



United States  
of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 107<sup>th</sup> CONGRESS, SECOND SESSION

Vol. 148

WASHINGTON, WEDNESDAY, APRIL 24, 2002

No. 47

## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts.

### PRAYER

The guest Chaplain, Father Daniel P. Coughlin, Chaplain of the House of Representatives, offered the following prayer:

Lord God, we ask that your Holy Spirit will fill the hearts and minds of our Nation's leadership on this day. Bless them with sacred wisdom that they may truly lead us through the complex issues that confront our people. Give them the courage to hold to what they believe to be right, and the humility to receive more truth than they possess.

Most of all, O God, we ask that You will give these leaders Your own great dreams for our life together, dreams that are greater than party allegiances, and certainly greater than the ambition any individual would carry into this Chamber. By Your Holy Spirit accommodate Your will to our political process that it may be used to lead this Nation to a future which is filled with hope.

And when the day is done and the Chamber is again empty, may all who have come here to serve the Republic know that their work has not been in vain. Encourage them in the certain conviction that You will use this day to build Your own great kingdom on Earth. This we ask in the name of the Lord, whose way we prepare. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable EDWARD M. KENNEDY 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. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, April 24, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable EDWARD M. KENNEDY, a Senator from the State of Massachusetts, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. KENNEDY thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

### NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 517, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 517) to authorize funding for the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006 and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Landrieu/Kyl amendment No. 3050 (to amendment No. 2917), to increase the transfer capability of electric energy transmission systems through participant-funded investment.

Schumer/Clinton amendment No. 3093 (to amendment No. 2917), to prohibit oil and gas

drilling activity in Finger Lakes National Forest, New York.

Dayton amendment No. 3097 (to amendment No. 2917), to require additional findings for FERC approval of an electric utility merger.

Murkowski/Breaux/Stevens amendment No. 3132 (to amendment No. 2917), to create jobs for Americans, to reduce dependence on foreign sources of crude oil and energy, to strengthen the economic self determination of the Inupiat Eskimos and to promote national security.

Feinstein amendment No. 3225 (to amendment No. 2917), to modify the provision relating to the renewable content of motor vehicle fuel to eliminate the required volume of renewable fuel for calendar year 2004.

Feinstein amendment No. 3170 (to amendment No. 2917), to reduce the period of time in which the Administrator may act on a petition by 1 or more States to waive the renewable fuel content requirement.

Fitzgerald amendment No. 3124 (to amendment No. 2917), to modify the definitions of biomass and renewable energy to exclude municipal solid waste.

Cantwell amendment No. 3234 (to amendment No. 2917), to protect electricity consumers.

Amendment No. 3231, as modified, which was to have been printed in yesterday's RECORD, is as follows:

(Purpose: To clarify the structure for, and improve the focus of, global climate change science research)

On page 470, beginning with line 10, strike through line 7 on page 532 and insert the following:

### TITLE XIII—CLIMATE CHANGE SCIENCE AND TECHNOLOGY

#### Subtitle A—Department of Energy Programs SEC. 1301. DEPARTMENT OF ENERGY GLOBAL CHANGE RESEARCH.

(a) PROGRAM DIRECTION.—The Secretary, acting through the Office of Science, shall conduct a comprehensive research program to understand and address the effects of energy production and use on the global climate system.

(b) PROGRAM ELEMENTS.—

(1) CLIMATE MODELING.—The Secretary shall—

(A) conduct observational and analytical research to acquire and interpret the data needed to describe the radiation balance from the surface of the Earth to the top of the atmosphere;

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



Printed on recycled paper.

S3233

(B) determine the factors responsible for the Earth's radiation balance and incorporate improved understanding of such factors in climate models;

(C) improve the treatment of aerosols and clouds in climate models;

(D) reduce the uncertainty in decade-to-century model-based projections of climate change; and

(E) increase the availability and utility of climate change simulations to researchers and policy makers interested in assessing the relationship between energy and climate change.

(2) **CARBON CYCLE.**—The Secretary shall—

(A) carry out field research and modeling activities—

(i) to understand and document the net exchange of carbon dioxide between major terrestrial ecosystems and the atmosphere; or

(ii) to evaluate the potential of proposed methods of carbon sequestration;

(B) develop and test carbon cycle models; and

(C) acquire data and develop and test models to simulate and predict the transport, transformation, and fate of energy-related emissions in the atmosphere.

(3) **ECOLOGICAL PROCESSES.**—The Secretary shall carry out long-term experiments of the response of intact terrestrial ecosystems to—

(A) alterations in climate and atmospheric composition; or

(B) land-use changes that affect ecosystem extent and function.

(4) **INTEGRATED ASSESSMENT.**—The Secretary shall develop and improve methods and tools for integrated analyses of the climate change system from emissions of aerosols and greenhouse gases to the consequences of these emissions on climate and the resulting effects of human-induced climate change on economic and social systems, with emphasis on critical gaps in integrated assessment modeling, including modeling of technology innovation and diffusion and the development of metrics of economic costs of climate change and policies for mitigating or adapting to climate change.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—From amounts authorized under section 1251(b), there are authorized to be appropriated to the Secretary for carrying out activities under this section—

(1) \$150,000,000 for fiscal year 2003;

(2) \$175,000,000 for fiscal year 2004;

(3) \$200,000,000 for fiscal year 2005; and

(4) \$230,000,000 for fiscal year 2006.

(d) **LIMITATION ON FUNDS.**—Funds authorized to be appropriated under this section shall not be used for the development, demonstration, or deployment of technology to reduce, avoid, or sequester greenhouse gas emissions.

#### **SEC. 1302. AMENDMENTS TO THE FEDERAL NON-NUCLEAR RESEARCH AND DEVELOPMENT ACT OF 1974.**

Section 6 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5905) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “and” at the end;

(B) in paragraph (3) by striking the period at the end and inserting “, and”; and

(C) by adding at the end the following:

“(4) solutions to the effective management of greenhouse gas emissions in the long term by the development of technologies and practices designed to—

“(A) reduce or avoid anthropogenic emissions of greenhouse gases;

“(B) remove and sequester greenhouse gases from emissions streams; and

“(C) remove and sequester greenhouse gases from the atmosphere;” and

(2) in subsection (b)—

(A) in paragraph (2), by striking “subsection (a)(1) through (3)” and inserting “paragraphs (1) through (4) of subsection (a)”; and

(B) in paragraph (3)—

(i) in subparagraph (R), by striking “and” at the end;

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

(iii) by adding at the end the following:

“(T) to pursue a long-term climate technology strategy designed to demonstrate a variety of technologies by which stabilization of greenhouse gases might be best achieved, including accelerated research, development, demonstration and deployment of—

“(i) renewable energy systems;

“(ii) advanced fossil energy technology;

“(iii) advanced nuclear power plant design;

“(iv) fuel cell technology for residential, industrial and transportation applications;

“(v) carbon sequestration practices and technologies, including agricultural and forestry practices that store and sequester carbon;

“(vi) efficient electrical generation, transmission and distribution technologies; and

“(vii) efficient end use energy technologies.”.

#### **Subtitle B—Department of Agriculture Programs**

#### **SEC. 1311. CARBON SEQUESTRATION BASIC AND APPLIED RESEARCH.**

(a) **BASIC RESEARCH.**—

(1) **IN GENERAL.**—The Secretary of Agriculture shall carry out research in the areas of soil science that promote understanding of—

(A) the net sequestration of organic carbon in soil; and

(B) net emissions of other greenhouse gases from agriculture.

(2) **AGRICULTURAL RESEARCH SERVICE.**—The Secretary of Agriculture, acting through the Agricultural Research Service, shall collaborate with other Federal agencies in developing data and carrying out research addressing soil carbon fluxes (losses and gains) and net emissions of methane and nitrous oxide from cultivation and animal management activities.

(3) **COOPERATIVE STATE RESEARCH, EXTENSION, AND EDUCATION SERVICE.**—

(A) **IN GENERAL.**—The Secretary of Agriculture, acting through the Cooperative State Research, Extension, and Education Service, shall establish a competitive grant program to carry out research on the matters described in paragraph (1) in land grant universities and other research institutions.

(B) **CONSULTATION ON RESEARCH TOPICS.**—Before issuing a request for proposals for basic research under paragraph (1), the Cooperative State Research, Extension, and Education Service shall consult with the Agricultural Research Service to ensure that proposed research areas are complementary with and do not duplicate research projects underway at the Agricultural Research Service or other Federal agencies.

(b) **APPLIED RESEARCH.**—

(1) **IN GENERAL.**—The Secretary of Agriculture shall carry out applied research in the areas of soil science, agronomy, agricultural economics and other agricultural sciences to—

(A) promote understanding of—

(i) how agricultural and forestry practices affect the sequestration of organic and inorganic carbon in soil and net emissions of other greenhouse gases;

(ii) how changes in soil carbon pools are cost-effectively measured, monitored, and verified; and

(iii) how public programs and private market approaches can be devised to incorporate

carbon sequestration in a broader societal greenhouse gas emission reduction effort;

(B) develop methods for establishing baselines for measuring the quantities of carbon and other greenhouse gases sequestered; and

(C) evaluate leakage and performance issues.

(2) **REQUIREMENTS.**—To the maximum extent practicable, applied research under paragraph (1) shall—

(A) draw on existing technologies and methods; and

(B) strive to provide methodologies that are accessible to a nontechnical audience.

(3) **MINIMIZATION OF ADVERSE ENVIRONMENTAL IMPACTS.**—All applied research under paragraph (1) shall be conducted with an emphasis on minimizing adverse environmental impacts.

(4) **NATURAL RESOURCES CONSERVATION SERVICES.**—The Secretary of Agriculture, acting through the Natural Resources Conservation Service, shall collaborate with other Federal agencies, including the National Institute of Standards and Technology, in developing new measuring techniques and equipment or adapting existing techniques and equipment to enable cost-effective and accurate monitoring and verification, for a wide range of agricultural and forestry practices, of—

(A) changes in soil carbon content in agricultural soils, plants, and trees; and

(B) net emissions of other greenhouse gases.

(5) **COOPERATIVE STATE RESEARCH, EXTENSION, AND EDUCATION SERVICE.**—

(A) **IN GENERAL.**—The Secretary of Agriculture, acting through the Cooperative State Research, Extension, and Education Service, shall establish a competitive grant program to encourage research on the matters described in paragraph (1) by land grant universities and other research institutions.

(B) **CONSULTATION ON RESEARCH TOPICS.**—Before issuing a request for proposals for applied research under paragraph (1), the Cooperative State Research, Extension, and Education Service shall consult with the National Resources Conservation Service and the Agricultural Research Service to ensure that proposed research areas are complementary with and do not duplicate research projects underway at the Agricultural Research Service or other Federal agencies.

(c) **RESEARCH CONSORTIA.**—

(1) **IN GENERAL.**—The Secretary of Agriculture may designate not more than two research consortia to carry out research projects under this section, with the requirement that the consortia propose to conduct basic research under subsection (a) and applied research under subsection (b).

(2) **SELECTION.**—The consortia shall be selected in a competitive manner by the Cooperative State Research, Extension, and Education Service.

(3) **ELIGIBLE CONSORTIUM PARTICIPANTS.**—Entities eligible to participate in a consortium include—

(A) land grant colleges and universities;

(B) private research institutions;

(C) State geological surveys;

(D) agencies of the Department of Agriculture;

(E) research centers of the National Aeronautics and Space Administration and the Department of Energy;

(F) other Federal agencies;

(G) representatives of agricultural businesses and organizations with demonstrated expertise in these areas; and

(H) representatives of the private sector with demonstrated expertise in these areas.

(4) **RESERVATION OF FUNDING.**—If the Secretary of Agriculture designates one or two consortia, the Secretary of Agriculture shall reserve for research projects carried out by

the consortium or consortia not more than 25 percent of the amounts made available to carry out this section for a fiscal year.

(d) STANDARDS OF PRECISION.—

(1) CONFERENCE.—Not later than 3 years after the date of enactment of this subtitle, the Secretary of Agriculture, acting through the Agricultural Research Service and in consultation with the Natural Resources Conservation Service, shall convene a conference of key scientific experts on carbon sequestration and measurement techniques from various sectors (including the Government, academic, and private sectors) to—

(A) discuss benchmark standards of precision for measuring soil carbon content and net emissions of other greenhouse gases;

(B) designate packages of measurement techniques and modeling approaches to achieve a level of precision agreed on by the participants in the conference; and

(C) evaluate results of analyses on baseline, permanence, and leakage issues.

(2) DEVELOPMENT OF BENCHMARK STANDARDS.—

(A) IN GENERAL.—The Secretary shall develop benchmark standards for measuring the carbon content of soils and plants (including trees) based on—

(i) information from the conference under paragraph (1);

(ii) research conducted under this section; and

(iii) other information available to the Secretary.

(B) OPPORTUNITY FOR PUBLIC COMMENT.—The Secretary shall provide an opportunity for the public to comment on benchmark standards developed under subparagraph (A).

(3) REPORT.—Not later than 180 days after the conclusion of the conference under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry, of the Senate a report on the results of the conference.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 2003 through 2006.

(2) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, at least 50 percent shall be allocated for competitive grants by the Cooperative State Research, Extension, and Education Service.

**SEC. 1312. CARBON SEQUESTRATION DEMONSTRATION PROJECTS AND OUTREACH.**

(a) DEMONSTRATION PROJECTS.—

(1) DEVELOPMENT OF MONITORING PROGRAMS.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Natural Resources Conservation Service and in cooperation with local extension agents, experts from land grant universities, and other local agricultural or conservation organizations, shall develop user-friendly, programs that combine measurement tools and modeling techniques into integrated packages to monitor the carbon sequestering benefits of conservation practices and net changes in greenhouse gas emissions.

(B) BENCHMARK LEVELS OF PRECISION.—The programs developed under subparagraph (A) shall strive to achieve benchmark levels of precision in measurement in a cost-effective manner.

