e) VIOLATIONS GENERALLY.—Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(1) by striking ''(or $500,000 in the case of a person who is an individual)'';

(2) by striking ''five years'' and inserting ''10 years''; and

(3) in paragraph (2), by striking ''false or misleading or knowingly inaccurate reports'' and inserting ''knowingly false, misleading, or inaccurate reports''.

**SEC. ___06. CONFORMING AMENDMENTS.**

(a) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) in subsection (d)(1), by striking ''section 5b'' and inserting ''section 5a(g), 5b,'';

(2) in subsection (e)(1), by inserting ''(1)'' after ''(g)''; and

(3) in subsection (i)—

(A) in paragraph (1)—

(i) by striking ''No provision'' and inserting ''IN GENERAL.—Subject to subsections (g)(2) and (h)(7), no provision''; and

(ii) in subparagraph (A), by inserting ''(1)'' after ''2(g)''; and

(B) in paragraph (2), by striking ''No provision'' and inserting ''IN GENERAL.—Subject to subsections (g)(2) and (h)(7), no provision''.

(b) Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended in the first sentence by inserting '', or pursuant to an exemption under section 4(c)'' after ''transaction execution facility''.

(c) Section 8a(9) of the Commodity Exchange Act (7 U.S.C. 12a(9)) is amended—

(1) by inserting ''or an electronic energy trading facility'' after ''direct the contract market'';

(2) by inserting after ''liquidation of any futures contract'' the following: ''or included energy transaction''; and

(3) by inserting ''or an electronic energy trading facility'' after ''given by a contract market''.

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**SA 2084.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Statements made by the Chairman and/or Ranking Member of the Agriculture Appropriations Subcommittee, and colloquies engaging the Chairman and/or Ranking Member of the Agriculture Appropriations Subcommittee, given on the Senate Floor or submitted for the Record during Senate consideration of this Act shall be deemed part of Senate Committee Report 108–107 for purposes of conference with the House of Representatives.''.

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**SA 2085.** Mr. HARKIN submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. CONSERVATION RESERVE PROGRAM.**

Land shall be considered eligible land under section 1231(b) of the Food Security Act of 1985 (16 U.S.C. 3831(b)) for purposes of enrollment into the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) if the land—

(1) is planted to hardwood trees as of the date of enactment of this Act; and

(2) was enrolled in the conservation reserve program under a contract that expired before the date of enactment of this Act.

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**SA 2086.** Mr. HOLLINGS submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. ___. CENTER OF EXCELLENCE FOR COMMODITY AND CONSERVATION DECISION SUPPORT SYSTEMS.**

To encourage the Chief of the Natural Resources Conservation Service to work with the University of South Carolina to establish a Center of Excellence for Department of Agriculture Commodity and Conservation Decision Support Systems.

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**SA 2087.** Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. HOLLINGS, Mr. JEFFORDS, Mr. DORGAN, and Mr. FEINGOLD) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. PROHIBITION OF ENERGY MARKET MANIPULATION.**

(a) PROHIBITION.—Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

**"SEC. 215. PROHIBITION OF MARKET MANIPULATION.**

''It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers.''.

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after ''not just and reasonable'' the following: ''or that result from a manipulative or deceptive device or contrivance''.

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**SA 2088.** Mr. AKAKA (for himself, Mr. LEVIN, Mr. LIEBERMAN, and Ms. CANTWELL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. PROTECTION OF DOWNED ANIMALS.**

None of the funds appropriated or otherwise made available by this Act to pay the salaries or expenses of employees or agents of the Department of Agriculture may be used to approve for human consumption under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) any cattle, sheep, swine, goats, horses, mules, or other equines that are unable to stand or walk unassisted at an establishment subject to inspection at the point of examination and inspection, as required by section 3(a) of that Act (21 U.S.C. 603(a)).

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**SA 2089.** Mr. DAYTON proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. EMERGENCY DISASTER ASSISTANCE FOR AGRICULTURAL PRODUCERS.**

(a) CROP DISASTER ASSISTANCE.—

(1) IN GENERAL.—Subject to paragraphs (2) through (4), the Secretary of Agriculture (referred to in this section as the ''Secretary'') shall use such sums as are necessary of funds of the Commodity Credit Corporation to make emergency financial assistance authorized under this subsection available to producers on a farm that have incurred qualifying crop losses for the 2001, 2002, or 2003 crop, or any combination of those crops, due to damaging weather or related condition, as determined by the Secretary.

(2) ADMINISTRATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall make assistance available under this subsection in the same manner as provided under section 815 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387; 114 Stat. 1549A–55), including using the same loss thresholds for the quantity and quality losses as were used in administering that section.

(B) PAYMENT RATES.—The Secretary shall make a disaster payment available to producers on a farm for a crop under this subsection at a rate equal to—

(i) 40 percent of the established price for the crop for any deficiency in production greater than 20 percent, but less than 35 percent, for the crop; and

(ii) 65 percent of the established price for the crop for any deficiency in production of 35 percent or more for the crop.

(3) CROP INSURANCE.—In carrying out this subsection, the Secretary shall not discriminate against or penalize producers on a farm that have purchased crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(4) OTHER ASSISTANCE.—Subject to paragraph (3), the amount of assistance that producers on a farm would otherwise receive under this section shall be reduced by the amount of assistance provided to the producers on the farm for crop losses described in paragraph (1) under any other Federal law.

(b) LIVESTOCK ASSISTANCE PROGRAM.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the Secretary shall use such sums as are necessary of funds of the Commodity Credit Corporation as are necessary to make and administer payments for livestock losses to producers for 2001, 2002, or 2003, or any combination of those years, in a county that has received a corresponding emergency designation by the President or the Secretary, of which an amount determined by the Secretary shall be made available for the American Indian livestock program under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387; 114 Stat. 1549, 1549A–51).

(2) ADMINISTRATION.—The Secretary shall make assistance available under this subsection in the same manner as provided under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106–387; 114 Stat. 1549, 1549A–51).

(3) OTHER ASSISTANCE.—The amount of assistance that a producer would otherwise receive under this subsection shall be reduced by the amount of assistance provided to the producer for losses described in paragraph (1) under any other Federal law.

(c) REMOVAL OF TREES ADVERSELY AFFECTED BY THE EMERALD ASH BORER.—

(1) IN GENERAL.—The Secretary shall use funds of the Commodity Credit Corporation to pay the costs of removing trees that have been adversely affected by the emerald ash borer.

(2) PRIORITY.—In carrying out paragraph (1), the Secretary shall give priority to trees on public property or that threaten public safety.

(d) REIMBURSEMENT OF COSTS OF REMOVING COMMERCIAL CITRUS TREES TO CONTROL CITRUS CANCER.—

(1) PAYMENTS FOR TREES REMOVED.—

(A) IN GENERAL.—The Secretary shall use funds of the Commodity Credit Corporation to make payments to commercial citrus growers located in the State of Florida in the amount of $26 for each commercial citrus tree removed after January 1, 1986, to control citrus canker to allow for tree replacement and associated business costs.

(B) PAYMENT LIMITS.—A payment to any citrus grower under this paragraph shall be limited to—

(i) in the case of grapefruit, 104 trees per acre;

(ii) in the case of valencias, 123 trees per acre;

(iii) in the case of navels, 118 trees per acre;

(iv) in the case of tangelos, 114 trees per acre;

(v) in the case of limes, 154 trees per acre; and

(vi) in the case of other citrus or mixed citrus, 104 trees per acre.

(2) COMPENSATION FOR LOST PRODUCTION.—

(A) IN GENERAL.—The Secretary shall use funds of the Commodity Credit Corporation to make payments to commercial citrus growers located in the State of Florida to compensate the citrus growers for lost production, as determined by the Secretary, with respect to trees removed after January 1, 1986, to control citrus canker.

(B) CROP INSURANCE.—

(i) COVERED.—In the case of a removed tree that was covered by a crop insurance tree policy, compensation for lost production under subparagraph (A) shall be reduced by the amount of any indemnity received with respect to the tree.

(ii) NOT COVERED.—In the case of a removed tree that was not covered by a crop insurance tree policy (even though such insurance may have been available), compensation for lost production under subparagraph (A), shall be reduced by 5 percent.

(e) PROMOTION OF SPECIALTY CROP AGRICULTURE.—The Secretary of Agriculture shall use funds of the Commodity Credit Corporation to provide a grant to each State for the promotion of agricultural commodities produced in the State in same proportion as grants are provided under section 7(b) of Public Law 107–25 (115 Stat.202).

(f) PHYTOPHTORA CROWN AND ROOT AND FRUIT ROT.—The Secretary of Agriculture shall use funds of the Commodity Credit Corporation to carry out agricultural research on growth and irradiation of Phytophthora crown and root and fruit rot in the State of Michigan.

(g) REIMBURSEMENT OF TREATMENT COSTS OF AVOCADO TREES TO COMPLY WITH FRUIT FLY QUARANTINE AND LOSSES DUE TO WINDFALL.—

(1) PAYMENTS FOR BAIT TREATMENT COSTS.—The Secretary shall use funds of the Commodity Credit Corporation to make payments to commercial avocado growers located in the State of California in the amount of $35 per acre for each individual bait treatment necessary for compliance with a Government-imposed quarantine after November 15, 2002, to control fruit flies.

(2) COMPENSATION FOR WINDFALL LOSSES.—The Secretary shall use funds of the Commodity Credit Corporation to make payments to commercial avocado growers in the State of California to compensate avocado

growers for windfall losses, as determined by the Secretary, with respect to loss due to winds after November 15, 2002, that occurred in a quarantine area.

(h) COMPENSATION OF ORCHARDISTS FOR TREE LOSSES.—The Secretary of Agriculture shall use funds of the Commodity Credit Corporation to provide assistance under the tree assistance program under subtitle C of title X of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8201 et seq.), to compensate eligible orchardists (as defined in section 10201 of that Act (7 U.S.C. 8201)) for tree losses incurred since October 24, 2003 due to wildfires in Southern California.

(i) FIRE ASSISTANCE.—The Secretary of Agriculture shall use funds of the Commodity Credit Corporation to provide assistance to agricultural producers with farms or ranches located in Ventura County, California for losses (including crop, livestock, and related losses) resulting from the Simi Valley and Piru fires occurring during calendar year 2003.

(j) FISHERIES DISASTER.—In addition to amounts appropriated or otherwise made available, $50,000,000 is appropriated to the Department of Commerce for fisheries disaster assistance to the shrimp industries in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, of which $45,000,000 shall be made available to such States in amounts that are in proportion to the percentage of shrimp catch landed in each State, and $5,000,000 shall be for a national research and development program for new products, improved quality assurance, and marketing, of domestic wild shrimp: *Provided*, That the funds distributed to the States may be used only for: (A) assistance for small business including fishing vessels, fish processors, and shoreside related businesses serving the fishing industry; (B) assistance for the additional incremental costs to fishermen associated with the purchase, installation and use, including but not limited to the loss in revenues due to any reduction in shrimp retention associated with such use of new Turtle Excluder Devices (TEDs) and Bycatch Reduction Devices (BRDs) required by Federal Regulations; (C) State seafood inspection and testing programs; (D) voluntary capacity reduction programs for shrimp fisheries under limited access; *Provided Further*, That not more than 5 percent of such funds may be used for administrative expenses, and no funds may be used for lobbying activities or representational expenses.

(k) FUNDING.—

(1) IN GENERAL.—Of the funds of the Commodity Credit Corporation, the Secretary shall use—

(A) such sums as are necessary to carry out subsections (a) and (b);

(B) $20,000,000 to carry out subsection (c);

(C) $15,000,000 to carry out subsection (d);

(D) $26,000,000 to carry out subsection (e);

(E) $184,000 to carry out subsection (f);

(F) $15,000,000 to carry out subsection (g);

(G) such sums as are necessary to carry out subsection (h); and

(H) $12,000,000 to carry out subsection (i).

(2) AVAILABILITY.—Funds made available under this section shall remain available until expended.

(l) REGULATIONS.—

(1) IN GENERAL.—The Secretary may promulgate such regulations as are necessary to implement this section.

(2) PROCEDURE.—The promulgation of the regulations and administration of this section shall be made without regard to—

(A) the notice and comment provisions of section 553 of title 5, United States Code;

(B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(C) chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'').

(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

(m) EMERGENCY DESIGNATION.—The entire amount made available under this section is designated by Congress as an emergency requirement under section 502(c) of H. Con. Res. 95 (108th Cong.).

(n) BUDGETARY TREATMENT.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the Joint Explanatory Statement of the Committee of Conference accompanying Conference Report No. 105–217, the provisions of this section that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) were it included in an Act other than an appropriation Act shall be treated as direct spending or receipts legislation, as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902).