(2) PROJECTS.—

(A) IN GENERAL.—The Secretary of Agriculture, acting through the Farm Service Agency, shall establish a program under which projects use the monitoring programs developed under paragraph (1) to demonstrate the feasibility of methods of measuring, verifying, and monitoring—

(i) changes in organic carbon content and other carbon pools in agricultural soils, plants, and trees; and

(ii) net changes in emissions of other greenhouse gases.

(B) EVALUATION OF IMPLICATIONS.—The projects under subparagraph (A) shall include evaluation of the implications for reassessed baselines, carbon or other greenhouse gas leakage, and permanence of sequestration.

(C) SUBMISSION OF PROPOSALS.—Proposals for projects under subparagraph (A) shall be submitted by the appropriate agency of each State, in cooperation with interested local jurisdictions and State agricultural and conservation organizations.

(D) LIMITATION.—Not more than 10 projects under subparagraph (A) may be approved in conjunction with applied research projects under section 1311(b) until benchmark measurement and assessment standards are established under section 1311(d).

(E) NATIONAL FOREST SYSTEM LAND.—The Secretary of Agriculture shall consider the use of National Forest System land as sites to demonstrate the feasibility of monitoring programs developed under paragraph (1).

(b) OUTREACH.—

(1) IN GENERAL.—The Cooperative State Research, Extension, and Education Service shall widely disseminate information about the economic and environmental benefits that can be generated by adoption of conservation practices (including benefits from increased sequestration of carbon and reduced emission of other greenhouses gases).

(2) PROJECT RESULTS.—The Cooperative State Research, Extension, and Education Service shall inform farmers, ranchers, and State agricultural and energy offices in each State of—

(A) the results of demonstration projects under subsection (a)(2) in the State; and

(B) the ways in which the methods demonstrated in the projects might be applicable to the operations of those farmers and ranchers.

(3) POLICY OUTREACH.—On a periodic basis, the Cooperative State Research, Extension, and Education Service shall disseminate information on the policy nexus between global climate change mitigation strategies and agriculture, so that farmers and ranchers may better understand the global implications of the activities of farmers and ranchers.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 2003 through 2006.

(2) ALLOCATION.—Of the amounts made available to carry out this section for a fiscal year, at least 50 percent shall be allocated for demonstration projects under subsection (a)(2).

Subtitle C—International Energy Technology Transfer

**SEC. 1321. CLEAN ENERGY TECHNOLOGY EXPORTS PROGRAM.**

(a) DEFINITIONS.—In this section:

(1) CLEAN ENERGY TECHNOLOGY.—The term “clean energy technology” means an energy supply or end-use technology that, over its lifecycle and compared to a similar technology already in commercial use in developing countries, countries in transition, and other partner countries—

(A) emits substantially lower levels of pollutants or greenhouse gases; and

(B) may generate substantially smaller or less toxic volumes of solid or liquid waste.

(2) INTERAGENCY WORKING GROUP.—The term “interagency working group” means the Interagency Working Group on Clean Energy Technology Exports established under subsection (b).

(b) INTERAGENCY WORKING GROUP.—

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Secretary of Energy, the Secretary of Commerce, and the Administrator of the U.S. Agency for International Development shall jointly establish a Interagency Working Group on Clean Energy Technology Exports. The interagency working group will focus on opening and expanding energy markets and transferring clean energy technology to the developing countries, countries in transition, and other partner countries that are expected to experience, over the next 20 years, the most significant growth in energy production and associated greenhouse gas emissions, including through technology transfer programs under the Framework Convention on Climate Change, other international agreements, and relevant Federal efforts.

(2) MEMBERSHIP.—The interagency working group shall be jointly chaired by representatives appointed by the agency heads under paragraph (1) and shall also include representatives from the Department of State, the Department of Treasury, the Environmental Protection Agency, the Export-Import Bank, the Overseas Private Investment Corporation, the Trade and Development Agency, and other Federal agencies as deemed appropriate by all three agency heads under paragraph (1).

(3) DUTIES.—The interagency working group shall—

(A) analyze technology, policy, and market opportunities for international development, demonstration, and development of clean energy technology;

(B) investigate issues associated with building capacity to deploy clean energy technology in developing countries, countries in transition, and other partner countries, including—

(i) energy-sector reform;

(ii) creation of open, transparent, and competitive markets for energy technologies;

(iii) availability of trained personnel to deploy and maintain the technology; and

(iv) demonstration and cost-buydown mechanisms to promote first adoption of the technology;

(C) examine relevant trade, tax, international, and other policy issues to assess what policies would help open markets and improve U.S. clean energy technology exports in support of the following areas—

(i) enhancing energy innovation and cooperation, including energy sector and market reform, capacity building, and financing measures;

(ii) improving energy end-use efficiency technologies, including buildings and facilities, vehicle, industrial, and co-generation technology initiatives; and

(iii) promoting energy supply technologies, including fossil, nuclear, and renewable technology initiatives;

(D) establish an advisory committee involving the private sector and other interested groups on the export and deployment of clean energy technology;

(E) monitor each agency's progress towards meeting goals in the 5-year strategic plan submitted to Congress pursuant to the Energy and Water Development Appropriations Act, 2001, and the Energy and Water Development Appropriations Act, 2002;

(F) make recommendations to heads of appropriate Federal agencies on ways to streamline Federal programs and policies to improve each agency's role in the international development, demonstration, and deployment of clean energy technology;

(G) make assessments and recommendations regarding the distinct technological, market, regional, and stakeholder challenges necessary to carry out the program; and

(H) recommend conditions and criteria that will help ensure that United States funds promote sound energy policies in participating countries while simultaneously opening their markets and exporting United States energy technology.

(C) **FEDERAL SUPPORT FOR CLEAN ENERGY TECHNOLOGY TRANSFER.**—Notwithstanding any other provision of law, each Federal agency or Government corporation carrying out an assistance program in support of the activities of United States persons in the environment or energy sector of a developing country, country in transition, or other partner country shall support, to the maximum extent practicable, the transfer of United States clean energy technology as part of that program.

(d) **ANNUAL REPORT.**—Not later than 90 days after the date of the enactment of this Act, and on the April 1st of each year thereafter, 2002, and each year thereafter, the Interagency Working Group shall submit a report to Congress on its activities during the preceding calendar year. The report shall include a description of the technology, policy, and market opportunities for international development, demonstration, and deployment of clean energy technology investigated by the Interagency Working Group in that year, as well as any policy recommendations to improve the expansion of clean energy markets and U.S. clean energy technology exports.

(e) **REPORT ON USE OF FUNDS.**—Not later than October 1, 2002, and each year thereafter, the Secretary of State, in consultation with other Federal agencies, shall submit a report to Congress indicating how United States funds appropriated for clean energy technology exports and other relevant Federal programs are being directed in a manner that promotes sound energy policy commitments in developing countries, countries in transition, and other partner countries, including efforts pursuant to multilateral environmental agreements.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the departments, agencies, and entities of the United States described in subsection (b) such sums as may be necessary to support the transfer of clean energy technology, consistent with the subsidy codes of the World Trade Organization, as part of assistance programs carried out by those departments, agencies, and entities in support of activities of United States persons in the energy sector of a developing country, country in transition, or other partner country.

#### **SEC. 1322. INTERNATIONAL ENERGY TECHNOLOGY DEPLOYMENT PROGRAM.**

Section 1608 of the Energy Policy Act of 1992 (42 U.S.C. 13387) is amended by striking subsection (1) and inserting the following:

“(1) **INTERNATIONAL ENERGY TECHNOLOGY DEPLOYMENT PROGRAM.**—

“(1) **DEFINITIONS.**—In this subsection:

“(A) **INTERNATIONAL ENERGY DEPLOYMENT PROJECT.**—The term ‘international energy deployment project’ means a project to construct an energy production facility outside the United States—

“(i) the output of which will be consumed outside the United States; and

“(ii) the deployment of which will result in a greenhouse gas reduction per unit of energy produced when compared to the technology that would otherwise be implemented—

“(I) 10 percentage points or more, in the case of a unit placed in service before January 1, 2010;

“(II) 20 percentage points or more, in the case of a unit placed in service after December 31, 2009, and before January 1, 2020; or

“(III) 30 percentage points or more, in the case of a unit placed in service after December 31, 2019, and before January 1, 2030.

“(B) **QUALIFYING INTERNATIONAL ENERGY DEPLOYMENT PROJECT.**—The term ‘qualifying international energy deployment project’ means an international energy deployment project that—

“(i) is submitted by a United States firm to the Secretary in accordance with procedures established by the Secretary by regulation;

“(ii) uses technology that has been successfully developed or deployed in the United States;

“(iii) meets the criteria of subsection (k);

“(iv) is approved by the Secretary, with notice of the approval being published in the Federal Register; and

“(v) complies with such terms and conditions as the Secretary establishes by regulation.

“(C) **UNITED STATES.**—For purposes of this paragraph, the term ‘United States’, when used in a geographical sense, means the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(2) **PILOT PROGRAM FOR FINANCIAL ASSISTANCE.**—

“(A) **IN GENERAL.**—Not later than 180 days after the date of enactment of this subsection, the Secretary shall, by regulation, provide for a pilot program for financial assistance for qualifying international energy deployment projects.

“(B) **SELECTION CRITERIA.**—After consultation with the Secretary of State, the Secretary of Commerce, and the United States Trade Representative, the Secretary shall select projects for participation in the program based solely on the criteria under this title and without regard to the country in which the project is located.

“(C) **FINANCIAL ASSISTANCE.**—

“(i) **IN GENERAL.**—A United States firm that undertakes a qualifying international energy deployment project that is selected to participate in the pilot program shall be eligible to receive a loan or a loan guarantee from the Secretary.

“(ii) **RATE OF INTEREST.**—The rate of interest of any loan made under clause (i) shall be equal to the rate for Treasury obligations then issued for periods of comparable maturities.

“(iii) **AMOUNT.**—The amount of a loan or loan guarantee under clause (i) shall not exceed 50 percent of the total cost of the qualified international energy deployment project.

“(iv) **DEVELOPED COUNTRIES.**—Loans or loan guarantees made for projects to be located in a developed country, as listed in Annex I of the United Nations Framework Convention on Climate Change, shall require at least a 50 percent contribution towards the total cost of the loan or loan guarantee by the host country.

“(v) **DEVELOPING COUNTRIES.**—Loans or loan guarantees made for projects to be located in a developing country (those countries not listed in Annex I of the United Nations Framework Convention on Climate Change) shall require at least a 50 percent contribution towards the total cost of the loan or loan guarantee by the host country.

“(vi) **CAPACITY BUILDING RESEARCH.**—Proposals made for projects to be located in a developing country may include a research component intended to build technological capacity within the host country. Such research must be related to the technologies being deployed and must involve both an institution in the host country and an industry, university or national laboratory participant from the United States. The host institution shall contribute at least 50 percent of funds provided for the capacity building research.

“(D) **COORDINATION WITH OTHER PROGRAMS.**—A qualifying international energy deployment project funded under this section shall not be eligible as a qualifying clean coal technology under section 415 of the Clean Air Act (42 U.S.C. 7651n).

“(E) **REPORT.**—Not later than 5 years after the date of enactment of this subsection, the Secretary shall submit to the President a report on the results of the pilot projects.

“(F) **RECOMMENDATION.**—Not later than 60 days after receiving the report under subparagraph (E), the President shall submit to Congress a recommendation, based on the results of the pilot projects as reported by the Secretary of Energy, concerning whether the financial assistance program under this section should be continued, expanded, reduced, or eliminated.

“(3) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary to carry out this section \$100,000,000 for each of fiscal years 2003 through 2011, to remain available until expended.”

Subtitle D—Climate Change Science and Information

#### **PART I—AMENDMENTS TO THE GLOBAL CHANGE RESEARCH ACT OF 1990**

##### **SEC. 1331. AMENDMENT OF GLOBAL CHANGE RESEARCH ACT OF 1990.**

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

##### **SEC. 1332. CHANGES IN DEFINITIONS.**

Paragraph (1) of section 2 (15 U.S.C. 2921) is amended by striking “Earth and Environmental Sciences” inserting “Global Change Research”.

##### **SEC. 1333. CHANGE IN COMMITTEE NAME AND STRUCTURE.**

Section 102 (15 U.S.C. 2932) is amended—

(1) by striking “**EARTH AND ENVIRONMENT SCIENCES**” in section heading and inserting “**GLOBAL CHANGE RESEARCH**”;

(2) by striking “Earth and Environmental Sciences” in subsection (a) and inserting “Global Change Research”;

(3) by striking the last sentence of subsection (b) and inserting “The representatives shall be the Deputy Secretary or the Deputy Secretary’s designee (or, in the case of an agency other than a department, the deputy head of that agency or the deputy’s designee).”;

(4) by striking “Chairman of the Council,” in subsection (c) and inserting “Director of the Office of National Climate Change Policy with advice from the Chairman of the Council, and”;

(5) by redesignating subsection (d) and (e) as subsections (e) and (f), respectively; and

(6) by inserting after subsection (c) the following:

“(d) **SUBCOMMITTEES AND WORKING GROUPS.**—

“(1) **IN GENERAL.**—There shall be a Subcommittee on Global Change Research, which shall carry out such functions of the Committee as the Committee may assign to it.

“(2) **MEMBERSHIP.**—The membership of the Subcommittee shall consist of—

“(A) the membership of the Subcommittee on Global Change Research of the Committee on Environment and Natural Resources (the functions of which are transferred to the Subcommittee established by this subsection) established by the National Science and Technology Council; and

“(B) such additional members as the Chair of the Committee may, from time to time, appoint.

“(3) CHAIR.—A high ranking official of one of departments or agencies described in subsection (b), appointed by the Chair of the Committee with advice from the Chairman of the Council, shall chair the subcommittee. The Chairperson shall be knowledgeable and experienced with regard to the administration of the scientific research programs, and shall be a representative of an agency that contributes substantially, in terms of scientific research capability and budget, to the Program.”.

“(4) OTHER SUBCOMMITTEES AND WORKING GROUPS.—The Committee may establish such additional subcommittees and working groups as it sees fit.”.

#### SEC. 1334. CHANGE IN NATIONAL GLOBAL CHANGE RESEARCH PLAN.

Section 104 (15 U.S.C. 2934) is amended—

(1) by inserting “short-term and long-term” before “goals” in subsection (b)(1);

(2) by striking “usable information on which to base policy decisions related to” in subsection (b)(1) and inserting “information relevant and readily usable by local, State, and Federal decision-makers, as well as other end-users, for the formulation of effective decisions and strategies for measuring, predicting, preventing, mitigation, and adapting to”;

(3) by adding at the end of subsection (c) the following:

“(6) Methods for integration information to provide predictive and other tools for planning and decision making by governments, communities and the private sector.”;

(4) by striking subsection (d)(3) and inserting the following:

“(3) combine and interpret data from various sources to produce information readily usable by local, State, and Federal policy makers, and other end-users, attempting to formulate effective decisions and strategies for preventing, mitigating, and adapting to the effects of global change.”;

(5) by striking “and” in subsection (d)(2);

(6) by striking “change.” in subsection (d)(3) and inserting “change; and”;

(7) by adding at the end of subsection (d) the following:

“(4) establish a common assessment and modeling framework that may be used in both research and operations to predict and assess the vulnerability of natural and managed ecosystems and of human society in the context of other environmental and social changes.”; and

(8) by adding at the end the following:

“(g) STRATEGIC PLAN; REVISED IMPLEMENTATION PLAN.—The Chairman of the Council, through the Committee, shall develop a strategic plan for the United States Global Climate Change Research Program for the 10-year period beginning in 2002 and submit the plan to the Congress within 180 days after the date of enactment of the Global Climate Change Act of 2002. The Chairman, through the Committee, shall also submit revised implementation plans as required under subsection (a).”.

#### SEC. 1335. INTEGRATED PROGRAM OFFICE.

Section 105 (15 U.S.C. 2935) is amended—

(1) by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d), respectively; and

(2) inserting before subsection (b), as redesignated, the following:

“(a) INTEGRATED PROGRAM OFFICE.—

“(1) ESTABLISHMENT.—There is established in the Office of Science and Technology Policy an integrated program office for the global change research program.

“(2) ORGANIZATION.—The integrated program office established under paragraph (1) shall be headed by the associate director with responsibility for climate change

science and technology and shall include, to the maximum extent feasible, a representative from each Federal agency participating in the global change research program.

“(3) FUNCTION.—The integrated program office shall—

“(A) manage, working in conjunction with the Committee, interagency coordination and program integration of global change research activities and budget requests;

“(B) ensure that the activities and programs of each Federal agency or department participating in the program address the goals and objectives identified in the strategic research plan and interagency implementation plans;

“(C) ensure program and budget recommendations of the Committee are communicated to the President and are integrated into the climate change action strategy;

“(D) review, solicit, and identify, and allocate funds for, partnership projects that address critical research objectives or operational goals of the program, including projects that would fill research gaps identified by the program, and for which project resources are shared among at least two agencies participating in the program; and

“(E) review and provide recommendations on, in conjunction with the Committee, all annual appropriations requests from Federal agencies or departments participating in the program.”;

(3) by striking “Committee.” in paragraph (2) of subsection (c), as redesignated, and inserting “Committee and the Integrated Program Office.”; and

(4) by inserting “and the Integrated Program Office” after “Committee” in paragraph (1) of subsection (d), as redesignated.

#### SEC. 1336. RESEARCH GRANTS.

Section 105 (15 U.S.C. 2935) is amended—

(1) by redesignating subsection (c) as (d); and

(2) by inserting after subsection (b) the following:

“(c) RESEARCH GRANTS.—

“(1) COMMITTEE TO DEVELOP LIST OF PRIORITY RESEARCH AREAS.—The Committee shall develop a list of priority areas for research and development on climate change that are not being addressed by Federal agencies.

“(2) DIRECTOR OF OSTP TO TRANSMIT LIST TO NSF.—The Director of the Office of Science and Technology Policy shall transmit the list to the National Science Foundation.

“(3) FUNDING THROUGH NSF.—

“(A) BUDGET REQUEST.—The National Science Foundation shall include, as part of the annual request for appropriations for the Science and Technology Policy Institute, a request for appropriations to fund research in the priority areas on the list developed under paragraph (1).

“(B) AUTHORIZATION.—For fiscal year 2003 and each fiscal year thereafter, there are authorized to be appropriated to the National Science Foundation not less than \$17,000,000, to be made available through the Science and Technology Policy Institute, for research in those priority areas.”.

#### SEC. 1337. EVALUATION OF INFORMATION.

Section 106 (15 U.S.C. 2936) is amended—

(1) by striking “Scientific” in the section heading;

(2) by striking “and” after the semicolon in paragraph (2); and

(3) by striking “years.” in paragraph (3) and inserting “years; and”;

(4) by adding at the end the following:

“(4) evaluates the information being developed under this title, considering in particular its usefulness to local, State, and national decisionmakers, as well as to other stakeholders such as the private sector, after providing a meaningful opportunity for the

consideration of the views of such stakeholders on the effectiveness of the Program and the usefulness of the information.”.

#### PART II—NATIONAL CLIMATE SERVICES AND MONITORING

##### SEC. 1341. AMENDMENT OF NATIONAL CLIMATE PROGRAM ACT.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the National Climate Program Act (15 U.S.C. 2901 et seq.).

##### SEC. 1342. CHANGES IN FINDINGS.

Section 2 (15 U.S.C. 2901) is amended—

(1) by striking “Weather and climate change affect” in paragraph (1) and inserting “Weather, climate change, and climate variability affect public safety, environmental security, human health.”;

(2) by striking “climate” in paragraph (2) and inserting “climate, including seasonal and decadal fluctuations.”;

(3) by striking “changes.” in paragraph (5) and inserting “changes and providing free exchange of meteorological data.”; and

(4) by adding at the end the following:

“(7) The present rate of advance in research and development and application of such advances is inadequate and new developments must be incorporated rapidly into services for the benefit of the public.

“(8) The United States lacks adequate infrastructure and research to meet national climate monitoring and prediction needs.”.

##### SEC. 1343. TOOLS FOR REGIONAL PLANNING.

Section 5(d) (15 U.S.C. 2904(d)) is amended—

(1) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(2) by inserting after paragraph (3) the following:

“(4) methods for improving modeling and predictive capabilities and developing assessment methods to guide national, regional, and local planning and decision-making on land use, water hazards, and related issues.”;

(3) by inserting “sharing,” after “collection,” in paragraph (5), as redesignated;

(4) by striking “experimental” each place it appears in paragraph (9), as redesignated;

(5) by striking “preliminary” in paragraph (10), as redesignated;

(6) by striking “this Act,” the first place it appears in paragraph (10), as redesignated, and inserting “the Global Climate Change Act of 2002.”; and

(7) by striking “this Act,” the second place it appears in paragraph (10), as redesignated, and inserting “that Act.”.

##### SEC. 1344. AUTHORIZATION OF APPROPRIATIONS.

Section 9 (15 U.S.C. 2908) is amended—

(1) by striking “1979,” and inserting “2002.”;

(2) by striking “1980,” and inserting “2003.”;

(3) by striking “1981,” and inserting “2004.”; and

(4) by striking “\$25,500,000” and inserting “\$75,500,000”.

##### SEC. 1345. NATIONAL CLIMATE SERVICE PLAN.

The Act (15 U.S.C. 2901 et seq.) is amended by inserting after section 5 the following:

##### SEC. 6. NATIONAL CLIMATE SERVICE PLAN.

“Within 1 year after the date of enactment of the Global Climate Change Act of 2002, the Secretary of Commerce shall submit to the Senate Committee on Commerce, Science, and Transportation and the House Science Committee a plan of action for a National Climate Service under the National Climate Program. The plan shall set forth recommendations and funding estimates for—

“(1) a national center for operational climate monitoring and predicting with the

functional capacity to monitor and adjust observing systems as necessary to reduce bias;

“(2) the design, deployment, and operation of an adequate national climate observing system that builds upon existing environmental monitoring systems and closes gaps in coverage by existing systems;

“(3) the establishment of a national coordinated modeling strategy, including a national climate modeling center to provide a dedicated capability for climate modeling and a regular schedule of projections on a long and short term time schedule and at a range of spatial scales;

“(4) improvements in modeling and assessment capabilities needed to integrate information to predict regional and local climate changes and impacts;

“(5) in coordination with the private sector, improving the capacity to assess the impacts of predicted and projected climate changes and variations;

“(6) a program for long term stewardship, quality control, development of relevant climate products, and efficient access to all relevant climate data, products, and critical model simulations; and

“(7) mechanisms to coordinate among Federal agencies, State, and local government entities and the academic community to ensure timely and full sharing and dissemination of climate information and services, both domestically and internationally.”.

#### SEC. 1346. INTERNATIONAL PACIFIC RESEARCH AND COOPERATION.

The Secretary of Commerce, in cooperation with the Administrator of the National Aeronautics and Space Administration, shall conduct international research in the Pacific region that will increase understanding of the nature and predictability of climate variability in the Asia-Pacific sector, including regional aspects of global environmental change. Such research activities shall be conducted in cooperation with other nations of the region. There are authorized to be appropriated for purposes of this section \$1,500,000 to the National Oceanic and Atmospheric Administration, \$1,500,000 to the National Aeronautics and Space Administration, and \$500,000 for the Pacific ENSO Applications Center.

#### SEC. 1347. REPORTING ON TRENDS.

(a) **ATMOSPHERIC MONITORING AND VERIFICATION PROGRAM.**—The Secretary of Commerce, in coordination with relevant Federal agencies, shall, as part of the National Climate Service, establish an atmospheric monitoring and verification program utilizing aircraft, satellite, ground sensors, and modeling capabilities to monitor, measure, and verify atmospheric greenhouse gas levels, dates, and emissions. Where feasible, the program shall measure emissions from identified sources participating in the reporting system for verification purposes. The program shall use measurements and standards that are consistent with those utilized in the greenhouse gas measurement and reporting system established under subsection (a) and the registry established under section 1102.

(b) **ANNUAL REPORTING.**—The Secretary of Commerce shall issue an annual report that identifies greenhouse emissions and trends on a local, regional, and national level. The report shall also identify emissions or reductions attributable to individual or multiple sources covered by the greenhouse gas measurement and reporting system established under section 1102.

#### SEC. 1348. ARCTIC RESEARCH AND POLICY.

(a) **ARCTIC RESEARCH COMMISSION.**—Section 103(d) of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4102(d)) is amended—

(1) by striking “exceed 90 days” in the second sentence of paragraph (1) and inserting

“exceed, in the case of the chairperson of the Commission, 120 days, and, in the case of any other member of the Commission, 90 days.”;

(2) by striking “Chairman” in paragraph (2) and inserting “chairperson”.

(b) **GRANTS.**—Section 104 of the Arctic Research and Policy Act of 1984 (15 U.S.C. 4103) is amended by adding at the end the following:

“(c) **FUNDING FOR ARCTIC RESEARCH.**—

“(1) **IN GENERAL.**—With the prior approval of the commission, or under authority delegated by the Commission, and subject to such conditions as the Commission may specify, the Executive Director appointed under section 106(a) may—

“(A) make grants to persons to conduct research concerning the Arctic; and

“(B) make funds available to the National Science Foundation or to Federal agencies for the conduct of research concerning the Arctic.

“(2) **EFFECT OF ACTION BY EXECUTIVE DIRECTOR.**—An action taken by the executive director under paragraph (1) shall be final and binding on the Commission.

“(3) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Commission such sums as are necessary to carry out this section.”.

#### SEC. 1349. ABRUPT CLIMATE CHANGE RESEARCH.

(a) **IN GENERAL.**—The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall carry out a program of scientific research on potential abrupt climate change designed—

(1) to develop a global array of terrestrial and oceanographic indicators of paleoclimate in order sufficiently to identify and describe past instances of abrupt climate change;

(2) to improve understanding of thresholds and nonlinearities in geophysical systems related to the mechanisms of abrupt climate change;

(3) to incorporate these mechanisms into advanced geophysical models of climate change; and

(4) to test the output of these models against an improved global array of records of past abrupt climate changes.

(b) **ABRUPT CLIMATE CHANGE DEFINED.**—In this section, the term “abrupt climate change” means a change in climate that occurs so rapidly or unexpectedly that human or natural systems may have difficulty adapting to it.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Commerce \$10,000,000 for each of the fiscal years 2003 through 2008, and such sums as may be necessary for fiscal years after fiscal year 2008, to carry out subsection (a).

### PART III—OCEAN AND COASTAL OBSERVING SYSTEM

#### SEC. 1351. OCEAN AND COASTAL OBSERVING SYSTEM.

(a) **ESTABLISHMENT.**—The President, through the National Ocean Research Leadership Council, established by section 7902(a) of title 10, United States Code, shall establish and maintain an integrated ocean and coastal observing system that provides for long-term, continuous, and real-time observations of the oceans and coasts for the purposes of—

(1) understanding, assessing and responding to human-induced and natural processes of global change;

(2) improving weather forecasts and public warnings;

(3) strengthening national security and military preparedness;

(4) enhancing the safety and efficiency of marine operations;

(5) supporting efforts to restore the health of and manage coastal and marine ecosystems and living resources;

(6) monitoring and evaluating the effectiveness of ocean and coastal environmental policies;

(7) reducing and mitigating ocean and coastal pollution; and

(8) providing information that contributes to public awareness of the State and importance of the oceans.