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**SA 2090.** Mr. HATCH (for himself, Mr. HARKIN, and Mr. DURBIN) submitted an amendment intended to be proposed by him to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. DIETARY SUPPLEMENTS.**

The Commissioner of Food and Drugs shall provide not less than $11,400,000 from within funds appropriated or otherwise made available by this Act for regulation by the Food and Drug Administration of dietary supplements.

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**SA 2091.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 50, line 14, strike ''$27,745,981,000'' and insert in lieu thereof ''$29,945,981,000''.

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**SA 2092.** Mr. BENNETT (for Mr. DURBIN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Hereafter, no funds provided in this or any other Act shall be available to the Secretary of Agriculture acting through the Foreign Agricultural Service to promote the sale or export of tobacco or tobacco products.''.

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**SA 2093.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 51, lines 14 through 17, strike ''special'' and all that follows through ''1985,'' and insert in lieu thereof ''special assistance (in a form determined by the Secretary of Agriculture) for the nuclear affected islands, as authorized by section 103(h)(2) of the Compact of Free Association Act of 1985 (48 U.S.C. 1903(h)(2)) (or a successor law),''.

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**SA 2094.** Mr. BENNETT (for Ms. MURKOWSKI (for herself, Mr. STEVENS, Mr. INOUYE, and Mr. AKAKA)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 33, line 9, strike ''$769,479,000'' and insert in lieu thereof ''$767,479,000'' and on page 37, line 2, strike $25,000,000'' and insert in lieu thereof ''$23,000,000''.

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . (a) IN GENERAL.—Section 3(o)(4) of the Food Stamp Act of 1977, as amended, (7 U.S.C. 2012(o)(4)) is amended by inserting before the period at the end the following: '', and except that on October 1, 2003 in the case of households residing in Alaska and Hawaii the Secretary may not reduce the cost of such diet in effect on September 30, 2002.''.

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective beginning on September 30, 2003.''.

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**SA 2095.** Mr. BENNETT (for Ms. SNOWE (for herself, Mr. DORGAN, and Ms. COLLINS)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

**''SEC. . MODIFICATION OF BOUNDARIES OF AROOSTOOK COUNTY AND GRIGGS-STEELE EMPOWERMENT ZONES.**

''(a) AROOSTOOK COUNTY EMPOWERMENT ZONE.—Notwithstanding any other provision of law, the Aroostook County empowerment zone shall include for the period such empowerment zone remains designated, in addition to the area designated as of the date of the enactment of this Act, the remaining area of the county not included in such designation.

''(b) GRIGGS-STEELE EMPOWERMENT ZONE.—Notwithstanding any other provision of law, the Griggs-Steele empowerment zone shall include for the period such empowerment zone remains designated, in addition to the area designated as of the date of the enactment of this Act, the remaining area of Griggs County not included in such designation.''.

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**SA 2096.** Mr. BENNETT (for Mr. LEVIN (for himself and Ms. STABENOW)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. COST-SHARING FOR ANIMAL AND PLANT HEALTH EMERGENCY PROGRAMS.**

None of the funds made available by this Act may be used to issue a final rule in furtherance of, or otherwise implement, the proposed rule on cost-sharing for animal and plant health emergency programs of the Animal and Plant Health Inspection Service published on July 8, 2003 (Docket No. 02–062–1; 68 Fed. Reg. 40541).

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**SA 2097.** Mr. BENNETT (for Mr. INHOFE) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 77, line 18, strike the comma and insert ''; the City of Guymon, Oklahoma; the City of Shawnee, Oklahoma; and the City of Altus, Oklahoma,''.

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**SA 2098.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

SEC. . Section 601(b)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 950bb(b)(2)) is amended to read as follows:

''(2) ELIGIBLE RURAL COMMUNITY.—The term 'eligible rural community' means any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.''.

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**SA 2099.** Mr. BENNETT (for Mr. INOUYE) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Notwithstanding any other provision of law, for all activities under programs of the Rural Development Mission Area within the County of Honolulu, Hawaii, the Secretary may designate any portion of the country as a rural area or eligible rural community that the Secretary determines is not urban in character.''.

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**SA 2100.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

SEC. . The first sentence of section 306(g)(1) of the National Housing Act (12 U.S.C. 1721(g)(1)) is amended—

(1) by striking ''or title V of the Housing Act of 1949''; and

(2) by inserting after ''1994'' the following: '', title V of the Housing Act of 1949,''.

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**SA 2101.** Mr. BENNETT (for Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following new section:

''SEC. . Notwithstanding the provisions of the Consolidated Farm and Rural Development Act (including the associated regulations) governing the Community Facilities Program, the Secretary shall allow all Community Facility Program facility borrowers and grantees to enter into contracts with not-for-profit third parties for services consistent with the requirements of the Program, grant, and/or loan; *Provided,* That the contracts protect the interests of the Government regarding cost, liability, maintenance, and administrative fees.''.

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**SA 2102.** Mr. BENNETT (for Mr. BROWNBACK) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 72, line 20, after the word ''Utah'' insert the following: '', and four flood control structures in Marmaton, Kansas''.

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**SA 2103.** Mr. BENNETT proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 42, line 1, insert ''Utah,'' after ''Mississippi,''.

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**SA 2104.** Mr. BENNETT (for himself and Mr. KOHL) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 74, line 7, insert ''(a)'' before the word ''Notwithstanding'' and on line 15 insert the following new subsection:

''(b) The Secretary shall publish a proposed rule to carry out Section 313A of the Rural Electrification Act of 1936 within 60 days of enactment of this Act.''.

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**SA 2105.** Mr. BENNETT (for Mr. GRASSLEY (for himself and Mr. DORGAN)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. EQIP PAYMENT LIMIT.**

None of the funds made available under this Act or any other Act shall be used to pay the salaries and expenses of personnel to carry out chapter 4 of subtitle D of the Food Security Act of 1985 (16 U.S.C. 3839aa et seq.) to make payments to an individual, entity, or agricultural operation, directly or indirectly, in excess of an aggregate of $300,000 for all contracts entered into by the individual, entity, or agricultural operation during the period of fiscal years 2002 through 2007.

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**SA 2106.** Mr. BENNETT (for Mr. CRAIG) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place insert the following:

''Notwithstanding any other provision of law, the Secretary of Agriculture may use appropriations available to the Secretary for activities authorized under 7 U.S.C. 426–426c, under this or any other Act, to enter into cooperative agreements, with a State, political subdivision, or agency thereof, a public or private agency, organization, or any other person, to lease aircraft if the Secretary determines that the objectives of the agreement will: (1) Serve a mutual interest of the parties to the agreement in carrying out the programs administered by the Animal Plant Health Inspection Service, Wildlife Service; and (2) all parties will contribute resources to the accomplishment of these objectives; award of a cooperative agreement authorized by the Secretary may be made for an initial term not to exceed 5 years.''

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**SA 2107.** Mr. BENNETT (for Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. CITRUS CANKER ASSISTANCE.**

Section 211 of the Agricultural Assistance Act of 2003 (117 Stat. 545) is amended—

(1) in the section heading, by inserting ''**tree replacement and**'' after ''**for**''; and

(2) in subsection (a), by inserting ''tree replacement and'' after ''Florida for''.

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**SA 2108.** Mr. BENNETT (for Mr. BURNS (for himself and Mrs. CLINTON)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. RURAL ELECTRIFICATION.**

For fiscal year 2004, the Secretary of Agriculture may use any unobligated carryover funds made available for any program administered by the Rural Utilities Service (not including funds made available under the heading ''RURAL COMMUNITY ADVANCEMENT PROGRAM'' in any Act of appropriation) to carry out section 315 of the Rural Electrification Act of 1936 (7 U.S.C. 940e).

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**SA 2109.** Mr. BENNETT (for Mr. DURBIN) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . The Commissioner of the Food and Drug Administration shall provide no less than $250,000, from within funds appropriated or otherwise made available in this Act for the Food and Drug Administration, to process comments submitted in response to Docket No. 95N–0304 published in the Federal Register on March 5, 2003 (68 FR 10417). Provided further, the Commissioner should expedite and complete review of available scientific evidence of ephedra's pharmacology and mechanism of action.

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**SA 2110.** Mr. BENNETT (for Mr. SCHUMER (for himself and Mrs. CLINTON)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 57, line 4, insert ''and of which no less than $52,845,000 shall be available for the generic drugs program'' before the semicolon.

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**SA 2111.** Mr. BENNETT (for Mr. MILLER) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. WORKLOAD ANALYSIS OF FARM SERVICE AGENCY.**

None of the funds made available by this Act may be used to pay more than ½ of the salary of the Under Secretary for Farm and Foreign Agricultural Services after January 31, 2004, unless and until the Secretary of Agriculture provides to the Committee on Agriculture of House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a workload analysis of employees of the Farm Service Agency for each of fiscal years 2001, 2002, and 2003 (including an analysis of the number of workload items and required man-years, by State).

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**SA 2112.** Mr. BENNETT (for Mr. FRIST (for himself and Mr. DASCHLE)) proposed an amendment to the bill H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 79, between lines 7 and 8, insert the following:

**SEC. 7___. SUN GRANT RESEARCH INITIATIVE.**

(a) SHORT TITLE.—This section may be cited as the ''Sun Grant Research Initiative Act of 2003''.

(b) RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.—Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101 et seq.) is amended by adding at the end the following:

**''SEC. 9011. RESEARCH, EXTENSION, AND EDUCATIONAL PROGRAMS ON BIOBASED ENERGY TECHNOLOGIES AND PRODUCTS.**

''(a) PURPOSES.—The purposes of the programs established under this section are—

''(1) to enhance national energy security through the development, distribution, and implementation of biobased energy technologies;

''(2) to promote diversification in, and the environmental sustainability of, agricultural production in the United States through biobased energy and product technologies;

''(3) to promote economic diversification in rural areas of the United States through biobased energy and product technologies; and

''(4) to enhance the efficiency of bioenergy and biomass research and development programs through improved coordination and collaboration between the Department of Agriculture, the Department of Energy, and the land-grant colleges and universities.

''(b) DEFINITIONS.—In this section:

''(1) LAND-GRANT COLLEGES AND UNIVERSITIES.—The term 'land-grant colleges and universities' means—

''(A) 1862 Institutions (as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601));

''(B) 1890 Institutions (as defined in section 2 of that Act) and West Virginia State College; and

''(C) 1994 Institutions (as defined in section 2 of that Act).

''(2) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

''(c) ESTABLISHMENT.—To carry out the purposes described in subsection (a), the Secretary shall establish programs under which—

''(1) the Secretary shall provide grants to sun grant centers specified in subsection (d); and

''(2) the sun grant centers shall use the grants in accordance with this section.

''(d) GRANTS TO CENTERS.—The Secretary shall use amounts made available for a fiscal year under subsection (j) to provide a grants in equal amounts to each of the following sun grant centers:

''(1) NORTH-CENTRAL CENTER.—A north-central sun grant center at South Dakota State University for the region composed of the States of Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming.

''(2) SOUTHEASTERN CENTER.—A southeastern sun grant center at the University of Tennessee at Knoxville for the region composed of—

''(A) the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia;

''(B) the Commonwealth of Puerto Rico; and

''(C) the United States Virgin Islands.

''(3) SOUTH-CENTRAL CENTER.—A south-central sun grant center at Oklahoma State University for the region composed of the States of Arkansas, Colorado, Kansas, Louisiana, Missouri, New Mexico, Oklahoma, and Texas.

''(4) WESTERN CENTER.—A western sun grant center at Oregon State University for the region composed of—

''(A) the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington; and

''(B) territories and possessions of the United States (other than the territories referred to in subparagraphs (B) and (C) of paragraph (2)).

''(5) NORTHEASTERN CENTER.—A northeastern sun grant center at Cornell University for the region composed of the States of Connecticut, Delaware, Massachusetts, Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and West Virginia.

''(e) USE OF FUNDS.—

''(1) CENTERS OF EXCELLENCE.—Of the amount of funds that are made available for a fiscal year to a sun grant center under subsection (d), the center shall use not more than 25 percent of the amount for administration to support excellence in science, engineering, and economics at the center to promote the purposes described in subsection (a) through the State agricultural experiment station, cooperative extension services, and relevant educational programs of the university.

''(2) GRANTS TO LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(A) IN GENERAL.—The sun grant center established for a region shall use the funds that remain available for a fiscal year after expenditures made under paragraph (1) to provide competitive grants to land-grant colleges and universities in the region of the sun grant center to conduct, consistent with the purposes described in subsection (a), multiinstitutional and multistate—

''(i) research, extension, and educational programs on technology development; and

''(ii) integrated research, extension, and educational programs on technology implementation.

''(B) PROGRAMS.—Of the amount of funds that are used to provide grants for a fiscal year under subparagraph (A), the center shall use—

''(i) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(i); and

''(ii) not less than 30 percent of the funds to carry out programs described in subparagraph (A)(ii).