(b) **COUNCIL FUNCTIONS.**—In addition to its responsibilities under section 7902(a) of such title, the Council shall be responsible for planning and coordinating the observing system and in carrying out this responsibility shall—

(1) develop and submit to the Congress, within 6 months after the date of enactment of this Act, a plan for implementing a national ocean and coastal observing system that—

(A) uses an end-to-end engineering and development approach to develop a system design and schedule for operational implementation;

(B) determines how current and planned observing activities can be integrated in a cost-effective manner;

(C) provides for regional and concept demonstration projects;

(D) describes the role and estimated budget of each Federal agency in implementing the plan;

(E) contributes, to the extent practicable, to the National Global Change Research Plan under section 104 of the Global Change Research Act of 1990 (15 U.S.C. 2934); and

(F) makes recommendations for coordination of ocean observing activities of the United States with those of other nations and international organizations;

(2) serve as the mechanism for coordinating Federal ocean observing requirements and activities;

(3) work with academic, State, industry and other actual and potential users of the observing system to make effective use of existing capabilities and incorporate new technologies;

(4) approve standards and protocols for the administration of the system, including—

(A) a common set of measurements to be collected and distributed routinely and by uniform methods;

(B) standards for quality control and assessment of data;

(C) design, testing and employment of forecast models for ocean conditions;

(D) data management, including data transfer protocols and archiving; and

(E) designation of coastal ocean observing regions; and

(5) in consultation with the Secretary of State, provide representation at international meetings on ocean observing programs and coordinate relevant Federal activities with those of other nations.

(c) **SYSTEM ELEMENTS.**—The integrated ocean and coastal observing system shall include the following elements:

(1) A nationally coordinated network of regional coastal ocean observing systems that measure and disseminate a common set of ocean observations and related products in a uniform manner and according to sound scientific practice, but that are adapted to local and regional needs.

(2) Ocean sensors for climate observations, including the Arctic Ocean and sub-polar seas.

(3) Coastal, relocatable, and cabled sea floor observatories.

(4) Broad bandwidth communications that are capable of transmitting high volumes of data from open ocean locations at low cost and in real time.

(5) Ocean data management and assimilation systems that ensure full use of new sources of data from space-borne and in situ sensors.

(6) Focused research programs.

(7) Technology development program to develop new observing technologies and techniques, including data management and dissemination.

(8) Public outreach and education.

#### SEC. 1352. AUTHORIZATION OF APPROPRIATIONS.

For development and implementation of an integrated ocean and coastal observation system under this title, including financial assistance to regional coastal ocean observing systems, there are authorized to be appropriated \$235,000,000 in fiscal year 2003, \$315,000,000 in fiscal year 2004, \$390,000,000 in fiscal year 2005, and \$445,000,000 in fiscal year 2006.

Subtitle E—Climate Change Technology

#### SEC. 1361. NIST GREENHOUSE GAS FUNCTIONS.

Section 2(c) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)) is amended—

(1) striking “and” after the semicolon in paragraph (21);

(2) by redesignating paragraph (22) as paragraph (23); and

(3) by inserting after paragraph (21) the following:

“(22) perform research to develop enhanced measurements, calibrations, standards, and technologies which will enable the reduced production in the United States of greenhouse gases associated with global warming, including carbon dioxide, methane, nitrous oxide, ozone, perfluorocarbons, hydrofluorocarbons, and sulfur hexafluoride; and”.

#### SEC. 1362. DEVELOPMENT OF NEW MEASUREMENT TECHNOLOGIES.

(a) IN GENERAL.—The Secretary of Commerce shall initiate a program to develop, with technical assistance from appropriate Federal agencies, innovative standards and measurement technologies (including technologies to measure carbon changes due to changes in land use cover) to calculate—

(1) greenhouse gas emissions and reductions from agriculture, forestry, and other land use practices;

(2) non-carbon dioxide greenhouse gas emissions from transportation;

(3) greenhouse gas emissions from facilities or sources using remote sensing technology; and

(4) any other greenhouse gas emission or reductions for which no accurate or reliable measurement technology exists.

#### SEC. 1363. ENHANCED ENVIRONMENTAL MEASUREMENTS AND STANDARDS

The National Institute of Standards and Technology Act (15 U.S.C. 271 et seq.) is amended—

(1) by redesignating sections 17 through 32 as sections 18 through 33, respectively; and

(2) by inserting after section 16 the following:

#### “SEC. 17. CLIMATE CHANGE STANDARDS AND PROCESSES.

“(a) IN GENERAL.—The Director shall establish within the Institute a program to perform and support research on global climate change standards and processes, with the goal of providing scientific and technical knowledge applicable to the reduction of greenhouse gases (as defined in section 4 of the Global Climate Change Act of 2002).

“(b) RESEARCH PROGRAM.—

“(1) IN GENERAL.—The Director is authorized to conduct, directly or through contracts or grants, a global climate change standards and processes research program.

“(2) RESEARCH PROJECTS.—The specific contents and priorities of the research program shall be determined in consultation with appropriate Federal agencies, including the Environmental Protection Agency, the National Oceanic and Atmospheric Administra-

tion, and the National Aeronautics and Space Administration. The program generally shall include basic and applied research—

“(A) to develop and provide the enhanced measurements, calibrations, data, models, and reference material standards which will enable the monitoring of greenhouse gases;

“(B) to assist in establishing of a baseline reference point for future trading in greenhouse gases and the measurement of progress in emissions reduction;

“(C) that will be exchanged internationally as scientific or technical information which has the stated purpose of developing mutually recognized measurements, standards, and procedures for reducing greenhouses gases; and

“(D) to assist in developing improved industrial processes designed to reduce or eliminate greenhouse gases.

“(c) NATIONAL MEASUREMENT LABORATORIES.—

“(1) IN GENERAL.—In carrying out this section, the Director shall utilize the collective skills of the National Measurement Laboratories of the National Institute of Standards and Technology to improve the accuracy of measurements that will permit better understanding and control of these industrial chemical processes and result in the reduction or elimination of greenhouse gases.

“(2) MATERIAL, PROCESS, AND BUILDING RESEARCH.—The National Measurement Laboratories shall conduct research under this subsection that includes—

“(A) developing material and manufacturing processes which are designed for energy efficiency and reduced greenhouse gas emissions into the environment;

“(B) developing environmentally-friendly, ‘green’ chemical processes to be used by industry; and

“(C) enhancing building performance with a focus in developing standards or tools which will help incorporate low or no-emission technologies into building designs.

“(3) STANDARDS AND TOOLS.—The National Measurement Laboratories shall develop standards and tools under this subsection that include software to assist designers in selecting alternate building materials, performance data on materials, artificial intelligence-aided design procedures for building sub-systems and ‘smart buildings’, and improve test methods and rating procedures for evaluating the energy performance of residential and commercial appliances and products.

“(d) NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM.—The Director shall utilize the National Voluntary Laboratory Accreditation Program under this section to establish a program to include specific calibration or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in measuring the production of greenhouse gases. In carrying out this subsection the Director may cooperate with other departments and agencies of the Federal Government, State and local governments, and private organizations.”.

#### SEC. 1364. TECHNOLOGY DEVELOPMENT AND DIFFUSION.

The Director of the National Institute of Standards and Technology, through the Manufacturing Extension Partnership Program, may develop a program to support the implementation of new “green” manufacturing technologies and techniques by the more than 380,000 small manufacturers.

#### SEC. 1365. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director to carry out functions pursuant to sections 1345, 1351, and 1361 through 1363, \$10,000,000 for fiscal years 2002 through 2006.

Subtitle F—Climate Adaptation and Hazards Prevention

#### PART I—ASSESSMENT AND ADAPTATION

#### SEC. 1371. REGIONAL CLIMATE ASSESSMENT AND ADAPTATION PROGRAM.

(a) IN GENERAL.—The President shall establish within the Department of Commerce a National Climate Change Vulnerability and Adaptation Program for regional impacts related to increasing concentrations of greenhouse gases in the atmosphere and climate variability.

(b) COORDINATION.—In designing such program the Secretary shall consult with the Federal Emergency Management Agency, the environmental Protection Agency, the Army Corps of Engineers, the Department of Transportation, and other appropriate Federal, State, and local government entities.

(c) VULNERABILITY ASSESSMENTS.—The program shall—

(1) evaluate, based on predictions and other information developed under this Act and the National Climate Program Act (15 U.S.C. 2901 et seq.), regional vulnerability to phenomena associated with climate change and climate variability, including—

(A) increases in severe weather events;

(B) sea level rise and shifts in the hydrological cycle;

(C) natural hazards, including tsunami, drought, flood and fire; and

(D) alteration of ecological communities including at the ecosystem or watershed levels; and

(2) build upon predictions and other information developed in the National Assessments prepared under the Global Change Research Act of 1990 (15 U.S.C. 2921 et seq.).

(d) PREPAREDNESS RECOMMENDATIONS.—The program shall submit a report to Congress within 2 years after the date of enactment of this Act that identifies and recommends implementation and funding strategies for short- and long-term actions that may be taken at the national, regional, State, and local level—

(1) to reduce vulnerability of human life and property;

(2) to improve resilience to hazards;

(3) to minimize economic impacts; and

(4) to reduce threats to critical biological ecological processes.

(e) INFORMATION AND TECHNOLOGY.—The Secretary shall make available appropriate information and other technologies and products that will assist national, regional, State, and local efforts, as well as efforts by other end-users, to reduce loss of life and property, and coordinate dissemination of such technologies and products.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce \$4,500,000 to implement the requirements of this section.

#### SEC. 1372. COASTAL VULNERABILITY AND ADAPTATION.

(a) COASTAL VULNERABILITY.—Within 2 years after the date of enactment of this Act, the Secretary shall, in consultation with the appropriate Federal, State, and local governmental entities, conduct regional assessments of the vulnerability of coastal areas to hazards associated with climate change, climate variability, sea level rise, and fluctuation of Great Lakes water levels. The Secretary may also establish, as warranted, longer term regional assessment programs. The Secretary may also consult with the governments of Canada and Mexico as appropriate in developing such regional assessments. In preparing the regional assessments, the Secretary shall collect and compile current information on climate change, sea level rise, natural hazards, and coastal erosion and mapping, and specifically address impacts on Arctic regions and



the Central, Western, and South Pacific regions. The regional assessments shall include an evaluation of—

(1) social impacts associated with threats to and potential losses of housing, communities, and infrastructure;

(2) physical impacts such as coastal erosion, flooding and loss of estuarine habitat, saltwater intrusion of aquifers and saltwater encroachment, and species migration; and

(3) economic impact on local, State, and regional economics, including the impact on abundance or distribution of economically important living marine resources.

(b) **COASTAL ADAPTATION PLAN.**—The Secretary shall, within 3 years after the date of enactment of this Act, submit to the Congress a national coastal adaptation plan, composed of individual regional adaptation plans that recommend targets and strategies to address coastal impacts, associated with climate change, sea level rise, or climate variability. The plan shall be developed with the participation of other Federal, State, and local government agencies that will be critical in the implementation of the plan at the State and local levels. The regional plans that will make up the national coastal adaptation plan shall be based on the information contained in the regional assessments and shall identify special needs associated with Arctic areas and the Central, Western, and South Pacific regions. The Plan shall recommend both short- and long-term adaptation strategies and shall include recommendations regarding—

(1) Federal flood insurance program modifications;

(2) areas that have been identified as high risk through mapping and assessment;

(3) mitigation incentives such as rolling easements, strategic retreat, State or Federal acquisition in fee simple or other interest in land, construction standards, and zoning;

(4) land and property owner education;

(5) economic planning for small communities dependent upon affected coastal resources, including fisheries; and

(6) funding requirements and mechanisms.

(c) **TECHNICAL PLANNING ASSISTANCE.**—The Secretary, through the National Ocean Service, shall establish a coordinated program to provide technical planning assistance and products to coastal States and local governments as they develop and implement adaptation or mitigation strategies and plans. Products, information, tools and technical expertise generated from the development of the regional assessments and the regional adaptation plans will be made available to coastal States for the purposes of developing their own State and local plans.

(d) **COASTAL ADAPTATION GRANTS.**—The Secretary shall provide grants of financial assistance to coastal States with federally approved coastal zone management programs to develop and begin implementing coastal adaptation programs if the State provides a Federal-to-State match of 4 to 1 in the first fiscal year, 2.3 to 1 in the second fiscal year, 2 to 1 in the third fiscal year, and 1 to 1 thereafter. Distribution of these funds to coastal States shall be based upon the formula established under section 306(c) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455(c)), adjusted in consultation with the States as necessary to provide assistance to particularly vulnerable coastlines.

(e) **COASTAL RESPONSE PILOT PROGRAM.**—

(1) **IN GENERAL.**—The Secretary shall establish a 4-year pilot program to provide financial assistance to coastal communities most adversely affected by the impact of climate change or climate variability that are located in States with federally approved coastal zone management programs.

(2) **ELIGIBLE PROJECTS.**—A project is eligible for financial assistance under the pilot program if it—

(A) will restore or strengthen coastal resources, facilities, or infrastructure that have been damaged by such an impact, as determined by the Secretary;

(B) meets the requirements of the Coastal Zone Management Act (16 U.S.C. 1451 et seq.) and is consistent with the coastal zone management plan of the State in which it is located; and

(C) will not cost more than \$100,000.

(3) **FUNDING SHARE.**—The Federal funding share of any project under this subsection may not exceed 75 percent of the total cost of the project. In the administration of this paragraph—

(A) the Secretary may take into account in-kind contributions and other non-cash support or any project to determine the Federal funding share for that project; and

(B) the Secretary may waive the requirements of this paragraph for a project in a community if—

(i) the Secretary determines that the project is important; and

(ii) the economy and available resources of the community in which the project is to be conducted are insufficient to meet the non-Federal share of the project's costs.

(f) **DEFINITIONS.**—Any term used in this section that is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) has the meaning given it by that section.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$3,000,000 annually for regional assessments under subsection (a), and \$3,000,000 annually for coastal adaptation grants under subsection (d).

#### **SEC. 1373. ARCTIC RESEARCH CENTER.**

(a) **ESTABLISHMENT.**—The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility, to be known as the Barrow Arctic Research Center, to support climate change and other scientific research activities in the Arctic.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, \$35,000,000 for the planning, design, construction, and support of the Barrow Arctic Research Center.

#### **PART II—FORECASTING AND PLANNING PILOT PROGRAMS**

#### **SEC. 1381. REMOTE SENSING PILOT PROJECTS.**

(a) **IN GENERAL.**—The Administrator of the National Aeronautics and Space Administration may establish, through the National Oceanic and Atmospheric Administration's Coastal Services Center, a program of grants for competitively awarded pilot projects to explore the integrated use of sources of remote sensing and other geospatial information to address State, local, regional, and tribal agency needs to forecast a plan for adaptation to coastal zone and land use changes that may result as a consequence of global climate change or climate variability.

(B) **PREFERRED PROJECTS.**—In awarding grants under this section, the Center shall give preference to projects that—

(1) focus on areas that are most sensitive to the consequences of global climate change or climate variability;

(2) make use of existing public or commercial data sets;

(3) integrate multiple sources of geospatial information, such as geographic information system data, satellite-provided positioning data, and remotely sensed data, in innovative ways;

(4) offer diverse, innovative approaches that may serve as models for establishing a future coordinated framework for planning strategies for adaptation to coastal zone and land use changes related to global climate change or climate variability;

(5) include funds or in-kind contributions from non-Federal sources;

(6) involve the participation of commercial entities that process raw or lightly processed data, often merging that data with other geospatial information, to create data products that have significant value added to the original data; and

(7) taken together demonstrate as diverse a set of public sector applications as possible.

(c) **OPPORTUNITIES.**—In carrying out this section, the Center shall seek opportunities to assist—

(1) in the development of commercial applications potentially available from the remote sensing industry; and

(2) State, local, regional, and tribal agencies in applying remote sensing and other geospatial information technologies for management and adaption to coastal and land use consequences of global climate change or climate variability.

(d) **DURATION.**—Assistance for a pilot project under subsection (a) shall be provided for a period of not more than 3 years.

(e) **RESPONSIBILITIES OF GRANTEEES.**—Within 180 days after completion of a grant project, each recipient of a grant under subsection (a) shall transmit a report to the Center on the results of the pilot project and conduct at least one workshop for potential users to disseminate the lessons learned from the pilot project as widely as feasible.

(f) **REGULATIONS.**—The Center shall issue regulations establishing application, selection, and implementation procedures for pilot projects, and guidelines for reports and workshops require by this section.

#### **SEC. 1382. DATABASE ESTABLISHMENT.**

The Center shall establish and maintain an electronic, Internet-accessible database of the results of each pilot project completed under section 1381.

#### **SEC. 1383. DEFINITIONS.**

In this subtitle:

(1) **CENTER.**—The term "Center" means the Coastal Services Center of the National Oceanic and Atmospheric Administration.

(2) **GEOSPATIAL INFORMATION.**—The term "geospatial information" means knowledge of the nature and distribution of physical and cultural features on the landscape based on analysis of data from airborne or spaceborne platforms or other types and sources of data.

(3) **INSTITUTION OF HIGHER EDUCATION.**—The term "institution of higher education" has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

#### **SEC. 1384. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Administrator to carry out the provisions of this subtitle—

(1) \$17,500,000 for fiscal year 2003;

(2) \$20,000,000 for fiscal year 2004;

(3) \$22,500,000 for fiscal year 2005; and

(4) \$25,000,000 for fiscal year 2006.

#### **SEC. 1385. AIR QUALITY RESEARCH, FORECASTS AND WARNINGS.**

(a) **REGIONAL STUDIES.**—The Secretary of Commerce, through the Administration of the National Oceanographic and Atmospheric Administration, shall, in order of priority as listed in section (c), conduct regional studies of the air quality within specific regions of the United States. Such studies should assess the effect of in-situ emissions of air pollutants and their precursors, transport of such emissions and precursors from outside the region, and production of



air pollutants with region via chemical reactions.

(b) FORECASTS AND WARNINGS.—The Secretary of Commerce, through the Administrator of the National Oceanographic and Atmospheric Administration, shall, in order of priority as listed in section (c), establish a program to provide operational air quality forecasts and warnings for specific regions of the United States.

(c) DEFINITION.—For the purposes of this section, the term “specific regions of the United States” means the following geographical areas:

(1) the Northeast, composed of Main, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, the District of Columbia, and West Virginia;

(2) the Southeast, composed of Virginia, North Carolina, South Carolina, Georgia, Alabama, and Florida;

(3) the Midwest, composed of Minnesota, Wisconsin, Iowa, Missouri, Illinois, Kentucky, Indiana, Ohio, and Michigan;

(4) the South, composed of Tennessee, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas;

(5) the High Plains, composed of North Dakota, South Dakota, Nebraska, and Kansas;

(6) the Northwest, composed of Washington, Oregon, Idaho, Montana, and Wyoming;

(7) the Southwest, composed of California, Nevada, Utah, Colorado, Arizona, and New Mexico;

(8) Alaska; and

(9) Hawaii.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce \$3,000,000 for each of fiscal years 2003 through 2006 for studies pursuant to subsection (b) of this section, and \$5,000,000 for fiscal year 2003 and such sums as may be necessary for subsequent fiscal years for the forecast and warning program pursuant to subsection (c) of this section.

The text of submitted amendment No. 3274, as modified, which was to have been printed in yesterday's RECORD, is as follows:

(Purpose: To increase the transfer capability of electric energy transmission systems through participant-funded investment)

At the appropriate place, insert the following:

#### SEC. . TRANSMISSION EXPANSION.

Section 205 of the Federal Power Act is amended by inserting after subsection (h) the following:

“(i) RULEMAKING.—Within six months of Enactment of this Act, the Commission shall issue final rules governing the pricing of transmission services.

“(1) TRANSMISSION PRICING PRINCIPLES.—Rules for transmission pricing issued by the Commission under this subsection shall adhere to the following principles:

“(A) transmission pricing must provide accurate and proper price signals for the efficient and reliable use and expansion of the transmission system; and

“(B) new transmission facilities should be funded by those parties who benefit from such facilities.

“(2) FUNDING OF CERTAIN FACILITIES.—The rules established pursuant to this subsection shall, among other things, provide that, upon request of a regional transmission organization or other Commission-approved transmission organization, certain new transmission facilities that increase the transfer capability of the transmission system may be Participant Funded. In such rules, the Commission shall also provide

guidance as to what types of facilities may be participant funded.

“(3) PARTICIPANT-FUNDING.—The term ‘participant-funding’ means an investment in the transmission system controlled by a RTO, made after the date that the RTO or other transmission organization is approved by the Commission, that—

“(A) increases the transfer capability of the transmission system; and

“(B) is funded by the entities that, in return for payment, receives the tradable transmission rights created by the investment.

“(4) TRADABLE TRANSMISSION RIGHT.—The term ‘tradable transmission right’ means the right of the holder of such right to avoid payment of, or have rebated, transmission congestion charges on the transmission system of a regional transmission organization, the right to use a specified capacity of such transmission system without payment of transmission congestion charges, or other rights as determined by the Commission.”.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, as the Chair has announced, we have resumed consideration of the energy reform bill. Members know there are 18 hours remaining postcloture, after the cloture vote that took place yesterday. There will be rollcall votes in relation to amendments to the bill throughout the day. First-degree amendments to the Baucus language in the energy reform bill must be filed prior to 1 p.m. today.

Mr. President, the Senator from Washington was next in order. Her amendment is pending.

I ask, with the consent of the managers, that that amendment be set aside and that we proceed to the Nelson-Craig amendment dealing with hydro.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I rise today in support of my amendment to title III dealing with hydroelectric license improvement. This is an issue of vital importance to the electricity consumers of Nebraska and I ask unanimous consent to call up amendment No. 3140.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

Mr. REID. Mr. President, that requires unanimous consent, does it not?

The ACTING PRESIDENT pro tempore. It does require that we set aside the current amendment. Does the Senator request we temporarily set aside the current amendment?

Mr. NELSON of Nebraska. I request that we set aside the pending amendment.

Mr. REID. Mr. President, reserving right to object, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. EDWARDS). Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the Senate now return to the consideration of the Cantwell amendment which is the matter that was pending when we started this morning.

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

The Senator from Washington.

AMENDMENT NO. 3234

Ms. CANTWELL. Mr. President, I rise today to speak about my electricity consumer protection amendment to improve what I believe is a flawed deregulation provision in the underlying energy bill.

It is not widely known that the electricity title of this bill includes a new provision to further deregulate our energy markets. Indeed, many of these provisions were included, I believe, without adequate consideration and review by this body.

For the first time this bill gives the Federal Energy Regulatory Commission the statutory authority to allow market-based rates, a key component of deregulation. It also lowers the standard by which mergers of utilities can take place, and it repeals a current law that has been the cornerstone of consumer protection.

Given the sweeping changes in this bill, I think it is important that we proceed cautiously on this path, and that we put safeguards in place, which my amendment does, to protect consumers as FERC is given this new responsibility.

After last year's energy crisis, we should be asking ourselves, how do we better protect consumers, not how do we loosen the rules for utility companies so that they can have better controls in the marketplace.

My amendment is written to protect consumers basically across the country from the same mishaps that happened in the western markets that have caused consumers in the West so much harm. After all we learned from the energy crisis and the collapse of Enron, it is plain that we need to move forward and set a clear set of rules to ensure that, in deregulated markets, consumers are protected. The fact is that consumers deserve efficient electricity markets with adequate protections and efficient oversight.

As the bill now stands, we are giving the Enrons of the world more power to manipulate markets. In fact, without this consumer protection amendment this bill sends some of those people the opportunity, I believe, to actually end up overcharging consumers.

These are commonsense ideas and that is why this amendment has gained support from a wide range of consumer, industry, local government and environmental groups. They are united behind the idea that consumers should be protected as this bill moves towards deregulation.

I am pleased to be joined by Senators DAYTON, WELLSTONE, FEINGOLD, BOXER,

WYDEN, MURRAY, and STABENOW in this effort.

Groups ranging from AARP to the American Public Power Association, to the Consumers Union and the Sierra Club, to the U.S. Conference of Mayors stand behind the consumer protection measures in this amendment.

I ask unanimous consent that a full list of the organizations which support this legislation be printed in the RECORD.

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

#### SUPPORT THE CONSUMER PROTECTION PACKAGE

Amendment No. 3097, offered by Senators Dayton, Wellstone, Feingold, Cantwell, Boxer and Wyden, would add crucial consumer protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

Air Conditioning Contractors of America.  
American Association of Retired Persons.  
American Public Power Association.  
Consumer Federation of America.  
Consumers for Fair Competition.  
Consumers Union.  
Electricity Consumers Resource Council.  
National Association of State Utility Consumer Advocates.

National Environmental Trust.  
National League of Cities.  
National Rural Electric Cooperatives Association.

Natural Resources Defense Council.  
Physicians for Social Responsibility.  
Public Citizen.  
Sierra Club.  
Transmission Access Policy Study Group.  
U.S. Conference of Mayors.  
Union of Concerned Scientists.  
U.S. Public Interest Research Group.  
Vote "yes" on the Consumer Protection Package.

Ms. CANTWELL. Mr. President, their voice is loud and clear. After last year's energy crisis, it is unacceptable to launch a new round of deregulation without first putting in place adequate consumer protections.

I would like to read from a letter signed by the Consumers Union, Sierra Club, NRDC, Consumer Federation of America, and others. It reads:

This amendment would add important and much-needed protections to legislation that actually repeals already weak consumer protections in current law. S. 517 repeals most of the Public Utility Holding Company Act (PUHCA), including provisions that have been in place for over six decades, and does almost nothing to ensure that consumer protections will be maintained. Now, with the exposure of Enron's questionable trading deals, we need these protections more than ever to prevent energy companies from manipulating prices and supply. We need to strengthen consumer protections, not weaken them.

Consumers for Fair Competition wrote:

In the wake of the West Coast electricity crisis and Enron collapse, Congress should only pass electricity legislation if it takes needed steps to protect consumers and prevent a repetition of these crises.

I ask unanimous consent to have printed in the RECORD letters of support that I have received from these organizations.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

APRIL 15, 2002.

#### DEFEND ELECTRICITY CONSUMERS' RIGHTS—SUPPORT THE CONSUMER PROTECTION PACKAGE: S.A. 3097 TO S. 517

DEAR SENATOR: We are writing to urge you to support S.A. 3097, the consumer protection amendment to the Senate energy bill (S. 517), offered by Senators Dayton, Wellstone, Feingold, Cantwell, Boxer, and Wyden. This amendment would add important and much-needed protections to legislation that actually repeals already weak consumer protections in current law. S. 517 repeals most of the Public Utility Holding Company Act (PUHCA), including provisions that have been in place for over six decades, and does almost nothing to ensure that consumer protections will be maintained. Now, with the exposure of Enron's questionable trading deals, we need these protections more than ever to prevent energy companies from manipulating prices and supply. We need to strengthen consumer protections, not weaken them.

This consumer protection package would: Ensure that mergers in the energy sector "advance the public interest," based on objective criteria that would be evaluated by the Federal Energy Regulatory Commission (FERC). In repealing the higher merger standards of PUHCA, S. 517 would simply require a determination for a merger approval that the merger is "consistent with the public interest." Given the wave of mergers sweeping through the electric industry and the collapse of meaningful competition in California and other states, we believe that a more protective standard is necessary to adequately protect consumers from abuse. FERC must hold the public interest paramount in evaluating any potential energy company mergers. The amendment would: establish criteria for FERC to consider in order to determine that a merger would "advance the public interest," including efficiency gains, impact on competition, and its ability to effectively regulate the industry; clarify that these provisions would apply to all potential financial arrangements (not just stock acquisitions) which could lead to exertion of control over the entity, including partnerships; and clarify that FERC review applies to all electric and gas combinations.