''(3) INDIRECT COSTS.—A sun grant center may not recover the indirect costs of making grants under paragraph (2) to other land-grant colleges and universities.

''(f) PLAN.—

''(1) IN GENERAL.—Subject to the availability of funds under subsection (j), in cooperation with other land-grant colleges and universities and private industry in accordance with paragraph (2), the sun grant centers shall jointly develop and submit to the Secretary, for approval, a plan for addressing at the State and regional levels the bioenergy, biomass, and gasification research priorities of the Department of Agriculture and the Department of Energy for the making of grants under paragraphs (1) and (2) of subsection (e).

''(2) GASIFICATION COORDINATION.—

''(A) IN GENERAL.—In developing the plan under paragraph (1) with respect to gasification research, the sun grant centers identified in paragraphs (1) and (2) of subsection (d) shall coordinate with land grant colleges and universities in their respective regions that have ongoing research activities with respect to the research.

''(B) FUNDING.—Funds made available under subsection (d) to the sun grant center identified in subsection (e)(2) shall be available to carry out planning coordination under paragraph (1) of this subsection.

''(g) GRANTS TO OTHER LAND-GRANT COLLEGES AND UNIVERSITIES.—

''(1) PRIORITY FOR GRANTS.—In making grants under subsection (e)(2), a sun grant center shall give a higher priority to programs that are consistent with the plan approved by the Secretary under subsection (f).

''(2) TERM OF GRANTS.—The term of a grant provided by a sun grant center under subsection (e)(2) shall not exceed 5 years.

''(h) GRANT INFORMATION ANALYSIS CENTER.—The sun grant centers shall maintain a Sun Grant Information Analysis Center at the sun grant center specified in subsection (d)(1) to provide sun grant centers analysis and data management support.

''(i) ANNUAL REPORTS.—Not later than 90 days after the end of a year for which a sun grant center receives a grant under subsection (d), the sun grant center shall submit to the Secretary a report that describes the policies, priorities, and operations of the program carried out by the center during the

year, including a description of progress made in facilitating the priorities described in subsection (f).

''(j) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

''(A) $25,000,000 for fiscal year 2005;

''(B) $50,000,000 for fiscal year 2006; and

''(C) $75,000,000 for each of fiscal years 2007 through 2010.

''(2) GRANT INFORMATION ANALYSIS CENTER.—Of amounts made available under paragraph (1), not more than $4,000,000 for each fiscal year shall be made available to carry out subsection (h).''.

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**SA 2113.** Mr. BENNETT (for Mr. THOMAS (for himself, Mr. BINGAMAN, and Mr. HAGEL)) proposed an amendment to the bill H.R. 1442, to authorize the design and construction of a visitor center for the Vietnam Veterans Memorial; as follows:

Strike all after the enacting clause and insert the following:

**TITLE I—VIETNAM VETERANS MEMORIAL VISITOR CENTER**

**SEC. 101. VISITOR CENTER**

Public Law 96–297 (16 U.S.C. 431 note) is amended by adding at the end the following:

**''SEC. 6. VISITOR CENTER.**

''(a) AUTHORIZATION.—

''(1) IN GENERAL.—The Vietnam Veterans Memorial Fund, Inc., is authorized to construct a visitor center at or near the Vietnam Veterans Memorial on Federal land in the District of Columbia, or its environs, subject to the provisions of this section, in order to better inform and educate the public about the Vietnam Veterans Memorial and the Vietnam War.

''(2) LOCATION.—The visitor center shall be located underground.

''(3) CONSULTATION ON DESIGN PHASE.—The Vietnam Veterans Memorial Fund, Inc. shall consult with educators, veterans groups, and the National Park Service in developing the proposed design of the visitor center.

''(b) COMPLIANCE WITH STANDARDS APPLICABLE TO COMMEMORATIVE WORKS.—Chapter 89 of title 40, United States Code, shall apply, including provisions related to the siting, design, construction, and maintenance of the visitor center, and the visitor center shall be considered a commemorative work for the purposes of that Act, except that—

''(1) final approval of the visitor center shall not be withheld;

''(2) the provisions of subsections (b) and (c) of section 8908 of title 40, United States Code, requiring further approval by law for the location of a commemorative work within Area I and prohibiting the siting of a visitor center within the Reserve shall not apply;

''(3) the size of the visitor center shall be limited to the minimum necessary—

''(A) to provide for appropriate educational and interpretive functions; and

''(B) to prevent interference or encroachment on the Vietnam Veterans Memorial and to protect open space and visual sightlines on the Mall; and

''(4) the visitor center shall be constructed and landscaped in a manner harmonious with the site of the Vietnam Veterans Memorial, consistent with the special nature and sanctity of the Mall.

''(c) OPERATION AND MAINTENANCE.—

''(1) IN GENERAL.—The Secretary of the Interior shall—

''(A) operate and maintain the visitor center, except that the Secretary shall enter into a written agreement with the Vietnam Veterans Memorial Fund, Inc. for specified maintenance needs of the visitor center, as determined by the Secretary; and

''(B) as soon as practicable, in consultation with educators and veterans groups, develop a written interpretive plan for the visitor center in accordance with National Park Service policy.

''(2) DONATION FOR PERPETUAL MAINTENANCE AND PRESERVATION.—Paragraph (1)(A) does not waive the requirements of section 8906(b) of title 40, United States Code, with respect to the visitor center.

''(d) FUNDING.—The Vietnam Veterans Memorial Fund, Inc. shall be solely responsible for acceptance of contributions for, and payment of expenses of, the establishment of the visitor center. No Federal funds shall be used to pay any expense of the establishment of the visitor center.''.

**TITLE II—COMMEMORATIVE WORKS**

**SEC. 201. SHORT TITLE.**

This title may be cited as the ''Commemorative Works Clarification and Revision Act of 2003''.

**SEC. 202. ESTABLISHMENT OF RESERVE.**

(a) FINDINGS.—Congress finds that—

(1) the great cross-axis of the Mall in the District of Columbia, which generally extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial, is a substantially completed work of civic art; and

(2) to preserve the integrity of the Mall, a reserve area should be designated within the core of the great cross-axis of the Mall where the siting of new commemorative works is prohibited.

(b) RESERVE.—Section 8908 of title 40, United States Code, is amended by adding at the end the following:

''(c) RESERVE.—After the date of enactment of the Commemorative Works Clarification and Revision Act of 2003, no commemorative work or visitor center shall be located within the Reserve.''.

**SEC. 203. CLARIFYING AND CONFORMING AMENDMENTS.**

(a) PURPOSES.—Section 8901(2) of title 40, United States Code, is amended by striking ''Columbia;'' and inserting ''Columbia and its environs, and to encourage the location of commemorative works within the urban fabric of the District of Columbia;''.

(b) DEFINITIONS.—Section 8902 of title 40, United States Code, is amended by striking subsection (a) and inserting the following:

''(a) DEFINITIONS.—In this chapter:

''(1) COMMEMORATIVE WORK.—The term 'commemorative work' means any statue, monument, sculpture, memorial, plaque, inscription, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of an individual, group, event or other significant element of American history, except that the term does not include any such item which is located within the interior of a structure or a structure which is primarily used for other purposes.

''(2) THE DISTRICT OF COLUMBIA AND ITS ENVIRONS.—The term 'the District of Columbia and its environs' means those lands and properties administered by the National Park Service and the General Services Administration located in the Reserve, Area I, and Area II as depicted on the map entitled 'Commemorative Areas Washington, DC and Environs', numbered 869/86501 B, and dated June 24, 2003.

''(3) RESERVE.—The term 'Reserve' means the great cross-axis of the Mall, which generally extends from the United States Capitol to the Lincoln Memorial, and from the White House to the Jefferson Memorial, as depicted on the map referenced in paragraph (2).

''(4) SPONSOR.—The term 'sponsor' means a public agency, or an individual, group or organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, and which is authorized by Congress to establish a commemorative work in the District of Columbia and its environs.''.

(c) AUTHORIZATION.—Section 8903 of title 40, United States Code, is amended—

(1) in subsection (b)—

(A) by striking ''work commemorating a lesser conflict'' and inserting ''work solely commemorating a limited military engagement''; and

(B) by striking ''the event'' and inserting ''such war or conflict'';

(2) in subsection (d)—

(A) by striking ''CONSULTATION WITH NATIONAL CAPITAL MEMORIAL COMMISSION.—'' and inserting ''CONSULTATION WITH NATIONAL CAPITAL MEMORIAL ADVISORY COMMISSION.—'';

(B) by striking ''House Administration'' and inserting ''Resources''; and

(C) by inserting ''Advisory'' before ''Commission''; and

(3) by striking subsection (e) and inserting the following:

''(e) EXPIRATION OF LEGISLATIVE AUTHORITY.—Any legislative authority for a commemorative work shall expire at the end of the seven-year period beginning on the date of the enactment of such authority, or at the end of the seven-year period beginning on the date of the enactment of legislative authority to locate the commemorative work within Area I, if such additional authority has been granted, unless—

''(1) the Secretary of the Interior or the Administrator of General Services (as appropriate) has issued a construction permit for the commemorative work during that period; or

''(2) the Secretary or the Administrator (as appropriate), in consultation with the National Capital Memorial Advisory Commission, has made a determination that—

''(A) final design approvals have been obtained from the National Capital Planning Commission and the Commission of Fine Arts; and

''(B) 75 percent of the amount estimated to be required to complete the commemorative work has been raised.

If these two conditions have been met, the Secretary or the Administrator (as appropriate) may extend the seven-year legislative authority for a period not to exceed three additional years. Upon expiration of the legislative authority, any previous site and design approvals shall also expire.''.

(d) NATIONAL CAPITAL MEMORIAL ADVISORY COMMISSION.—Section 8904 of title 40, United States Code, is amended—

(1) in the heading, by inserting ''**Advisory**'' before ''**Commission**'';

(2) in subsection (a), by striking ''There is a National'' and all that follows through ''consists of'' and inserting the following: ''There is established the National Capital Memorial Advisory Commission, which shall be composed of'';

(3) in subsection (c)—

(A) by inserting ''Advisory'' before ''Commission shall''; and

(B) by striking ''Services'' and inserting ''Services (as appropriate)''; and

(4) in subsection (d) by inserting ''Advisory'' before ''Commission''.

(e) SITE AND DESIGN APPROVAL.—Section 8905 of title 40, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''person'' each place it appears and inserting ''sponsor''; and

(B) in paragraph (1)—

(i) by inserting ''Advisory'' before ''Commission''; and

(ii) by striking ''designs'' and inserting ''design concepts''; and

(2) in subsection (b)—

(A) by striking ''Secretary, and Administrator'' and inserting ''and the Secretary or Administrator (as appropriate)''; and

(B) in paragraph (2)(B), by striking, ''open space and existing public use.'' and inserting ''open space, existing public use, and cultural and natural resources.''.

(f) CRITERIA FOR ISSUANCE OF CONSTRUCTION PERMIT.—Section 8906 of title 40, United States Code, is amended—

(1) in subsection (a)(3) and (a)(4) by striking ''person'' and inserting ''sponsor''; and

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

''(b) DONATION FOR PERPETUAL MAINTENANCE AND PRESERVATION.—

''(1) In addition to the criteria described above in subsection (a), no construction permit shall be issued unless the sponsor authorized to construct the commemorative work has donated an amount equal to 10 percent of the total estimated cost of construction to offset the costs of perpetual maintenance and preservation of the commemorative work. All such amounts shall be available for those purposes pursuant to the provisions of this subsection. The provisions of this subsection shall not apply in instances when the commemorative work is constructed by a Department or agency of the Federal Government and less than 50 percent of the funding for such work is provided by private sources.

''(2) Notwithstanding any other provision of law, money on deposit in the Treasury on the date of enactment of the Commemorative Works Clarification and Revision Act of 2003 provided by a sponsor for maintenance pursuant to this subsection shall be credited to a separate account in the Treasury.

''(3) Money provided by a sponsor pursuant to the provisions of this subsection after the date of enactment of the Commemorative Works Clarification and Revision Act of 2003 shall be credited to a separate account with the National Park Foundation.

''(4) Upon request of the Secretary or Administrator (as appropriate), the Secretary of the Treasury or the National Park Foundation shall make all or a portion of such moneys available to the Secretary or the Administrator (as appropriate) for the maintenance of a commemorative work. Under no circumstances may the Secretary or Administrator request funds from a separate account exceeding the total money in the account established under paragraph (2) or (3). The Secretary and the Administrator shall maintain an inventory of funds available for such purposes. Funds provided under this paragraph shall be available without further appropriation and shall remain available until expended.''.

(g) AREAS I AND II.—Section 8908(a) of title 40, United States Code, is amended—

(1) by striking ''Secretary of the Interior and Administrator of General Services'' and inserting ''Secretary of the Interior or the Administrator of General Services (as appropriate)''; and

(2) by striking ''numbered 869/86581, and dated May 1, 1986'' and inserting ''entitled 'Commemorative Areas Washington, DC and Environs', numbered 869/86501 B, and dated June 24, 2003''.