Direct FERC to precisely define a competitive market and establish rules for when market-based rates will be permitted. In addition, it would put in place market monitoring procedures so that FERC can better detect problems before they lead to a complete breakdown in the market, and give FERC more authority to take action to protect consumers when the market is failing. This change is necessary to ensure that electricity suppliers do not continue to manipulate the market to the detriment of consumers, as they did in the western electricity market in 2000–2001.

Require that transactions between utilities and their affiliates be transparent, and it would shield consumers from the costs and risks of these transactions. It provides for FERC review of utility diversification efforts so that consumers are not victims of abusive affiliate transactions.

Require that state and federal regulators have enhanced access to books and records. It would require FERC, in consultation with state commissions, to conduct triennial audits of the books and records of holding companies. Regulators could initiate proceedings based upon their reviews and violations could be corrected earlier, minimizing the damage done to consumers. Since holding companies would be responsible for paying

the cost of the audits, regulators would have adequate resources to do their job. Enhanced access to books and records is critical to avoid further Enron-like collapses.

Help ensure fair and functional markets, increasing the likelihood that energy companies will invest in new, innovative, and clean technologies such as solar and wind power.

Consumers have been grossly and unacceptably short-changed in the Senate energy bill. S.A. 3097 will begin to rectify the problems this bill creates for consumers. Federal energy legislation should increase, not decrease, consumers' economic and energy security. Please adopt this basic consumer protection package to address these serious consumer concerns.

Sincerely,

Adam J. Goldberg, Policy Analyst, Consumers Union.

Mark N. Cooper, Director of Research, Consumer Federation of America.

Alyssandra Campaigne, Legislative Director, Natural Resources Defense Council.

Kevin S. Curtis, Vice President, Government Affairs, National Environmental Trust.

Susan West Marmagas, Director, Environment and Health Programs, Physicians for Social Responsibility.

Debbie Boger, Senior Washington Representative, Sierra Club.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

Alden Meyer, Director of Government Relations, Union of Concerned Scientists.

Wenonah Hauter, Director, Public Citizen's Critical Mass Energy and Environment Program.

#### NATIONAL ALLIANCE FOR FAIR COMPETITION,

Washington, DC, April 12, 2002.

DEAR SENATOR: The National Alliance for Fair Competition (NAFC), a coalition of national trade associations representing over 25,000 individual firms, mostly family owned and operated small businesses, is deeply concerned about the present direction of energy legislation, S. 517, in light of recent West Coast power problems and the collapse of Enron. As it now stands, the electricity portion (Title II) of this bill fails to adequately address issues of market power and abusive affiliate transactions.

NAFC is also concerned about lack of opportunity to thoroughly explore the implications and consequences of Title II through the full committee process. Had the committee process not been circumvented, there would have been ample opportunity to craft language to protect consumers and preserve true competition. Regrettably, Title II of S. 517 increases the potential for abuses in these areas—by, among other things, repealing the Public Utility Holding Company Act (PUHCA)—without providing needed offsetting protections.

Senators Cantwell, Wellstone, Dayton, Feingold and Boxer will offer a package of provisions to protect electricity consumers and ensure fair and effective oversight of electricity markets. The package will:

Require that proposed utility mergers promote the public interest in order to be approved;

Establish clear rules—and enforcement—for when market rates can be charged to prevent a repeat of soaring electricity rates when markets are not truly competitive;

Protect consumers from assuming the cost and risks of utility diversifications into non-utility businesses;

Prevent utilities from subsidizing affiliate ventures and competing unfairly with independent businesses;

Provide effective review of utility books and records.

Amendment #3097, the Dayton-Wellstone-Feingold amendment, and the second degree

offered by Sen. Cantwell and others would add crucial protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

We urge you to support these amendments when they are offered.

Respectfully,

TONY PONTICELLI,  
*Executive Director.*

WASHINGTON PUBLIC UTILITY  
DISTRICTS ASSOCIATION,  
Seattle, WA, April 15, 2002.

Hon. MARIA CANTWELL,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR CANTWELL: On behalf of the Washington Public Utility Districts Association (WPUDA), I would like to express our strong support for the amendment you are cosponsoring, the Consumer Protection Package (#3097). This amendment adds crucial consumer protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

As you correctly stated on the Senate floor on April 10th, the electricity title in S. 517 is of primary significance to the citizens of Washington, and the Northwest region—we have already suffered huge rate increases and cannot bear the consequences of another "failed experiment." Because the underlying bill repeals the Public Utility Holding Company Act (PUHCA) without including adequate consumer protections, your package of amendments is essential to ensure that the consumer is not overlooked and adversely affected. For example, your amendment requires clear, upfront rules on market-based rates. In doing so, it reduces the instances in which corrective actions will be needed by the Federal Energy Regulatory Commission (FERC).

Once again, WPUDA thanks you for your leadership and supports this critical amendment that seeks to protect the public interest.

Sincerely,

STEVE JOHNSON,  
*Executive Director.*

Ms. CANTWELL. Mr. President, my constituents and the constituents of my colleagues from the West, particularly California, Oregon, and Idaho, have seen first hand the devastation caused by the Western energy crisis: wholesales rate spikes of more than 1,000 percent; aluminum workers put off of work because electricity costs were too high for their companies to operate; and an economic slump in California, Oregon, and Washington directly related to last year's high energy prices.

In my home state of Washington we are still paying the price for the lack of consumer protections during the energy crisis. Ratepayers in my home of Edmonds, WA are paying almost 60 percent more than they did before the crisis, with no relief in sight.

Nowhere do consumers know the importance of proper safeguards more acutely than in the West. In the wake of what happened there, why would we even consider reducing consumer protections and lowering legal standards? Why would we promote further deregulation and at the same time abandon consumer protections?

Ask anyone from California whether they want more deregulation without

consumer protection. They will all tell you the same answer: After Enron and the western energy crisis we should strengthen consumer protection laws, not weaken them. They know that without adequate consumer protections, electricity markets may not work to protect consumers.

One need look no further than a February 2001 poll in which California residents were asked if they supported the legislature's decision to deregulate the electricity market. By nearly 40 percent, Californians opposed the deregulation plan.

There are many other public opinion polls across this country that show consumers are very concerned about any move toward more deregulation without sufficient consumer protection. A July 2001 survey by the Mellman Group revealed that North Carolinians opposed deregulation by a 14 percent margin and by a 40 percent margin thought that deregulation would cause rate increases. In March of this year, a different Mellman survey showed that 60 percent of Montanans thought that deregulation had caused higher electricity rates.

The public voice is clear.

I think it is important to review how we got to this point, beginning with the first major piece of legislation to protect ratepayers, passed during the first term of Franklin Delano Roosevelt's Presidency.

In the 1920s our system of utility regulation began to fail consumers. Complex corporate structures made it impossible to offer adequate consumers protections. By 1932, 45 percent of all electricity was controlled by three groups. Because of their market power and complex and misleading corporate structure, the utilities owned by these holding companies were able to charge excessive rates, which were passed directly to consumers.

In response to this situation, this body passed into law the Public Utilities Act of 1935 to help bring the system under control and offer consumers adequate safeguards. The two key titles of the Public Utilities Act—PUHCA and the Federal Power Act—put in place important consumer protection regulations. PUHCA required utilities to either largely operate within a single state, or be subject to strict federal regulation by the SEC. The Federal Power Act created a consumer protection framework for the transmission of electricity in interstate commerce and wholesale rates for electricity.

Today, we are faced with an energy bill that repeals key consumer protections from these pieces of legislation.

Albeit, I know the chairman of our committee wants those laws to be more effective, and to be more effective under FERC, while I agree there can be authorities new at FERC, I want to make sure that, while we change from the SEC to FERC, we don't repeal the legal standards or the framework for consumer protection.

Just think about the energy crises of the past. In the 1920s, when corporate structures got out of control and retail consumers suffered the consequences, we responded with the Public Utilities Act. During the 1970s energy crisis, we responded with the Public Utility Regulatory Policies Act.

But today we are faced with the prospect of responding to the Western energy crisis of 2001 with more of the same that helped cause the crisis in the first place. I believe the Western energy crisis was really precipitated by two factors: obviously, California adopted a restructuring plan without adequate thought and deliberation, and the fact that FERC, the Federal Energy Regulatory Commission, signed off on it. That is right, they signed off on the California plan. Then FERC allowed generators in the West to charge market-based rates without first ensuring that those markets were sufficient in their competition and that they were adequately monitoring those markets over time.

The definition of insanity is watching something fail and then doing it again. And that is what we are headed towards doing. It would be insane for us to enact further flawed deregulation without at least addressing the importance of providing consumer protections.

Consumers know that they are ultimately the ones who will get stuck holding the check. And they are right. It is wrong policy to deregulate without protecting consumers. And ultimately, it hurts them where it hurts most: in their pocketbooks.

This amendment addresses the need for consumer protection from deregulation by creating safeguards from potential market failures and abuses.

The amendment would prevent a repeat of soaring electricity rates in deregulated markets by directing FERC to establish rules and enforcement procedures for market monitoring to protect electricity consumers.

The market rate provisions of this amendment are actually quite simple in concept.

As I said earlier, for the first time in this legislation, the underlying authority is given to FERC instead of to the SEC. While giving this new power to FERC, we need to make sure consumers are protected by making sure they do not lower the standard.

I believe it is critical that within this legislation we not lower the legal standard by which these mergers were held in the past. FERC can have new responsibility, but we must make sure we are not lowering the legal standard by which we allow these companies to merge. FERC needs statutory guidance on just what factors it should consider before it allows market-based rates to be charged. That is, before FERC opens up the energy market, it should have to ensure that those markets are going to operate efficiently and not gouge consumers.

The bill currently does not adequately offer consumer protection, especially in view of the House of Representatives' electricity bill, which I think goes too far in giving a wish list to the big energy companies. The electricity provisions of this bill right now actually lower the overall merger standard.

This amendment would maintain current law with regard to that merger standard. It is a very important point—that current law be the standard for FERC.

In fact, there have been something like 30 major utility mergers and acquisitions over the past few years alone. That is a testament to the need for laws to protect consumers from consolidation which is happening in the utility sector.

It is also a powerful reminder that current law is in no way too prescriptive. Maintaining the legal merger standard currently on the books—I think it is important to do this—is a critical part of the amendment.

The electricity provisions in this bill also fall short, in my view, on the issue of insulating consumers from the economically devastating effects of the energy markets which have gone horribly awry.

The primary difference between the Senate energy bill as it is currently written and what we are trying to accomplish with this amendment is simple. It is the difference between preventing dysfunctional markets from happening in the first place, and post hoc investigations that are unlikely to provide better relief for consumers harmed by skyrocketing energy prices.

What I mean by that is, without these specific requirements in place, and new mergers and market-based rates happening, and without the oversight, it is very hard, once consumers are gouged, to then come back and ask for records and information that show what kind of protections should have been on the books.

I do not think many of my colleagues realize that, for the very first time, this legislation, the underlying bill, gives FERC explicit statutory authority to allow companies to charge market-based rates. So nowhere had FERC ever been given that statutory authority. They had always been cost-based rates. But this legislation will, for the first time, give FERC statutory authority to allow companies to charge market-based rates that they decided administratively to start allowing in the mid-1980s.

While the Energy Policy Act of 1992 affirmed the direction FERC was moving in regard to opening of the Nation's transmission system, it did not contain this explicit authority for FERC to grant market-based rates.

I believe this is a very important point because if we are going to move forward in saying that market-based rates should be there, then we must make sure those consumer protections are in place as well.

In sifting through the ashes of the California experiment, it is now obvious that FERC did not pause to consider the constraints—whether real or manipulated—on natural gas transportation into the State, which, in turn, drove up the price of electrical generation. FERC approved a system without assessing the market power of what became known as the big five energy companies in the California crisis, including Enron, and the impact they had.

It is also clear that FERC approved the California proposal without assurances that the State's independent system operator could effectively monitor market conditions. I have heard from numerous utilities involved in the California market that the ISO began declaring emergencies purely subjectively because its mechanisms for assessing where physical megawatts actually existed—and whether these shortages were real or imagined—were so incredibly flawed.

In addition, it has been repeatedly alleged that the ISO declared these emergencies for political reasons because utilities, as such in those States, were obligated to sell into the California market, first under a Department of Energy order, and later under an order from FERC itself, when emergencies were declared. FERC did not have the market monitoring practices in place that would have been the protections the consumers needed.

So why give them more authority now to do market-based rates without making sure the legal standards are in place and making sure that consumer protections are in place?

In summary, I want it to be clear to my colleagues that this amendment today should do its job to prevent a flawed deregulation bill and to help protect consumers.

This legislation specifically does several things: It helps maintain the competitive markets, it effectively monitors markets, it prevents the abuse of market power and manipulation, and it ensures the maintenance of just and reasonable rates.

The amendment would also require utility mergers to serve the public interest and for utility books to be fully open. It would protect consumers from absorbing the costs of utility diversifications and prevent them from being basically subject to the various tactics in which consumers are held to higher costs when the markets are consolidated or market-based rates are charged and things can actually go awry.

This amendment does not take away any of FERC's authority to allow market-based rates. It does not stop the move toward deregulation. In fact, it is consistent with the concept of deregulation. It simply says we need a roadmap for consumers. We need protections for this new market-oriented approach.

I am reminded by something that FERC Chairman Pat Wood said on March 11:

I'm probably the world's biggest believer in markets.

But Mr. Wood also said:

But I'm also the world's biggest believer that people will take advantage of it if they don't have a cop walking down the street.

This amendment provides the "cop walking down the street" for our electricity markets in protecting consumers. With all that we have read and seen of what happened during the Western energy crisis and the role that Enron and other power companies played in it, how can we even consider further deregulation without putting in place real consumer protections? It is practically malpractice for us to think about these new deregulations without thinking about how to protect consumers.

That is why we are offering this amendment today. We need to say to the people of this country, we are going to protect you from the crisis that has happened in California and in Washington and in Oregon. And we are going to make sure the markets operate in a way in which consumers are protected.

This is a critical amendment and should be adopted as a part of this bill. We need to say to the consumers that we are thinking about their needs, their protections, and the high price of electricity throughout the country.

I yield back the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I rise to say that I welcome the amendment by Senator CANTWELL and others that greatly strengthens the amendment that I previously brought to the floor. I compliment the Senator from Washington, who has done an extraordinary amount of work on this measure, for her leadership in bringing together Senators, consumer groups, and others who would be affected by this legislation.

I think her work has been extraordinary. I know from my own observation that her work behind the scenes over the last days and weeks has been phenomenal. She has put countless hours into bringing this coalition together, bringing these amendments together, and bringing them to the floor for our consideration today.

Again, I want the RECORD to show that the Senator from Washington has been extraordinary in her efforts to bring this to the floor.

I yield the floor.

The PRESIDING OFFICER (Mrs. CLINTON). The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I rise to speak against the amendment that my colleague from Washington and the Senator from Minnesota have offered. This is an issue on which I think we need to refresh people's memory because it has been a few weeks since we had votes on this portion of the energy bill.

But let me recall for Senators and their staffs exactly with what we are dealing. This is the electricity title of

the energy bill. We have worked hard on that title, those of us who have been involved on the issue for a long time. Senator THOMAS, in particular, and myself have worked hard to come up with language which we believe ensures that consumers are protected and which ensures that mergers and acquisitions are properly reviewed before they are permitted to go forward or are turned down if they do not meet strict criteria. We have put together language we believe is very favorable to consumers.

Part of what we are proposing is that the Public Utility Holding Company Act be repealed. That is an issue that continues to be the subject of controversy. I understand that. And I understand the amendment, of course, that we are now presented with would try to eliminate the repeal of the Public Utility Holding Company Act and keep that current law.

This is a legitimate issue. In the Energy Committee, in the most recent hearing we had on energy-related issues, we had a hearing on this issue. I am trying to get the whole list of witnesses so that I can inform people about that. But we had one of the Commissioners from the Securities and Exchange Commission, the SEC, which currently has authority and responsibility to enforce the Public Utility Holding Company Act. The testimony of that Commissioner was very clear. Their testimony was that they do not support keeping that authority at the SEC. They do not support keeping the Public Utility Holding Company Act on the books. They have taken that position for the last 20 years. They continue to take that position. That was the position under the Clinton administration and that was the position under the Bush administration. And there was unanimous testimony to our committee that, in fact, we should shift this responsibility over to the Federal Energy Regulatory Commission, as we are proposing to do in this legislation.

Let me clarify that the problems the Senator from Washington refers to are very genuine problems.

I am sympathetic to those problems. I do think there were some shortcomings on the part of the Federal regulators as well as others in the way the crisis on the west coast was dealt with, but I point out that all of that happened under current law. All of that happened with PUHCA in force—with the Public Utility Holding Company Act in force—and we are proposing the repeal of that and a change in the authority so that it can be done much more effectively.

Our bill does nothing to deregulate electricity markets. It recognizes that the market depends on competition. It gives the Federal Energy Regulatory Commission the tools to be sure that competition does in fact work for consumers. We have enhanced FERC's authority over mergers and market-based rates. We have required new disclosure rules. We have required the Federal

Trade Commission to issue rules to protect consumers.

We take authority away from the SEC, as I mentioned, because the SEC has never enforced this law. We take the authority away from them and give it to FERC, which does understand the industry. It is the agency with the appropriate expertise to actually look out for consumers in this regard.

The bill we have brought to the Senate floor and on which Senator THOMAS and I have worked very hard requires four things before any disposition or consolidation or acquisition of utility assets is possible.

It requires, first, that the Federal Energy Regulatory Commission determine that the proposed disposition or acquisition be consistent with the public interest. That is a pretty good indication.

A second would be that they make a determination it will not adversely affect the interests of consumers of the electricity utility. That again is an important safeguard.

Third, it requires that any acquisition, any consolidation that is approved by FERC be determined by FERC not to impair the ability of regulators to regulate the utility.

The final thing we have required FERC to determine is that any acquisition that might be approved would not lead to cross-subsidization of associated companies. We believe that is also important. If in fact we are going to permit companies to purchase utilities, to acquire utilities, to acquire utility assets, we do not want to see the rate-payers of the utility having their rates go to cross-subsidize other companies. We require that FERC make that determination.

We believe the provisions we have in the bill are not only adequate but strengthening provisions. There are requirements in the amendment proposed here that go substantially further. There is a requirement that there be a determination that the transaction enhanced competition in wholesale markets. We do not believe it is an appropriate role for us to be blocking an acquisition unless it can be proven that it enhances competition. We believe a "do no harm" standard is the right standard for a regulatory agency. Clearly, that is where we come out.

The one other provision which is in their amendment which we believe goes too far is it requires that the transaction produce significant gains in operational and economic efficiency. I hope very much that any time there is an acquisition of a utility asset or a merger or a consolidation of any kind, it does produce significant gains in operational and economic efficiency. That would be a wonderful thing. I don't think it is reasonable to say all acquisitions, consolidations, and mergers should be blocked unless they can demonstrate that they will in fact demonstrate or produce significant gains in operational and economic efficiency.

We believe the provisions we have in the bill are the appropriate ones. For that reason, I will have to resist the amendment and hope Senators will oppose it.

I know Senator THOMAS has worked very hard on this issue as well. I know he is anxious to speak about it at some point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I rise to speak on the amendment now before the Senate. As the Senator from New Mexico mentioned, he and I and others have worked very long and hard on this electricity portion of the energy bill. When the Daschle-Bingaman bill was brought to the floor, we went into it and tried to work at it to make it more workable and, indeed, more simple, to give the States more authority but continue to have the protection, of course, for consumers. So that is what we sought to do.

I believe this amendment is not necessary. Certainly it does not add to but, in fact, detracts from that goal of protecting consumers and making the system more simple.

It seems we have heard an awful lot about the California problem, and it was a difficult one. It affected the rest of the west coast States, of course. Senator BINGAMAN held two hearings to examine the California collapse and the Enron collapse and its impact on the energy markets. The result of these hearings was a clear consensus that Enron had little, if any, impact on wholesale or retail electric markets. So this continued effort to do something with FERC because of that simply doesn't connect. I hope we can deal with it as it is in reality.

I rise in strong opposition to the pending amendment. The amendment proposes a major change in the standard FERC would use to review asset sales, mergers, and acquisitions. Under the proposed standard, in order to approve an asset sale, merger, or acquisition, FERC would have to affirmatively find that the action would, at a minimum, enhance competition in the wholesale markets, produce significant gains in operational and economic efficiency, and result in a corporate and capital structure that facilitates effective regulatory oversight.

This proposed change in the review standard, when coupled with an earlier amendment adopted by the Senate, expands the type of actions FERC must review and puts industry restructuring into gridlock. We are always talking about the overabundance of regulation and so on, and we have sought a balance here between States and FERC. This adds back to the problem that we sought to resolve. It will take FERC forever to go through the procedural steps necessary to allow even the most mundane asset sale.

Slowing restructuring and competition would be bad for both competition and consumers. The amendment also

establishes a full new set of rules and procedures for FERC to follow in regulating the wholesale power market. It gives FERC sweeping authority to do just about anything it wants to do—the very provisions that the bipartisan Thomas amendments adopted by the Senate struck from the underlying Daschle-Bingaman bill. That is what we voted on before. Now we are seeking to go back to what we tried to eliminate and did eliminate.

The amendment also modifies the Banking Committee PUHCA repeal provisions. For example, the pending amendment takes away the provisions dealing with State access to utility books and records. That is a part of the Banking-reported bill. The amendment also imposes a host of new transaction approval requirements under the guise of so-called transaction transparency. The transaction transparency provisions of the amendment do not just require the disclosure of information, they require FERC preapproval of all interaffiliated purchases, sales, leases, or transfer of assets, goods or services, and financial transactions.

Talk about creating a regulatory nightmare—Federal bureaucratic red-tape—this is it.

Madam President, it is not clear what problems this amendment is intended to address that are not already addressed by other provisions or existing law.

It cannot be aimed at curbing market power since it makes it more difficult for utilities to sell assets, such as generation and transmission.

It cannot be aimed at protecting consumers from undue price increases because, under existing law, FERC has jurisdiction over wholesale rates and the State public utility commissions have jurisdiction over retail rates.

With or without this amendment, the retail/wholesale electric rates have been and will continue to be subject to State and Federal review. Moreover, this issue is already addressed in the bipartisan electricity amendments adopted by the Senate on March 13.

For the benefit of the Senate, let me read some of the language from the amendment adopted by the Senate.

Section 203 of the Federal Power Act, as amended by the bipartisan amendment, will read:

No public utility shall, without first having secured an order of the Commission authorizing it to do so . . . merge or consolidate, directly or indirectly . . . by any means whatsoever.

The Commission shall approve the proposed disposition, consolidation, acquisition or control, if it finds that the proposed transaction—

(A) will be consistent with the public interest;

(B) will not adversely affect the interest of consumers; and

(C) will not impair the ability of FERC or any State commission . . . to protect the interests of consumers or the public.

Exactly. It is already there. Frankly, we are wasting our time with this.

In addition, there are other consumer protection provisions already in the underlying bill.

For example, in the PUHCA title there are provisions which specifically give FERC and State public utility commission access to books and records so that they can do their job to protect consumers. In the PUHCA title there is a Federal task force to review the status of competition. In the PUHCA title there is a provision requiring a GAO study and report on competition. And in another amendment, the Senate has already adopted an office of Consumer Advocacy in the Department of Justice.

Mr. President, in today's rapidly changing electric marketplace, utilities need to be able to buy and sell generation and other assets in order to be able to respond quickly to market conditions. This amendment will tie FERC and industry restructuring up in red tape.

I ask: How does slowing industry restructuring and handicapping competition benefit consumers?

We know the answer. It doesn't.

Requiring utilities to wait months—possibly years—for FERC to review and approve even relatively routine transactions simply does not make sense. It satisfies no public purpose, and it threatens to bury an already overburdened FERC staff in a blizzard of needless paper shuffling.

In sum, the proposed amendment appears to be a heavy-handed solution in search of a non-existent problem to solve. It is an extreme amendment that is intended to overturn a bipartisan, Senate-adopted amendment. It appears to be a thinly-disguised attempt to throw sand in the gears of competition, not to improve the legislation.

The amendment should be rejected.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Ms. STABENOW. Madam President, I rise today to proudly support the Cantwell amendment which I am very pleased to be cosponsoring.

I thank the Senator from New Mexico for all of his leadership, overall, on this important energy package. He has had a thankless job. There has been a tremendous amount of work. While I respectfully disagree with his position on this amendment, I commend him for his incredible leadership in this effort.

I am very pleased to support this amendment which would add important and much-needed consumer protection to the Senate energy bill. The Senate energy bill repeals most of what is called PUHCA. Many people are not aware of what that is and how important it is in terms of protecting consumer prices as it relates to electricity. It is the Public Utility Holding Company Act. This would repeal it without putting in place any protections to ensure that consumers are in fact protected.

Now, in light of what happened with Enron, what happened on the west coast with the electricity crisis, we need to be strengthening consumer protections, not weakening them. Last spring, when the Senate Banking Com-

mittee took up PUHCA repeal, I in fact was the only member of the committee who voted against that because I believed we should not be doing that independently of a larger focus to guarantee that if the bill were repealed—the statute—we in fact would keep the consumer protections in the act which are so critical. So I voted against that bill.

I believe we should be including this in the context of a broad bill, such as the Senate energy plan, that would include consumer and competitive protections. I believe this amendment puts into place those important consumer protections and competition protections.

This amendment would ensure that utility company mergers “advance the public interest” in order to be approved by FERC. That is a very important principle. FERC would assess the impact on the public interest by examining such criteria as the merger's effects on competition, economic efficiency, and regulatory oversight. We need to ensure that utility mergers promote, and not undermine, competition. That is what this amendment would do.

This amendment would also establish clear rules and enforcement procedures to prevent a repeat of soaring electricity rates in deregulated markets that are not really competitive. This amendment would also protect consumers from unjustified rate hikes and help ensure fair and competitive markets.

The amendment also would provide more transparency in the utility market to protect consumers from situations like Enron. The amendment would require public disclosure of financial transactions between holding companies, utilities, and their affiliates, as well as FERC preapproval of transactions that are not publicly disclosed.

This has been a real issue for small businesses in Michigan. The amendment would protect consumers from the costs and risks of utility diversification and prevent utilities from unfairly subsidizing their affiliates that compete with small businesses, with independent businesses—those that sell the furnaces, air-conditioners, and so on. This has been an important issue in Michigan where many of my small businesses have been concerned about competing against utility companies that are able to have their prices subsidized.

Finally, the amendment would give State and Federal regulators enhanced access to books and records. If we are going to move to a truly competitive utility market, we need to reshape FERC's role in the market. We need to increase the market transparency and make certain that consumer protections are maintained.

I strongly urge my colleagues to support this amendment. I believe it is absolutely necessary as we move into this deregulated marketplace to make sure



there really is competition to lower prices, there is accountability, transparency, and in fact in the end all of our consumers, the citizens of the country, are protected.

I thank the Chair.

Mr. FEINGOLD. Madam President, I rise in support of amendment 3234 offered by my colleague from Washington, Ms. CANTWELL, and I am pleased to be a cosponsor.