**SEC. 204. SITE AND DESIGN CRITERIA.**

Section 8905(b) of title 40, United States Code (as amended by section 203(e)), is amended by adding at the end the following:

''(5) MUSEUMS.—No commemorative work primarily designed as a museum may be located on lands under the jurisdiction of the Secretary in Area I or in East Potomac Park as depicted on the map referenced in section 8902(2).

''(6) SITE-SPECIFIC GUIDELINES.—The National Capital Planning Commission and the Commission of Fine Arts may develop such criteria or guidelines specific to each site that are mutually agreed upon to ensure that the design of the commemorative work carries out the purposes of this chapter.

''(7) DONOR CONTRIBUTIONS.—Donor contributions to commemorative works shall not be acknowledged in any manner as part of the commemorative work or its site.''.

**SEC. 205. NO EFFECT ON PREVIOUSLY APPROVED SITES.**

Except for the provision in the amendment made by section 202(b) prohibiting a visitor center from being located in the Reserve (as defined in section 8902 of title 40, United States Code), nothing in this title shall apply to a commemorative work for which a site was approved in accordance with chapter 89 of title 40, United States Code, prior to the date of enactment of this title.

**SEC. 206. NATIONAL PARK SERVICE REPORTS.**

Within six months after the date of enactment of this title, the Secretary of the Interior, in consultation with the National Capital Planning Commission and the Commission of Fine Arts, shall submit to the Committee on Energy and Natural Resources of the United States Senate, and to the Committee on Resources of the United States House of Representatives reports setting forth plans for the following:

(1) To relocate, as soon as practicable after the date of enactment of this Act, the National Park Service's stable and maintenance facilities that are within the Reserve (as defined in section 8902 of title 40, United States Code).

(2) To relocate, redesign or otherwise alter the concession facilities that are within the Reserve to the extent necessary to make them compatible with the Reserve's character.

(3) To limit the sale or distribution of permitted merchandise to those areas where such activities are less intrusive upon the Reserve, and to relocate any existing sale or distribution structures that would otherwise be inconsistent with the plan.

(4) To make other appropriate changes, if any, to protect the character of the Reserve.

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**SA 2114.** Mr. BENNETT (for Ms. COLLINS) proposed an amendment to the bill S. 589, to strengthen and improve the management of national security, encourage Government service in areas of critical national security, and to assist government agencies in addressing deficiencies in personnel possessing specialized skills important to national security and incorporating the goals and strategies for recruitment and retention for such skilled personnel into the strategic and performance management systems of Federal agencies; as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Homeland Security Federal Workforce Act of 2003''.

**SEC. 2. FINDINGS, PURPOSE, AND EFFECT OF LAW.**

(a) FINDINGS.—Congress makes the following findings:

(1) The security of the United States requires the fullest development of the intellectual resources and technical skills of its young men and women.

(2) The security of the United States depends upon the mastery of modern techniques developed from complex scientific principles. It depends as well upon the discovery and development of new principles, new techniques, and new knowledge.

(3) The United States finds itself on the brink of an unprecedented human capital crisis in Government. Due to increasing competition from the private sector in recruiting high-caliber individuals, Government departments and agencies, particularly those involved in national security affairs, are finding it hard to attract and retain talent.

(4) The United States must strengthen Federal civilian and military personnel systems in order to improve recruitment, retention, and effectiveness at all levels.

(5) The ability of the United States to exercise international leadership is, and will increasingly continue to be, based on the political and economic strength of the United States, as well as on United States military strength around the world.

(6) The Federal Government has an interest in ensuring that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this changing international environment.

(7) In January 2001, the General Accounting Office reported that, at the Department of Defense ''attrition among first-time enlistees has reached an all-time high. The services face shortages among junior officers, and problems in retaining intelligence analysts, computer programmers, and pilots.'' The General Accounting Office also warned of the Immigration and Naturalization Service's ''lack of staff to perform intelligence functions and unclear guidance for retrieving and analyzing information.''

(8) The United States Commission on National Security also cautioned that ''the U.S. need for the highest quality human capital in science, mathematics, and engineering is not being met.'' The Commission wrote, ''we must ensure the highest caliber human capital in public service. U.S. national security depends on the quality of the people, both civilian and military, serving within the ranks of government.''

(9) The events on and after September 11th have highlighted the weaknesses in the Federal and State government's human capital and its personnel management practices, especially as it relates to our national security.

(b) PURPOSES.—It is the purpose of this Act to—

(1) provide attractive incentives to recruit capable individuals for Government and military service; and

(2) provide the necessary resources, accountability, and flexibility to meet the national security educational needs of the United States, especially as such needs change over time.

(c) EFFECT OF LAW.—Nothing in this Act, or an amendment made by this Act, shall be construed to affect the collective bargaining unit status or rights of any Federal employee.

**TITLE I—PILOT PROGRAM FOR STUDENT LOAN REPAYMENT FOR FEDERAL EMPLOYEES IN NATIONAL SECURITY POSITIONS**

**SEC. 101. STUDENT LOAN REPAYMENTS.**

(a) IN GENERAL.—Subchapter VII of chapter 53 of title 5, United States Code, is amended by inserting after section 5379, the following:

**''§ 5379a. Pilot program for student loan repayment for Federal employees in national security positions**

''(a) In this section:

''(1) The term 'agency' means the Department of Defense, the Department of Homeland Security, the Department of State, the Department of Energy, the Department of the Treasury, the Department of Justice, the National Security Agency, and the Central Intelligence Agency.

''(2) The term 'national security position' means an employment position determined by the head of an agency for the purposes of a pilot program established under this section, to involve important homeland security applications.

''(3) The term 'student loan' means—

''(A) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

''(B) a loan made under part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq., 1087aa et seq.); and

''(C) a health education assistance loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part E of title VIII of such Act (42 U.S.C. 297a et seq.).

''(b)(1) The head of an agency shall, in order to recruit or retain highly qualified professional personnel, establish a pilot program under which the head of that agency may agree to repay (by direct payments on behalf of the employee) any student loan previously taken out by such employee if the employee is employed by the agency in a national security position. The head of an agency may provide for a program to apply to, and be administered with respect to, 1 or more organizational units of the agency.

''(2) Payments under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned.

''(3) The amount paid by the agency on behalf of an employee under this section may not exceed $10,000 in any calendar year toward the remaining balance of the student loan for each year that the employee remains in service in the position, except that the employee shall remain in such position for at least 3 years. The maximum total amount that may be paid on behalf of an employee under this paragraph shall be $60,000.

''(4) An employee may participate in the program under section 5379 and any program under this section at the same time, except the total amount paid by all agencies on behalf of that employee under section 5379 and this section may not exceed—

''(A) $10,000 in any calendar year; or

''(B) $60,000 in total.

''(5) Nothing in this section shall be considered to authorize an agency to pay any amount to reimburse an employee for any repayments made by such employee prior to the agency's entering into an agreement under this section with such employee.

''(6) Nothing in this section shall be construed—

''(A) to affect student loan repayment programs existing on the date of enactment of this section;

''(B) to revoke or rescind any existing law, collective bargaining agreement, or recognition of a labor organization;

''(C) to authorize the head of an agency to determine national security positions for any other purpose other than to make such determinations as are required by this section in order to carry out the purposes of this section; or

''(D) as a basis for determining the exemption of any position from inclusion in a bargaining unit under chapter 71 of title 5, United States Code, or from the right of any incumbent of a national security position determined by the head of an agency under this section, from entitlement to all rights and benefits under such chapter.

''(c)(1)(A) Not later than 6 months after the date of enactment of this section, the Director of the Office of Personnel Management shall report to the appropriate committees of Congress on the implementation of the program under this section.

''(B) Not later than 4 years after the date of enactment of this section, the Director of the Office of Personnel Management shall report to the appropriate committees of Congress on the status of the programs established under this section and the success of such programs in recruiting and retaining employees for national security positions, including an assessment as to whether the program should be expanded to other agencies or to non-national security positions to improve overall Federal workforce recruitment and retention.

''(2) The head of each agency establishing a program under this section shall provide any necessary information to the Office of Personnel Management to carry out this subsection.

''(d) An employee shall not be eligible for benefits under this section if such employee—

''(1) occupies a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

''(2) does not occupy a national security position.

''(e)(1) An employee selected to receive benefits under this section shall agree in writing, before receiving any such benefit, that the employee shall—

''(A) remain in the service of the agency in a national security position for a period to be specified in the agreement, but not less than 3 years, unless involuntarily separated; and

''(B) if separated involuntarily on account of misconduct, or voluntarily, before the end of the period specified in the agreement, repay to the Government the amount of any benefits received by such employee from that agency under this section.

''(2) The repayment provided for under paragraph (1)(B) may not be required of an employee who leaves the service of such employee's agency voluntarily to enter into the service of any other agency unless the head of the agency that authorized the benefits notifies the employee before the effective date of such employee's entrance into the service of the other agency that repayment will be required under this subsection.

''(3) If an employee who is involuntarily separated on account of misconduct or who (excluding any employee relieved of liability under paragraph (2)) is voluntarily separated before completing the required period of service fails to repay the amount provided for under paragraph (1)(B), a sum equal to the amount outstanding is recoverable by the Government from the employee (or such employee's estate, if applicable) by—

''(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

''(B) such other method as is provided for by law for the recovery of amounts owing to the Government.

''(4) The head of the agency concerned may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest.

''(5) Any amount repaid by, or recovered from, an individual (or an estate) under this subsection shall be credited to the appropriation, fund, or account from which the original payment was made. Any amount so credited shall be merged with other sums in such appropriation, fund, or account and shall be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

''(f) An employee receiving benefits under this section from an agency shall be ineligible for continued benefits under this section from such agency if the employee—

''(1) separates from such agency; or

''(2) does not maintain an acceptable level of performance, as determined under standards and procedures which the agency head shall by regulation prescribe.

''(g) In selecting employees to receive benefits under this section, an agency shall, consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of this title, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

''(h) Any benefit under this section shall be in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

''(i)(1) Not later than 60 days after the date of enactment of this section and after consultations with the heads of agencies, the Office of Personnel Management shall propose regulations for criteria to be used by the heads of agencies to make determinations of national security positions.

''(2) Not later than 180 days after the date on which the comment period for proposed regulations under paragraph (1) ends, the Office of Personnel Management shall promulgate final regulations containing such criteria.

''(j) A program established under this section may remain in effect for the 8-year period beginning on the date of enactment of this section. Such program shall continue to pay employees recruited under this program who are in compliance with this section their benefits through their commitment period regardless of the preceding sentence.

''(k) For the purpose of enabling the Federal Government to recruit and retain employees critical to the national security under this section, there are authorized to be appropriated such sums as may be necessary to carry out this section for each fiscal year.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 53 of title 5, United States Code, is amended by inserting after the item relating to section 5379 the following:

''5379a. Pilot program for student loan repayment for Federal employees in national security positions.''.

## TITLE II—FELLOWSHIPS FOR GRADUATE STUDENTS TO ENTER FEDERAL SERVICE AND NATIONAL SECURITY SERVICE CORPS

### SEC. 201. FELLOWSHIPS FOR GRADUATE STUDENTS TO ENTER FEDERAL SERVICE.

The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by inserting after section 802 the following:

### ''SEC. 802a. FELLOWSHIPS FOR GRADUATE STUDENTS TO ENTER FEDERAL SERVICE.

''(a) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency' means the Department of Defense, the Department of Homeland Security, the Department of State, the Department of Energy, the Department of the Treasury, the Department of Justice, the National Security Agency, and the Central Intelligence Agency, and other Federal Government agencies as determined by the Board.

''(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given to such term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

''(3) NATIONAL SECURITY POSITION.—The term 'national security position' means an employment position determined by the Board, in consultation with an agency, for the purposes of a program established under this section, to involve important homeland security applications.

''(4) SCIENCE.—The term 'science' means any of the natural and physical sciences including chemistry, biology, physics, and computer science. Such term does not include any of the social sciences.

''(b) IN GENERAL.—The Board shall establish and implement a program for the awarding of fellowships (to be known as 'National Security Fellowships') to graduate students who, in exchange for receipt of the fellowship, agree to employment with the Federal Government in a national security position. The Board may provide for the program to apply to, and be administered with respect to, 1 or more organizational units of an agency.

''(c) ELIGIBILITY.—To be eligible to participate in the program established under subsection (b), a student shall—

''(1) have been accepted into a graduate school program at an accredited institution of higher education within the United States and be pursuing or intend to pursue graduate education in the United States in the disciplines of foreign languages, science, mathematics, engineering, nonproliferation education, or other international fields that are critical areas of national security (as determined by the Board);

''(2) be a United States citizen, United States national, permanent legal resident, or citizen of the Freely Associated States; and

''(3) agree to employment with an agency or office of the Federal Government in a national security position.