I support and have been actively involved in the drafting of this amendment, which includes provisions from the sponsors of amendment 3097, Mr. WELLSTONE and Mr. DAYTON, on mergers as well as provisions from the Senator from California, Mrs. BOXER, and the Senator from Oregon, Mr. WYDEN.

These amendments would improve on the bill by making clear the actions that the Federal Energy Regulatory Commission, or FERC, must take in determining that proposed mergers in the electric power sector advance the public interest in order to secure Federal regulatory approval. Those of us who have worked on this package are deeply concerned about the effects of deregulation of the electric power sector.

The underlying bill says that FERC would have to determine that mergers be "consistent with" the public interest, a more typical standard used by other agencies reviewing other mergers, like the Federal Trade Commission.

My concern is that electricity is not just like other commodities. Electricity is essential to public well-being. When this bill is enacted and the Public Utility Holding Company Act is repealed, a strong incentive will exist for large utilities with the financial resources and the potential to exercise market power to get larger. Already, the electric utility industry is undergoing rapid consolidation. As my colleague from Minnesota, Mr. WELLSTONE, noted earlier in the debate on this bill, in the last past 3 years alone, there have been more than 30 major utility mergers and acquisitions, including several in my own home State and with utilities in Minnesota that serve Wisconsin. Many merchant generating companies have seen their stock prices plunge and credit ratings downgraded, and these companies are now prime buy-out targets.

I acknowledge that utility mergers are not inherently bad and should not be prevented. Such mergers can produce efficiencies, economies of scale and cost savings for electrical consumers. A merger can, however, also reduce competition, increase costs, and frustrate effective regulatory oversight.

In Wisconsin, we have been concerned about efforts to aggressively push electricity deregulation, because we are served in my state by a diverse number of local utilities: municipal utilities, electric cooperatives and investor-owned utilities. This diversity of electrical suppliers, about which my col-

leagues from Minnesota have eloquently spoken, are absolutely critical parts of our small rural communities.

In many cases, Wisconsin's rural coops and rural municipal utilities are the only entities interested in serving the electrical needs of the rural parts of my State. If we deregulate, we shouldn't create an environment that leaves these communities behind.

Federal electricity merger review policy should distinguish between those mergers that promote the public interest and protect our local sources of electrical power and those that don't. In proposing to amend the Federal Power Act to change FERC's merger review standard we are seeking to require merger applicants to show that the merger, which eliminates a competitor in a marketplace, provides affirmative benefits to the public that are not achievable without merger. Thus, the utility seeking the merger approval would need to show that the merger provides tangible public benefits by increasing competition or lowering prices through increased efficiency.

The amendment would improve on the language in the underlying energy bill in several ways. First, the language requires that proposed mergers promote the public interest in order to secure Federal regulatory approval. Second, the amendment spells out specific standards for assessing the impact on the public interest, including effects on competition, operational and economic efficiency, and regulatory oversight. Finally, this amendment prevents utilities from skirting Federal review by using partnerships or other corporate forms to avoid classification as a "merger."

I want to address concerns that some of my colleagues may have about the scope of this amendment. This amendment does not impose new regulatory requirements on proposed utility mergers. Rather, the standards contained in the amendment mirror those contained in the Public Utility Holding Company Act, or PUHCA, which the bill before us would repeal. While the standards are comparable, the amendment provides greater flexibility than exists under PUHCA. PUHCA requires that utilities be physically integrated in order to merge; the amendment waives that requirement. PUHCA also prevents the merger of multi-State electric and gas utilities; the amendment waives that requirement while providing for FERC review of such mergers.

I also want to speak in favor of language that my colleague from Oregon, Mr. WYDEN, and I developed on transactions between utility company affiliates. This amendment protects consumers from assuming the costs and risks of utility diversification into non-utility businesses and prevents utilities from subsidizing affiliate ventures and competing unfairly with independent businesses.

The language that the Senator from Oregon, Mr. WYDEN, and I worked to in-

clude in this package does three things. First, it extends to electricity suppliers the requirements we placed upon telecommunications companies when we repealed PUHCA in the telecommunications sector in 1996 in the Telecommunications Act. Second, it requires utilities to disclose all transactions with affiliates, including those that are off the books or with overseas affiliates. Finally, it establishes safeguards regarding the purchase of goods and services between the utility and their affiliates.

These provisions are needed, because we are already experiencing concerns about utilities expanding into electricity related services and out competing small businesses in my State. Small contractors can't compete against big utilities in areas like energy efficiency upgrades to private homes, when big utilities can use existing assets like personnel, equipment, and vehicles to perform those services. When PUHCA is repealed, utilities will be able to expand into other business areas, and we should make certain that we protect small businesses.

This amendment is good public policy, and it will strengthen the Senate's position in conference with the House of Representatives. I urge my colleagues concerned about ensuring a diversity of energy supply and fairness in a deregulated system to support this amendment.

Mrs. MURRAY. Madam President, I want to speak for a moment about the Consumer Protection Amendments being offered by Senator DAYTON and a number of co-sponsors, including myself. I want to thank all of my colleagues who have been working hard to improve this bill, particularly, my colleague from Washington, Senator CANTWELL, who has pushed to bring this amendment to a vote today.

This consumer protection amendment improves this bill by providing a number of much needed consumer protections for electricity customers. I have spoken a number of times expressing my concern regarding enacting broad, far-reaching electricity deregulation in these turbulent times. California's attempts to deregulate electricity markets were disastrous. We are all still trying to figure out what happened to Enron and thousands of retirement and saving accounts. Consumers in the Pacific Northwest are still paying for some of the aftereffects of these events.

Repealing the Public Utility Holding Company Act, which was enacted in 1935, without adding strong consumer protections would be irresponsible. In this energy bill, we are also contemplating major changes to the Publicly Utility Regulatory Policies Act and the Federal Power Act.

When making these changes, it is essential that we make sure consumers do not suffer. A number of people have indicated that appropriate consumer protections are already in place in the underlying bill.

I disagree. I think that additional consumer protections are necessary.

This amendment strengthens the consumer protections by: ensuring electric holding company mergers advance the public interest; requiring FERC monitor and prevent market power abuses; ensuring market abuses are remedied; ensuring open access to utility holding company records by State Regulatory Commissions; and, requiring transparency in market transactions.

These provisions will greatly improve the electricity title of this bill and I am proud to be a co-sponsor. I encourage my colleagues to also lend their support.

Energy is very important to our quality of life, particularly in the Pacific Northwest. The electricity title of this bill continues to concern me and many in the Northwest. However, it is important that we all work together to develop an energy bill that will benefit the entire country.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Madam President, I want to take an opportunity to respond to a few points my colleagues made about this amendment, which I think is necessary in protecting consumers.

It does repeal PUHCA and takes that measure off the books. What is important about that is, while we can say our current law didn't protect us from the mishaps in the California market and the Western energy crisis, it certainly means we should not be lowering the standard and taking away more consumer protections.

I applaud the chairman of the committee for trying to focus more attention in a particular area of energy expertise, to say let's look at these problems. But what we are doing by also saying let's have the energy expertise within FERC look at these problems, we are also saying, look at these problems within a framework that is less onerous on the energy companies; let's lower the legal standard by which they have to come before the Commission. And, basically, instead of saying they have to serve the public interest, they go for a lower standard by which those mergers can be completed.

It gives FERC the ability, with market-based rates, something they have never statutorily had. So instead of the consumers being able to have cost-based rates on electricity, we are saying, for the first time in statutory authority, they can charge market-based rates.

But we are saying charge market based-rates, and we are saying you don't have to consider some of the same things that ought to be considered, given that we are repealing PUHCA; and that is: What is in the public interest, and how is it advancing the public interest, how is it preventing unjust and unreasonable rates?

If we have learned anything from the California experience, it is that there has not been enough clout within a sin-

gular agency in the Federal Government to adequately protect consumers from unjust and unreasonable rates. They have not had enough protection.

That is why the AARP, the American Public Power Association, the Consumers Union, the Sierra Club, the U.S. Conference of Mayors, the Air Condition Contractors of America, the Consumer Federation of America, the Consumers for Fair Competition—all these organizations support this amendment, including the Electricity Consumers Resource Council, the National Association of State Utility Consumer Advocates, the National Environmental Trust, the National League of Cities, the National Rural Electric Co-op Association, the National Resources Defense Council, the Transmission Access Policy Study Group, the Union of Concerned Scientists, and U.S. Public Interest Research Group.

All these organizations are warning us, telling us, there are not enough consumer protections as this bill moves from having the PUHCA law on the books and having the SEC involved to FERC authority, which albeit could play a more responsible role and one with larger oversight, but we are not giving them the direction to do so in this bill. We are repealing those statutes that would give them specific standards by which to measure both these issues of market-based rates and mergers. We are giving new responsibility to an organization and taking away the consumer protections.

It does not make sense, in this time and era of an energy crisis in the West, where consumers have been gouged, where FERC has not been able to protect consumers before the incident in reviewing statistics and after the incident, to now say, Let's lessen the standard by which FERC should be involved, let's give them more authority to allow the energy companies to move more quickly, to move more aggressively without oversight on increasing electricity rates.

We cannot say to the consumers of America that we learned nothing from the Western energy crisis. We cannot say that to them. We have to adopt this amendment and say we know that, while we are repealing some laws and putting more responsibility on FERC, we are going to make sure consumers are protected.

I urge my colleagues to adopt this very needed consumer protection amendment.

The PRESIDING OFFICER. The Senator from California.

Mr. REID. Madam President, will the Senator yield for a brief announcement?

Mrs. BOXER. Yes, I will be glad to yield.

Mr. REID. Madam President, we expect a vote on this matter within the next 15 or 20 minutes. All Senators should be aware there will be an effort to vote in the near future. All Senators should be aware of that.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank the Chair.

Madam President, I thank my friend and colleague, Senator MARIA CANTWELL, and Senator DAYTON for bringing this amendment to the floor. I am a strong cosponsor of it.

Senator CANTWELL made a point that we need to learn what happened to those of us on the west coast who went through a terrible crisis in electricity and runaway price hikes. We all know if we do not look at history and the mistakes that were made, we are going to repeat those mistakes.

What the Senator from Washington is trying to do—and some of us are strongly behind her—is to tell the rest of our colleagues that we hope they prepare against what happened to us and make sure consumers are not forgotten.

I am stunned that there would even be objection to this amendment. All we are doing is ensuring that since PUHCA was repealed, we want to make sure the standard is not lowered. We want to make sure consumers are protected.

I can guarantee that those who vote for this bill, if this amendment goes down, are going to be back here complaining that they really did not understand what we were doing when we did not protect consumers. How do I know this? Because it is clear. What did we learn from Enron? Remember Enron? We learned that they did everything in secret. They did everything in secret. They sold the same electricity 15 times over. This is according to testimony from the people in California who suffered the consequences.

I guess, I say to my colleague, if the rest of this Senate wants to see an energy crisis happen in their States, all we can do is offer up this amendment as a way to stop it. But in the underlying bill, there is very little transparency. We need to make sure the books and records of these companies are open and they are clear so that my colleagues in their States can see why their prices are going up 100 percent, 200 percent, 300 percent. In our case, it was over a 500-percent increase in the price of electricity. By the way, demand was going down.

It is extraordinary. One year ago, April 2001, wholesale electricity was selling for \$201 per megawatt. A year earlier before the crisis began, it was \$32 per megawatt. It went up \$32 to \$201. That is a 528-percent increase.

Why did it happen? Because of deregulation. The problem is, there was no transparency. Everyone was paying more. We had rolling blackouts. We had horrible problems. Believe me when I tell you, Madam President—you know this because you have visited California often—this is a State that, if it was a nation, according to our gross domestic product, would be the fifth largest nation in the world. When I started in politics, we were ninth. It shows you how long I have been in politics, but it also shows the incredible growth of our agricultural sector and

Silicon Valley and their need to have electricity.

Mind you, it is not wasted. California now is the No. 1 State in energy efficiency per capita. During the crisis, our demand went down. No one can tell us our prices went up because demand went up, which is what the Vice President said. Our demand went down. We have been amazing at saving.

Someone has to look out for the consumer, and that is why I support what Senator CANTWELL is doing.

I, frankly, believed repealing PUHCA in the underlying bill was not the way to go. That was my opinion. But since we have taken the matter of PUHCA and transferred those responsibilities to FERC, let's at least make sure FERC has the same opportunity to learn the facts as the SEC did under PUHCA. That is why this amendment is so important.

This is what Loretta Lynch, the president of the California Public Utilities Commission, testified last week before the Commerce Committee about FERC and the weakening of its reporting requirements. Ms. Lynch testified:

FERC has over the past few years at the urging of Enron and others diluted the reporting requirements, loosened the accounting rules and exempted large classes of energy sellers from making required disclosures.

This is not from me. This is from someone on the ground, the head of our public utilities commission. Then she goes on to say:

FERC does not even require the same data to be filed in its quarterly reports, allowing companies like Enron to hide the true nature and extent of activities through skeletal public reporting and not be called to account by FERC.

The bottom line is, with this amendment, we are trying to restore some transparency. We need to see what these companies are doing.

As I say, it is stunning to me that we do not have support for this amendment, which is very modest in what it tries to do. The Senator from Washington has taken the critiques of this amendment and has answered one point at a time. The critiques we have heard in this debate simply are not right.

One of the claims is that we keep PUHCA on the books. How ridiculous. PUHCA is repealed. We do not bring it back. All we are saying is now that the underlying bill gives the responsibility of PUHCA to FERC, there ought to be some rules that show we care about the consumer and that the consumer will not be forgotten.

In closing, I think the Senator from Washington knows her stuff on this. She is on the Energy Committee. She gets it. She is taking the lessons of the west coast, what happened to our consumers, which was devastating, and saying to everyone: Please listen to us. We want to avoid this in the rest of the country