''(d) SERVICE AGREEMENT.—In awarding a fellowship under the program under this section, the Board shall require the recipient to enter into an agreement under which, in exchange for such assistance, the recipient—

''(1) will maintain satisfactory academic progress (as determined in accordance with regulations issued by the Board) and provide regularly scheduled updates to the Board on the progress of their education and how their employment continues to relate to a national security objective of the Federal Government;

''(2) will, upon completion of such education, be employed by the agency for which the fellowship was awarded for a period of at least 3 years as specified by the Board; and

''(3) agrees that if the recipient is unable to meet either of the requirements described in paragraph (1) or (2), the recipient will reimburse the United States for the amount of the assistance provided to the recipient under the fellowship, together with interest at a rate determined in accordance with regulations issued by the Board, but not higher than the rate generally applied in connection with other Federal education loans.

''(e) FEDERAL EMPLOYMENT ELIGIBILITY.—If a recipient of a fellowship under this section demonstrates to the satisfaction of the Board that, after completing their education, the recipient is unable to obtain a national security position in the Federal Government because such recipient is not eligible for a security clearance or other applicable clearance necessary for such position, the Board may permit the recipient to fulfill the service obligation under the agreement under subsection (d) by working in another office or agency in the Federal Government for which their skills are appropriate, by teaching math, science, or foreign languages, or by performing research, at an institution of higher education, for a period of not less than 3 years, in the area of study for which the fellowship was awarded.

''(f) FELLOWSHIP SELECTION.—

''(1) IN GENERAL.—The Board shall consult with agencies in the selection and placement of national security fellows under this section.

''(2) FUNCTIONS.—The Board shall carry out the following functions:

''(A) Develop criteria for awarding fellowships under this section.

''(B) Provide for the wide dissemination of information regarding the activities assisted under this section.

''(C) Establish qualifications for students desiring fellowships under this section, including a requirement that the student have a demonstrated commitment to the study of the discipline for which the fellowship is to be awarded.

''(D) Provide for the establishment and semiannual update of a list of fellowship recipients, including an identification of their skills, who are available to work in a national security position.

''(E) Not later than 30 days after a fellowship recipient completes the study or education for which assistance was provided under this section, work in conjunction with agencies to make reasonable efforts to hire and place the fellow in an appropriate national security position.

''(F) Review the administration of the program established under this section.

''(G) Develop and provide to Congress a strategic plan that identifies the skills needed by the Federal national security workforce and how the provisions of this Act, and related laws, regulations, and policies will be used to address such needs.

''(g) SPECIAL CONSIDERATION FOR CURRENT FEDERAL EMPLOYEES.—

''(1) SET ASIDE OF FELLOWSHIPS.—Twenty percent of the fellowships awarded under this section shall be set aside for Federal employees who are working in national security positions on the date of enactment of this section to enhance the education and training of such employees in areas important to national security.

''(2) FULL- OR PART-TIME EDUCATION.—Federal employees who are awarded fellowships under paragraph (1) shall be permitted to obtain advanced education under the fellowship on a full-time or part-time basis.

''(3) PART-TIME EDUCATION.—A Federal employee who pursues education or training under a fellowship under paragraph (1) on a part-time basis shall be eligible for a stipend in an amount which, when added to the employee's part-time compensation, does not exceed the amount described in subsection (i)(2).

''(h) FELLOWSHIP SERVICE.—Any individual under this section who is employed by the Federal Government in a national security position shall be able to count the time that the individual spent in the fellowship program towards the time requirement for a reduction in student loans as described in section 5379a of title 5, United States Code.

''(i) AMOUNT OF AWARD.—A National Security Fellow who complies with the requirements of this section may receive funding under the fellowship for up to 3 years at an amount determined appropriate by the Board, but not to exceed the sum of—

''(1) the amount of tuition paid by the fellow; and

''(2) a stipend in an amount equal to the maximum stipend available to recipients of fellowships under section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1869) for the year involved.

''(j) CONSULTATION WITH CHIEF HUMAN CAPITAL OFFICERS.—The Board shall consult with the chief human capital officers of participating agencies in carrying out this section.

''(k) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

''(1) to authorize the Board to determine national security positions for any other purpose other than to make such determinations as are required by this section in order to carry out the purposes of this section; and

''(2) as a basis for determining the exemption of any position from inclusion in a bargaining unit under chapter 71 of title 5, United States Code, or from the right of any incumbent of a national security position determined by the Board under this section, from entitlement to all rights and benefits under such chapter.

''(l) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of enabling the Board to provide for the recruitment and retention of highly qualified employees in national security positions, there are authorized to be appropriated $100,000,000 for fiscal year 2004, and such sums as may be necessary for each fiscal year thereafter.''.

**SEC. 202. NATIONAL SECURITY SERVICE CORPS.**

The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by inserting after section 802a (as added by section 201 of this Act) the following:

**''SEC. 802b. NATIONAL SECURITY SERVICE CORPS.**

''(a) FINDINGS AND PURPOSES.—

''(1) FINDINGS.—Congress finds that—

''(A) a proficient national security workforce requires certain skills and knowledge, and effective professional relationships; and

''(B) a national security workforce will benefit from the establishment of a National Security Service Corps.

''(2) PURPOSES.—The purposes of this section are to—

''(A) provide mid-level employees in national security positions within agencies the opportunity to broaden their knowledge through exposure to other agencies;

''(B) expand the knowledge base of national security agencies by providing for rotational assignments of their employees at other agencies;

''(C) build professional relationships and contacts among the employees and agencies of the national security community; and

''(D) invigorate the national security community with exciting and professionally rewarding opportunities.

''(b) DEFINITIONS.—In this section:

''(1) AGENCY.—The term 'agency' means the Department of Defense, the Department of Homeland Security, the Department of State, the Department of Energy, the Department of the Treasury, the Department of Justice, and the National Security Agency.

''(2) CORPS.—The term 'Corps' means the National Security Service Corps.

''(3) CORPS POSITION.—The term 'corps position' means a position that—

''(A) is a position—

''(i) at or above GS–12 of the General Schedule; or

''(ii) in the Senior Executive Service;

''(B) the duties of which do not relate to intelligence support for policy; and

''(C) is designated by the head of an agency as a Corps position.

''(c) GOALS AND ADMINISTRATION.—The Board shall—

''(1) formulate the goals of the Corps;

''(2) resolve any issues regarding the feasibility of implementing this section;

''(3) evaluate relevant civil service rules and regulations to determine the desirability of seeking legislative changes to facilitate application of the General Schedule and Senior Executive Service personnel systems to the Corps;

''(4) create specific provisions for agencies regarding rotational programs;

''(5) formulate interagency compacts and cooperative agreements between and among agencies relating to—

''(A) the establishment and function of the Corps;

''(B) incentives for individuals to participate in the Corps;

''(C) professional education and training;

''(D)(i) the process for competition for a Corps position;

''(ii) which individuals may compete for Corps positions; and

''(iii) any employment preferences an individual participating in the Corps may have when returning to the employing agency of that individual; and

''(E) any other issues relevant to the establishment and continued operation of the Corps; and

''(6) not later than 180 days after the date of enactment of this section, submit a report to the Office of Personnel Management on all findings and relevant information on the establishment of the Corps.

''(d) CORPS.—

''(1) PROPOSED REGULATIONS.—Not later than 180 days after the date on which the report is submitted under subsection (c)(6), the Board shall publish in the Federal Register, proposed regulations describing the purpose, and providing for the establishment and operation of the Corps.

''(2) COMMENT PERIOD.—The Board shall provide for—

''(A) a period of 60 days for comments from all stakeholders on the proposed regulations; and

''(B) a period of 180 days following the comment period for making modifications to the regulations.

''(3) FINAL REGULATIONS.—After the 180-day period described under paragraph (2)(B), the Board shall promulgate final regulations that—

''(A) establish the Corps;

''(B) provide guidance to agencies to designate Corps positions;

''(C) provide for individuals to perform periods of service of not more than 2 years at a Corps position within agencies on a rotational basis;

''(D) establish eligibility for individuals to participate in the Corps;

''(E) enhance career opportunities for individuals participating in the Corps;

''(F) provide for the Corps to develop a group of policy experts with broad-based experience throughout the executive branch; and

''(G) provide for greater interaction among agencies with traditional national security functions.

''(4) ACTIONS BY AGENCIES.—Not later than 180 days after the promulgation of final regulations under paragraph (3), each agency shall—

''(A) designate Corps positions;

''(B) establish procedures for implementing this section; and

''(C) begin active participation in the operation of the Corps.

''(e) CONSULTATION WITH CHIEF HUMAN CAPITAL OFFICERS.—The Board shall consult with the chief human capital officers of participating agencies in carrying out this section.

''(f) ALLOWANCES, PRIVILEGES, AND BENEFITS.—An employee serving on a rotational basis with another agency under this section is deemed to be detailed and, for the purpose of preserving allowances, privileges, rights, seniority, and other benefits with respect to the employee, is deemed to be an employee of the original employing agency and is entitled to the pay, allowances, and benefits from funds available to that agency.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Board such sums as may be necessary to carry out this section.''.

**SEC. 203. TECHNICAL AND CONFORMING AMENDMENTS.**

The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended—

(1) in section 803(b)—

(A) by redesignating paragraphs (5) through (7) as paragraphs (7) through (9), respectively; and

(B) by inserting after paragraph (4) the following:

''(5) The Secretary of Homeland Security.

''(6) The Attorney General of the United States.'';

(2) in section 803(c), by striking ''subsection (b)(6)'' and inserting ''subsection (b)(8)'';

(3) in section 804(b)(1), by inserting '', including section 802a'' before the semicolon;

(4) by inserting after section 807, the following:

**''SEC. 807a. NONAPPLICATION OF PROVISIONS TO CERTAIN GRADUATE STUDENT FELLOWSHIPS AND THE NATIONAL SECURITY SERVICE CORPS.**

''Sections 805, 806, and 807 shall not apply with respect to section 802a or 802b.''; and

(5) in section 808(4), by striking ''The term'' and inserting ''Except as provided under section 802a, the term''.

**TITLE III—MISCELLANEOUS PROVISIONS**

**SEC. 301. STRATEGIC PLANS.**

Section 306(a) of title 5, United States Code, is amended—

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

''(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, training, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives.'';

(2) by redesignating paragraphs (4) through (6) as paragraphs (5) through (7), respectively; and

(3) by inserting after paragraph (3) the following:

''(4) a discussion of the extent to which the specific skills in the agency's human capital are needed to achieve the mission, goals, and objectives of the agency;''.

## NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON WATER AND POWER

Ms. MURKOWSKI. Mr. President, I would like to announce, for the information of the Senate and the public, that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, November 13, at 2:30 p.m., in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on S. 1085, a bill to provide for a Bureau of Reclamation program to assist States and local communities in evaluating and developing rural and small community water supply systems, and for other purposes; S. 1732, a bill to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents; S. 1211, a bill to further the purposes of title XVI of the Reclamation Projects Authorization and Adjustment Act of 1992, the ''Reclamation Wastewater and Groundwater Study and Facilities Act'', by directing the Secretary of the Interior to undertake a demonstration program for water reclamation in the Tularosa Basin of New Mexico, and for other purposes; S. 1727, a bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978; and S. 1791, a bill to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes. Contact: Shelly Randel 202–224–7933, Erik Webb 202–224–4756 or Meghan Beal at 202–224–7556.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Subcommittee on Water and Power, Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, November 5, 2003, at 9:30 a.m. on Aviation Security. The first part of the hearing will be closed.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet on Wednesday, November 5, 2003, at 9 a.m. to hold a hearing on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, November 5, 2003, at 2:30 p.m. to hold a hearing on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, November 5, 2003, at 2 p.m. for a hearing titled ''The Report of the Presidential Commission on the U.S. Postal Service: Preserving Access and Affordability.''

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT ECONOMIC COMMITTEE

Mr. BENNETT. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to conduct a hearing in Room 628 of the Dirksen Senate Office Building, Wednesday, November 5, 2003, from 9:30 a.m. to 1 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. BENNETT. Mr. President, I ask unanimous consent that the following staff have the privilege of the floor during the consideration of H.R. 2673, the Agriculture appropriations bill: Patricia Raymond, Fitzhugh Elder, Hunter Moorhead, Dianne Preece, Galen Fountain, Jessica Arden, William Simpson, Meaghan McCarthy, Larissa Sommer, and Mike Neilson.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that Ms. Barbara Peicheo, a fellow in my office, be allowed floor privileges for the duration of the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that Daniela Ligiero, who is a fellow in my office, be granted the privilege of the floor during the pendency of consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AUTHORIZING LEGAL REPRESENTATION

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 259 which was introduced earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 259) to authorize legal representation in Bell Aviation, Inc., et al. v. Sino Swearingen Aircraft Co., L.P., et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, this resolution concerns representation by the Senate legal counsel of Senator ROCKEFELLER and an employee in his office, who have been subpoenaed to provide testimony and office records at depositions in a civil business dispute in Dallas County, TX.

The subpoenas are seeking information about communications between the defendant business jet aircraft company, which has a manufacturing plant in Martinsburg, WV and the Senator's office, as well as Senator ROCKEFELLER's activities in connection with his service as Chairman, and now ranking minority Member, of the Subcommittee on Aviation of the Senate Committee on Commerce, Science, and Transportation.

This resolution would authorize the Senate legal counsel to represent Senator ROCKEFELLER and his staff in connection with these subpoenas in order to protect the privileges of the Senate.

Mr. BENNETT. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table en bloc, and any statements thereon be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 259) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 259

Whereas, in the case of Bell Aviation, Inc., et al. v. Sino Swearingen Aircraft Co., L.P., et al., Cause No. 03–02532, pending in the District Court of Dallas County, Texas, the plaintiffs have obtained from the Superior Court of the District of Columbia subpoenas for deposition testimony and document production by Senator John D. Rockefeller IV and Terri Giles, a staff member in the office of Senator Rockefeller;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent Members and employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate may, by the judicial or administrative process, be taken from such control or possession but by permission of the Senate; and

Whereas, by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave: Now, therefore, be it

*Resolved,* That the Senate Legal Counsel is authorized to represent Senator Rockefeller and Terri Giles in connection with the subpoenas issued in this action.

## AUTHORIZING DESIGN AND CONSTRUCTION OF VISITOR CENTER FOR THE VIETNAM VETERANS MEMORIAL

Mr. BENNETT. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 310, H.R. 1442.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1442) to authorize the design and construction of the visitor center for the Vietnam Veterans Memorial.

There being no objection, the Senate proceeded to consider the bill.

Mr. BENNETT. I ask unanimous consent that the Thomas amendment, which is at the desk, be agreed to; that the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table; and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2113) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 1442), as amended, was read the third time and passed.

## HOMELAND SECURITY FEDERAL WORKFORCE ACT

Mr. BENNETT. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 240, S. 589.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 589) to strengthen and improve the management of national security, encourage Government service in areas of critical national security, and to assist Government agencies in addressing deficiencies in personnel possessing specialized skills important to national security and incorporating the goals and strategies for recruitment and retention for such skilled personnel into the strategic and performance management systems of Federal agencies.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I support passage of the Homeland Security Federal Workforce Act, S. 589, and urge favorable Senate action and swift House adoption, as well. Senators AKAKA and DURBIN deserve great credit for developing this legislation last Congress with Senator THOMPSON and pursuing it to passage this year.

I share their concern that we need to do more to recruit and retain outstanding personnel in our pursuit of national security. I believe that includes our law enforcement personnel. For the last two Congresses I have sponsored the Federal Prosecutors' Retirement Benefit Equity Act, which is now S. 640. That bill, which is cosponsored by Senators HATCH, MIKULSKI and DURBIN, would correct an inequity that exists under current law whereby Federal prosecutors receive substantially less favorable retirement benefits than nearly all others involved in the federal criminal justice system. We have proposed that Assistant United States Attorneys be included as law enforcement officers under the Federal Employees' Retirement System and Civil Service Retirement System. I urge the Republican chairs of the Government Affairs Committee and the Subcommittee on Oversight of Government Management, the Federal workforce, and the District of Columbia to make enactment of that measure a priority rather than allow it to continue to languish without action year after year.

Similarly, I am a cosponsor of the Law Enforcement Officers Retirement Equity Act, S. 819, which was introduced by Senator MIKULSKI and is cosponsored by Senators SARBANES and CAMPBELL. This measure would include Customs agents, Treasury agents, and Homeland Security agents whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm within the definition of ''law enforcement officer'' for purposes of retirement benefits equity. This measure, likewise, is one that has been introduced and reintroduced but that has not received attention from the Government Affairs Committee or Subcommittee. In the interest of fairness and in recognition of the sacrifices that our officers make every day on our behalf, I urge attention to this measure.

I also note that last Congress the Senate Judiciary Committee favorably reported the Innocence Protection Act of 2002, which included provisions on student loan forgiveness. The bill would have established a program under which full-time prosecutors and public defenders could apply for repayment assistance of the Federal Stafford loans and would have extended the Perkins loan forgiveness program to include public defenders. I commend Senator DURBIN for his strong leadership in these matters. Unfortunately, those improvements and encouragements to young lawyers were blocked and are not yet enacted. They need to be. We must ensure that full-time public defenders have equivalent eligibility if the public defense function is to fulfill its constitutionally required role in our criminal justice system.

Specifically, with respect to the Homeland Security Federal Workforce Act that we consider today, I believe the program it establishes for student loan repayment can be an important incentive for our national security programs and understand those to include our law enforcement agents and officers. I regret that the substitute amendment lowers the maximum amount of loan repayment from $80,000 to $60,000 but believe it is an important start and should be used broadly as an incentive to both recruit and retain our national security employees. According to Dr. Paul Light of the Brookings Institution Center for Public Service, in 2002 the Department of Justice and the Department of Defense together awarded student loan repayment to only seven employees. To have its intended effect to recruit and retain outstanding talent to government service, especially national security positions that include law enforcement, we need to have a broad-based incentive through loan forgiveness. Student loans, include law school loans, that saddle talented and public-spirited graduates are a key reason so many opt for higher paying jobs in the private sector. An effective program of student loan forgiveness can help counterbalance that pressure.

I regret that the bill as written limits its application to executive departments like the Department of Justice and does not include Federal courts, which oversee our federal public defenders. Our prosecutors and our public defenders need this assistance and incentive to join and remain as critical components of the criminal justice system. To skew programs to help only one side of the criminal justice system is shortsighted and unfair. For more information on this important topic of loan forgiveness, I urge consideration of pages 37 through 40 of Senate report 107–315.

I am concerned that the Bush administration and its Office of Personnel Management will adopt an unreasonably restrictive view of those Federal employees who contribute to our national security. As I read the substitute amendment, the determination of national security positions is left to the Secretary of the Department of Homeland Security, the Secretary of the Treasury, the Attorney General and the other agency heads. That decision no longer is intended to reside with the Director of the Office of Personnel Management. That is an improvement. I hope that it will lead to a more broadly-based determination of the employment positions eligible for the student loan repayment program to include all who contribute to our national security.

I also look forward to enactment of the fellowship program provided by the bill and the strengthening of our national security workforce. I have been extremely disappointed by the efforts made at the Department of Justice to fulfil the mandates of the USA PATRIOT Act with respect to improving our workforce. As I detailed recently in connection with the confirmation hearing for the nominee to be the Deputy Attorney General, the Attorney General has yet to give us a straight answer with respect to hiring the necessary Arabic translators. That was a need I identified within days of the September 11, 2001 attacks and insisted be addressed in the PATRIOT Act. Over the last 2 years the Department has been both evasive and inconsistent in its answers regarding implementation of those provisions in that Act. Recently the FBI has, again, put out the call for assistance and additional translators. While Senator VOINOVICH may be correct that these provisions in the bill may be necessary, it is my hope that they will encourage the administration to do that which it could have done but has not under existing authority.

The administration has a long way to go to provide for our national security. I support this bill as another bipartisan effort by the Senate to help it along the way.

Mr. BENNETT. I ask unanimous consent that the Collins substitute amendment which is at the desk be agreed to; that the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table; and any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 2114) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 589), as amended, was read the third time and passed.

## REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT 108–10

Mr. BENNETT. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on November 5, 2003, by the President of the United States: Convention on International Interests in Mobile Equipment and Protocol to Convention on International Interests in Mobile Equipment (Treaty Document 108–10).

I further ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

*To the Senate of the United States:*

I transmit herewith, for Senate advice and consent to ratification, the Convention on International Interest in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment, concluded at Cape Town, South Africa, on November 16, 2001. The report of the Department of State and a chapter-by-chapter analysis are enclosed for the information of the Senate in connection with its consideration.

The essential features of the Convention and Aircraft Protocol are the establishment of an international legal framework for the creation, priority, and enforcement of security and leasing interests in mobile equipment, specifically high-value aircraft equipment (airframes, engines, and helicopters), and the creation of a worldwide International Registry where interests covered by the Convention can be registered. The Convention adopts ''asset-based financing'' rules, already in place in the United States, enhancing the availability of capital market financing for air carriers at lower cost. The Convention's and Protocol's finance provisions are consistent with the Uniform Commercial Code with regard to secured financing in the United States.

This new international system can significantly reduce the risk of financing, thereby increasing the availability and reducing the costs of aviation credit. As a result, air commerce and air transportation can become safer and environmentally cleaner through the acquisition of modern equipment facilitated by these instruments. The new international system should increase aerospace sales and employment, and thereby stimulate the U.S. economy.

Negotiation of the Convention and Protocol has involved close coordination between the key Federal agencies concerned with air transportation and export, including the Departments of State, Commerce, and Transportation, as well as the Eximbank, and U.S. interests from manufacturing, finance, and export sectors.

Ratification is in the best interests of the United States. I therefore urge the Senate to give early and favorable consideration to the Cape Town Convention and Aircraft Protocol, and that the Senate promptly give its advice and consent to ratification, subject to the seven declarations set out in the

accompanying report of the Department of State.

## ORDERS FOR THURSDAY, NOVEMBER 6, 2003

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Thursday, November 6. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business for 60 minutes, with the first 30 minutes under the control of the minority leader or his designee, and the second 30 minutes under the control of Senator HUTCHISON or her designee; provided that following morning business, the Senate proceed to executive session and the consideration of Calendar No. 310, the nomination of William Pryor, to be U.S. circuit judge for the Eleventh Circuit, and that there then be 60 minutes equally divided for debate on the nomination prior to the vote on the motion to invoke cloture.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Thank you, Mr. President.

Let me just say, very briefly, we have been told that next Wednesday the majority leader is going to move to a period of time where the majority will come and talk for some 30 hours about how the judges that have been recommended by President Bush have been treated.

I would say, I cannot possibly imagine why in the world we would take the time of this body at such an important time in the history of this country. On this side of the aisle, we have bent over backwards to cooperate on appropriations bills. We have cajoled, begged members on our side not to offer controversial amendments. On any one of these appropriations bills, there can be all kinds of things offered. Maybe they would be deemed not appropriate procedurally, but certainly a debate could be had and they would have to be disposed of by a vote. But we wanted to work for what we thought was the betterment of this body and this country.

We agreed, without any reservation or hesitation, to be in next Monday and Tuesday, Tuesday being a legal holiday. And when we are told that the sacrifices made to move this matter along are going to, in effect, play second fiddle to two legislative days; that is, 30 hours talking about judges, keep in mind we have done a pretty remarkably good job on these judges.

We have approved 168 judges; we have turned down 4—168 to 4. We have the lowest vacancy rate of the Federal judiciary in some 15 years.

So I say—and not in any way as criticism other than constructive criticism—I cannot imagine how the majority would allow this to happen. We are aware of this. And as my friend, the distinguished Senator from Utah knows, we work very hard to try to make things as convenient for Members as possible. But, keep in mind, recognizing how we can work to make things easy on Members, we can also work to make things hard on Members.

If this is going to be done, there has to be some reasonable response to it. You cannot be slapped around forever. We believe in turning our cheeks, and we have done it. Our cheeks have been turned and both sides slapped and we still move forward. But I think this is the ultimate. I think we have taken about as much as we are going to take.

I say to everyone within the sound of my voice, this is not to threaten, but just to make people understand that there is going to have to be some appropriate action taken if this is going to happen. We have been told it is going to happen by the highest authorities on the majority side. We have asked that it not happen. We have been told it is going to happen. I think it is too bad for our Nation.

I have no objection to the unanimous consent request.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. BENNETT. For the information of all Senators, tomorrow, following morning business, there will be 60 minutes for debate prior to the cloture vote on the Pryor nomination. If cloture is not invoked on the nomination, the Senate is expected to resume consideration of H.R. 2673, the Agriculture appropriations bill. It is hoped that we can finish that bill at an early hour during tomorrow's session, and therefore Senators should expect a very busy day tomorrow with rollcall votes occurring throughout.

## ORDER FOR ADJOURNMENT

Mr. BENNETT. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator SESSIONS.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

The Senator from Alabama.

## JUDICIAL NOMINATIONS

Mr. SESSIONS. Mr. President, I thank Senator BENNETT for his leadership today and the work he does. He is such an able part of this body. I will just say to Senator REID, the assistant Democratic leader, that something has happened here in this body that has never happened before.

Even though there are a majority of Senators prepared to vote and confirm a series of highly qualified nominees for the Federal bench, for the first time in the history of this Nation, the Democratic leadership—Senator DASCHLE and his team—have deliberately and systematically filibustered. That has never been done before on Federal judges. It should not be done. It is a complete change in the history of this body.

I believe that Senator FRIST is correct that we need to talk about these nominees, and we need to spend some time talking about them. We need to state what their records are, what their accomplishments are, why they are fine and decent men and women, and why they ought to be confirmed.

I hope the American people will listen because everywhere I go people tell me they are concerned about the courts. They believe judges are stepping outside of their bounds. They are legislating when they ought to be adjudicating. They are taking over schools, prisons, hospitals, and whatever else, and running them for years and years. And people question that.

President Bush has said: I am going to nominate judges who believe in the rule of law and who believe in doing the right thing, who do not legislate but adjudicate, who decide cases based on what the law says, not what they think is good politics.

Now we have these filibusters for the first time in history. I cannot imagine why Senator DASCHLE and his team would object to utilizing the legitimate, historic rules of this body, to talk all night, if need be, about why filibustering is unfair. They are not going to be out here anyway doing business. We are not doing anything in the middle of the night anyway.

To take a day of this session to talk it all the way through that day about the incredible, historical change in procedure that has occurred here is eminently justified. Why they would think they should, therefore, be offended is really amazing to me. There is just no basis for it. It is mock anger that they are going to now block legislation, which apparently was the intention all along.

We passed the CARE Act 90 to 5. We can't move the bill to conference because that bill is being filibustered under the leadership of Senator DASCHLE and the Democrats. We passed the Healthy Forests Act 80 to 14, an overwhelmingly bipartisan vote. That is being blocked, so it cannot be sent to conference. This is obstructionism again and again. I believe it is not harmful for the American people to have a glimpse of what is going on in this body.

When we saw what went on in the Intelligence Committee with the disclosure of this internal memorandum for the first time in history that I know of—the Intelligence Committee, which has always been organized and always been led to be a nonpartisan—not bipartisan, a nonpartisan entity dealing

with the most sensitive secrets this Nation deals with, wrestling with the idea of whether or not we have enough intelligence, do we have enough interpreters, do we have enough agents, do we have enough high-tech equipment to defend our country and to give our men and women in uniform the best information they have; that is what this committee has been about. Now we know that the minority Democratic staff were plotting and making plans to drag out the committee hearings, then turn on the chairman who has tried his best to be fair and open with them, and then attack him and attack the President next year during the election year. This is what we are seeing here to an unprecedented degree.

Let me talk now about Bill Pryor, the attorney general of the State of Alabama, who is nominated by the President for the Eleventh Circuit Court of Appeals. He represents the highest and best and finest qualities in lawyering in America today. I know Bill Pryor. I hired him as an assistant attorney general. I put him in charge of the most complex and important cases in my office. He was a partner in two of Birmingham's finest law firms, two of Alabama's finest law firms. He gave that up for public service. No more idealistic public servant exists in America today, a man of unquestioned integrity, unquestioned ability, a man who is willing to give up the high salaries he could make in any law firm in America and give his service to the people of America because that is the way he was raised.

His daddy was band director at the McGill-Toolen High School in Mobile, AL, a Catholic school. He was raised to do right. He believes in doing right. His family believes in doing right. His mother has taught in African-American schools voluntarily for most of her career as a schoolteacher. They have done the right things. They are the good people, people who always wanted to make America better, to reach a higher level of morality and decency and faithfulness. That is the way he is.

Bill Pryor attended Tulane University. I know the Presiding Officer knows Tulane is an excellent school, in the league with the Ivy League institutions. They think so at least. It is certainly a superb institution. He graduated magna cum laude. He was editor in chief of the Tulane Law Review. For those who understand law school, they know that the editor of the law review is the most respected graduate of the law class. Somebody might have higher grades, although few had higher grades than Bill Pryor. But if you are selected by your compatriots on the law review to be editor in chief, that is an additional indication of respect that even high grades don't have.

That is what he came from. He then clerked for Judge John Minor Wisdom on the Fifth Circuit Court of Appeals, the very type of position he will be undertaking. He was a law clerk sitting at the right hand of Judge John Minor Wisdom on the old Fifth Circuit Court of Appeals. Judge Wisdom is known as a champion of civil rights. He was one of the giants on the Fifth Circuit who was faced with rendering the decrees that dismantled segregation throughout the South. That is Bill Pryor's background.

His father was a John F. Kennedy Democrat, Catholic Democrat, who believed in that and voted for President Kennedy years ago. So this is his background.

He was very successful in his clerkship with Judge Wisdom. Then he served as an attorney with two law firms in Birmingham, first rate firms. I called on him to join my office-the office of the State Attorney General—and he took over the most important cases in my office. And, lo and behold, 2 years later I find myself in the Senate. The Governor made a decision to appoint Bill Pryor as my successor. He was one of the youngest, if not the youngest, attorneys general in America at the time. He handled that office with courage, with brilliance, with commitment to the rule of law, and with enthusiasm and commitment to a degree matched by few.

In the course of it, he won tremendous respect throughout the State. He had case after case that were exceedingly difficult, tough cases, more than you would normally get, in which he was called on to make choices, make legal decisions in litigation that placed him at odds with his core supporters, friends of his, friends of mine.

For example, there was a redistricting in Alabama. In the State legislature, the Republicans hold not many offices, well below half. But five of the seven Congressmen are Republicans. The Governor is Republican. Both Senators are Republican. But the way they organized those districts—some would say gerrymandered the districts—it favored Democrats being elected. Republicans filed a lawsuit to attack it. Unfortunately, the lawsuit was legally improper and not sound.

Bill Pryor is attorney general of the State of Alabama. He has to speak for the State. This reapportionment plan, whether he liked it or not—I assume he didn't like it; I haven't liked it—he was empowered and required under the duty of an attorney general to defend the acts of the Alabama Legislature, the reapportionment plan they had, and defend it he did.

It made them mad. A lot of our Republican friends were mad at Bill Pryor. They said he ought to work with them, he ought to help them. This was several years ago. He said: My job is to defend the law. My job is to do what an attorney general should do. An attorney general should defend the duly enacted laws of the State of Alabama, including the laws they passed to redistrict the State, as long as they are defensible.

He lost in the court of appeals. The Eleventh Circuit Court of Appeals, which he would be joining, ruled against him. But he didn't stop there. He knew he was correct. He appealed to the U.S. Supreme Court. The U.S. Supreme Court heard the case, ruled against the Republicans, ruled with Attorney General Pryor, and kept in place the reapportionment plan in that State.

I hear people say: Attorney General Pryor is an activist. He has political views. He is a conservative. He won't follow the law.

I am telling you, this man, as much as any man I have ever known in my life—and I have spent 20 years in the full-time practice of law and I know a lot of lawyers—is committed to the rule of law. He is committed to doing what is right. That is the way he was raised. That is the way he always does.

He has had many other difficult positions. Right this very minute, this very week, he has been drawn into the case of the Ten Commandments at the Supreme Court. Justice Roy Moore, chief justice of the Alabama Supreme Court, had a Ten Commandments plaque in his office as county judge. It was carved out of wood. And when he got elected to the supreme court, he was sort of known as the Ten Commandments judge. After that, he decided to put in a block of stone, not much bigger than these desks, and it had the Ten Commandments on the top.

Frankly, I am not offended by it. At least three replicas of the Ten Commandments are in the Supreme Court Building right across that street. Right up on that wall in the Senate Chamber are the words ''In God We Trust.'' I don't see anything wrong with it, frankly. But Judge Moore had some very strong views about this. He had his own ideas about separation of church and state. He read all the papers of the Founding Fathers. He can quote from them at length. He thinks we are misinterpreting what the Founding Fathers thought about separation of church and state. He believes it deeply, and I respect him for it.

Attorney General Pryor says: I am sympathetic with you, Judge, and I support your opinion. But as attorney general, I write the briefs for the State and we will argue it my way.

Judge Moore said: No, I want you to argue it my way.

He is chief justice. But, basically, what happened was the attorney general said: You hire your lawyer, and you argue it the way you want to; I am the attorney general, and I represent the State, and I will make the best argument that I think is worthy of merit and that could protect the ability to preserve the Ten Commandments.

The story goes that the supreme court did not agree and the courts have not agreed. They have ordered the Ten Commandments block to be removed, and there has been quite a bit of stir about it. So what do you do?

Under Alabama law, the attorney general is required to, and has a duty to, argue cases brought by the Judicial Inquiry Commission. The Judicial Inquiry Commission met and returned

charges against the chief justice, saying he violated a court order to remove the Ten Commandments. The attorney general now is required to handle that case. There is no way he can get away from it. He is either going to violate his duty and obstruct the rule of law, or he is going to prosecute the case. So he is prosecuting the case. He is going forward.

I say this: Go back and look at the documents put out by People for the American Way in opposition to the confirmation of William Pryor, and some of these other trashy, sorry, dishonest documents that were put out there. They have accused Bill Pryor of being in cahoots with Judge Moore to upset the rule of law, to impose religious views on people because he has expressed his personal belief in God and his personal faith in public statements. So they have accused him of being a religious extremist and are trying to attack him on that basis.

Nothing could be further from the truth. It is just a false charge. As a matter of fact, when former Gov. Bob James—who was the Governor who appointed Bill Pryor—resisted the Federal court rulings that said teachers could not lead children in prayer, Governor James took the view that football coaches ought to be able to lead the boys in prayer. He didn't see anything wrong with that. He didn't think the Constitution prohibited that. Frankly, I don't think it does either. The Constitution says that Congress shall make no law respecting the establishment of a religion nor prohibiting the free exercise thereof. That is all it says.

Anyway, the courts say you cannot have a football coach lead the kids in prayer before the ball game. So it caused a big stir. Some schools thought they could and some didn't. Lawsuits were being filed. Attorney General Pryor researched the law of schools and prayer and wrote a letter to every school board in the State asserting leadership. He acted in a way that the Atlanta Journal Constitution even said helped to bring a cooling voice in a heated period. He told them what they could do and what they could not do. As it turns out, that opinion he wrote was very similar to the position the Clinton Department of Education took on these matters. He researched the law and decided what the law was, and he followed it. So it is a pretty high price that some people are trying to put on him, because it is not true.

Dr. Joe Reed is one of the most powerful political figures in the State of Alabama. Every Democratic Presidential candidate will know Dr. Reed. He is an important African-American leader in the State. When he speaks as chairman of the Alabama Democratic Conference, an arm of the Alabama Democratic Party, and endorses a candidate for President, or Governor, or Lieutenant Governor, he has tremendous weight. His opinions are followed closely. He is a member of the Democratic National Committee. Dr. Reed is a vice chairman of the teachers union in Alabama—another source of influence and power. He is a man who has always been interested in Federal courts. He has endorsed Attorney General Pryor, saying, ''He is a first-class public official'' who will ''be a credit to the judiciary and a guardian of justice.''

Some of the national civil rights groups have attacked Bill Pryor. They don't know him, don't know anything about him, and they have accused him of being a southerner who is conservative; they try to say he is anti civil rights. Joe Reed is a serious leader in this State, and has been for 30 years, and he endorses him.

Thurbert Baker, an African-American Democratic attorney general in Georgia, says that Attorney General Pryor ''has always done what he thought was best for the people of Alabama'' and ''know[s] that his work on the bench will continue to serve as an example of how the public trust should be upheld.''

Attorney General Baker strongly supports him.

Former Democratic Governor, Don Siegleman, stated:

> Bill Pryor is an incredibly talented, intellectually honest attorney general. He calls them like he sees them. He's got a lot of courage, and he will stand up and fight when he believes he's right.

That is absolutely true. They are not political allies, but that is true.

State Representative Alvin Holmes, who is one of the most outspoken African-American leaders in the State senate, is very supportive of Bill Pryor. He told me he would come up here and speak for him and that he believes this very strongly. One of the stories he tells is that, under Alabama's constitution—and a number of States had this—was a provision that prohibited interracial marriage. Mr. Holmes opposed that. Attorney General Pryor was sworn in as attorney general of Alabama, and he made reference to that as being wrong. Of course, it is unconstitutional. Clearly, it is in violation of the Federal Constitution, and the courts, if they have not already declared it invalid, would do that at any time. But it was still in the document. It ought not to have been there.

Bill Pryor led the charge around the State to remove this improper language in the Alabama Constitution that said people of different races could not marry. Alvin Holmes said no other state wide elected politician stood with Bill Pryor.

Artur Davis, an African-American Congressman from Alabama, is a big supporter of Bill Pryor and also supports his confirmation.

Mr. President, we will talk about this more tomorrow. I know the chairman of the Judiciary Committee, Senator ORRIN HATCH, is extremely impressed with Attorney General Bill Pryor. He has seen him as a witness. He has met him personally. He told me after Attorney General Pryor's confirmation hearing that Attorney General Pryor testified brilliantly. He was one of the best witnesses he had ever seen before the Judiciary Committee. They tried to give him a hard time and they never laid a glove on him.

He spoke carefully. He spoke pleasantly. He spoke with conviction and with great intelligence and legal acumen. It was a tremendous performance. They questioned him about his views on abortion because he doesn't believe in abortion. I know that is a big subject with some people. He believes abortion is taking of innocent human life, and when pressed on it, that is what he said. He said: Senator, I believe it is taking of innocent human life. The reason I criticize Roe v. Wade is because I believe it is unprincipled, and I also believe it has led to the death of millions of innocent unborn.

That is his view. That is the view of the Catholic Church, the largest Christian church in the world. It is the view of a lot of other churches and denominations, and a lot of people who don't go to church believe that is a life.

We have to get our heads straight in the confirmation process. We have to get our thinking clear in this process. It makes no difference what he may believe personally about abortion. The question is, if the United States passed a constitutional law that deals with abortion, will he follow it? If the Supreme Court of the United States makes a declaration of interpretation of the U.S. Constitution, will he follow it? Bill Pryor has proved he will.

With regard to abortion, which he feels deeply about, Bill Pryor wrote a number of years ago, before he was ever considered for a Federal judgeship, to the attorneys general in Alabama and told them the Supreme Court had rendered an opinion on partial-birth abortion and that a large part of it had been declared unconstitutional; that it could not be enforced by them and they should not bring legal actions under it.

Even though he deeply believes abortion is wrong and certainly even more strongly believes that partial-birth abortion is wrong, which is overwhelmingly the view of the American people, indeed overwhelmingly of this Senate because we passed a law declaring it unconstitutional, he told them they couldn't enforce it. They had to allow this procedure to go forward under certain terms. He was condemned by the pro-life movement of which he shares many friends and shares many beliefs.

What we have to do as a Senate throughout this confirmation process is not ask what a person's political beliefs are or their religious beliefs but whether or not they understand the law of America and whether or not they will enforce it. That is the key to it. If we get away from that, we are going to be in trouble.

Orthodox Jews have views I do not share and most Americans do not share. The Muslim faith has views I

may not share that is in the Koran. Other denominations and church groups throughout America have views I do not share and in which I do not believe. Are we going to get to the point of asking these questions and saying: I don't agree with you and your religion; I don't agree with how you interpret the Scripture; therefore, I am not going to vote for you. How ridiculous can that be? We will never get anybody confirmed.

We have to say to Mr. Pryor, as was asked of him: OK, Mr. Pryor, I respect how you believe this, but the Supreme Court has held otherwise, and I want to know whether or not you will follow that law. He has demonstrated time and again that he will follow the law. He believes in the rule of law. He will carry his duties on in a way that brings credit to the rule of law. The rule of law is the key cornerstone of American greatness, in my view.

Bill Pryor is a champion of the rule of law. We couldn't have a finer nominee. I am so distressed his record has been distorted. I am so distressed people have tried to make him out to be something he is not. It is not right to have a decent, kind, Christian gentleman who has done nothing throughout his life but try to serve his Lord and his country with distinction and integrity, to have these skunks come in here, as Senator HATCH calls them, the usual suspects, with their distorted interpretations of his career and try to paint him as something he is not is just wrong. We need to stop it.

It is wrong to have a filibuster, and it is wrong to distort a man's record—it is not correct—in a way that demeans him and undermines his true worth as a human being. He is first rate in every way.

I am confident he will make a great judge. I see my time has passed. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, before the Senator from Alabama leaves, may I ask him a question, and if it is appropriate to make a comment about his remarks?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. Mr. President, I listened very carefully to the Senator from Alabama, and I have been listening to the debate about the judges. I understand what some of our colleagues on the other side are saying is somehow Mr. PRYOR is, for some reason, not sensitive to civil rights, is an activist, is a person who is unwilling to put his own personal beliefs, political beliefs aside and enforce the law; is that what the charge is?

Mr. SESSIONS. That is part of it; that he is insensitive to civil rights.

Mr. ALEXANDER. As I was listening to the Senator from Alabama, and maybe he will correct me if I have this wrong, but we are talking about Alabama, this is not Brooklyn, NY, we are talking about; right? And we are talking about the attorney general of the State of Alabama.

If I understand it right, after he was appointed, he went out of his way to point out that to have the words banning an interracial marriage in the Alabama State Constitution was wrong; did I understand the Senator to say that?

Mr. SESSIONS. Absolutely. He said it was bad law, but more than that, he said it was morally wrong and not to be accepted any longer in our Constitution.

Mr. ALEXANDER. Then, Mr. President, I believe the Senator from Alabama talked about the situation going on there today where the chief judge is embroiled in a great controversy over whether the Ten Commandments have to be taken out of the courtroom. I ask the Senator from Alabama, Mr. President, what percent of Alabamians probably believe the chief judge is right about the Ten Commandments?

Mr. SESSIONS. Mr. President, I don't have the numbers for Alabama particularly, but I saw a USA Today poll that said 77 percent of the people in the United States believe it is all right to have the Ten Commandments in the building.

Mr. ALEXANDER. I am going to just guess, having lived a long time in a State that borders Alabama, that it is higher than that in Alabama. If I understood the Senator from Alabama correctly, here is the attorney general of Alabama, who may also agree with Judge Moore about the Ten Commandments, but he is endorsing the judicial proceedings against Judge Moore; is that what I heard the Senator say?

Mr. SESSIONS. That is correct.

Mr. ALEXANDER. Against the judge who wants to keep the Ten Commandments there.

I think I also heard the Senator from Alabama say there was a reapportionment case in the State of Alabama, and the Republican Party wanted the attorney general to work with them, since he was appointed by a Republican Governor and is a Republican, and that he wouldn't do that, and that he even lost the case in the appellate court and kept going. He finally defeated a law that was adverse to his party; did I understand that right, too?

Mr. SESSIONS. That is correct. I think he could have not appealed to the Supreme Court. The Supreme Court doesn't take a lot of these cases. He could have probably justified that and rationalized that, but if he believed that the existing Alabama reapportionment system was duly enacted and defensible, an attorney general of integrity would appeal to the Supreme Court, and he did so, to the detriment of the interest of his political party.

Mr. ALEXANDER. Just a couple of other questions, because I think the Senator from Alabama is making an important statement. I believe I heard him say that the attorney general of Alabama wrote a letter to every school district in Alabama, every superintendent and every school, telling them that the football coach could not lead a prayer before the football game, not because that was what he believed but because he researched the law and came to the conclusion that is what the law requires, and then he went ahead and suggested to the schools what they could do as well as what they could not do, and that his advice turned out to be almost exactly the same advice that President Clinton and former Secretary of Education Dick Riley advised schools all over America. Do I have that about right?

Mr. SESSIONS. That is correct.

Mr. ALEXANDER. Again, thoroughly unpopular. Alabama is interested in football and Alabama is interested in prayer, and for a public official to write every school and tell them they cannot pray before a football game is not an easy thing to do, even if the law does require it.

Then, on the issue of abortion, he is a Roman Catholic and he has a religious belief about it, but did I understand the Senator from Alabama to say that he told the legislature that he could not enforce a law they passed limiting abortion because it was unconstitutional?

Mr. SESSIONS. Well, very similar. What he actually did, I say to the Senator from Tennessee, is that as attorney general he has the authority to superintend all of the State district attorneys who enforce the law.

Mr. ALEXANDER. I see.

Mr. SESSIONS. There was an already-passed partial birth abortion ban in Alabama. The Supreme Court ruled that big chunks of that were not constitutional and could not be enforced, and Attorney General Pryor, even though he strongly thinks that abortion is not good policy, wrote those district attorneys throughout the State and told them they could not enforce the law.

Mr. ALEXANDER. So the point I am trying to make is, if I were to come before my colleagues today and we had no other——

Mr. SESSIONS. May I say one thing on that?

Mr. ALEXANDER. Of course.

Mr. SESSIONS. The pro-life groups in Alabama that supported Mr. Pryor criticized him for that letter, and the ACLU thanked him for it.

Mr. ALEXANDER. If we had never heard of this individual and someone came today and said he is attorney general of the State of Alabama, and he voluntarily scolded the State for still having interracial marriage words in the State constitution at a time when he really did not have to, who is enforcing the proceedings against a judge who has taken an overwhelmingly popular position about the Ten Commandments, who took to the Supreme Court a case that was adverse to the Republican Party of which he was a member, who advised the district attorneys they could not enforce a law about abortion that he personally disagreed with but he felt that the law required it, who wrote all of the schools

that they could not pray before a football game, where is someone going to find anybody who has more clearly proven that he or she is able to take personal positions and subjugate them to a willingness to enforce the law?

As I said earlier, this is not northern California or the Bronx we are talking about, even though those might be difficult positions in those States. He was taking positions that were contrary to virtually all of the people that he represented and against his own beliefs.

I am not sure the Senator from Alabama is even aware of this, but I was also a law clerk for Judge John Minor Wisdom of the Fifth Circuit Court of Appeals, as was Mr. Pryor. Judge Wisdom was one of the great judges of America. He was a part of the panel that ordered Ole Miss to admit James Meredith in 1962. He, along with Judge Elbert Tuttle of Atlanta, Richard Rives of Florida, and John R. Brown of Texas, presided over the peaceful desegregation of the South.

I want to be careful how I say this. I was technically not a law clerk. I was a messenger to Judge Wisdom in 1965 and 1966 because he already had one of the top graduates of Harvard, but he had a little money left for a messenger and he said he would treat me like a law clerk. So I am saying that so people will not think I am talking about myself.

All through the 1960s and 1970s and 1980s and 1990s, law graduates in America fought each other to be a law clerk for Judge Wisdom. I was lucky to be his messenger who was treated as a law clerk. He hired the best and the brightest. He was also a graduate of Tulane Law School. He would consider the editor in chief of the Tulane Law School to be one of the finest persons in America eligible for a law clerkship.

I can also guarantee that he would never have hired anyone as a law clerk who he did not think of as someone of the highest character, good intelligence, capacity to be a good lawyer and committed to civil rights and to the rights of the individual.

So something is really amiss in our system of approving judges when someone of the academic character and personal integrity of Mr. Pryor, who clearly is one of the finest lawyers in the country, who has taken a position contrary to the position of most of the people of the State he represents because he believes in the law, how could he not be confirmed by the Senate? What is it that causes our friends on the other side to pick someone like that out and seek to destroy him or turn him down?

I congratulate the Senator from Alabama for his vigorous advocacy of such an outstanding person, and I hope very much when the vote comes he will be confirmed.

Mr. SESSIONS. I remain and have always been impressed with the Senator from Tennessee since the day he came to the Senate. I did not know he clerked for or worked for Judge Wisdom. He gave some real insight into the prestige of an appointment to clerk for a judge like Judge Wisdom on the court of appeals, a very competitive thing.

Bill Pryor is one of the best lawyers in America, and these charges from People for the American Way that he tried to undermine the separation of church and State, he had a majoritarian ideology—actually, he stood firm for minorities and against the majority in many cases, as we just mentioned. They call him an extreme ideologue, a crusader to push the law far to the right. Anybody who knows him and knows the circumstances under which he has operated knows the courage he has shown and knows that these charges are just bogus. It is not fair, and we are doing that too often here.

I thank the Senator from Tennessee for his fine comments. I believe Bill Pryor is the most principled, committed lawyer I have known in this country. I know he would be a magnificent Federal judge, and we will make a big mistake if this body does not see fit to confirm him. He needs an up-or-down vote, and we will have that vote tomorrow to see if he gets an up-or-down vote. If he gets an up-or-down vote, he will be confirmed.

I yield the floor.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. The Senate stands adjourned until Thursday, November 6, at 9:30 a.m.

Thereupon, the Senate, at 7:14 p.m., adjourned until Thursday, November 6, 2003, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate November 5, 2003:

DEPARTMENT OF HOMELAND SECURITY

JAMES M. LOY, OF VIRGINIA, TO BE DEPUTY SECRETARY OF HOMELAND SECURITY, VICE GORDON ENGLAND, RESIGNED.

UNITED STATES INSTITUTE OF PEACE

LAURIE SUSAN FULTON, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 2007, VICE HARRIET M. ZIMMERMAN, TERM EXPIRED.

THE JUDICIARY

PETER G. SHERIDAN, OF NEW JERSEY, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY, VICE STEPHEN M. ORLOFSKY, RESIGNED.

WILLIAM S. DUFFEY, JR., OF GEORGIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF GEORGIA, VICE J. OWEN FORRESTER, RETIRING.

## CONFIRMATION

Executive nomination confirmed by the Senate November 5, 2003:

THE JUDICIARY

ROGER W. TITUS, OF MARYLAND, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND.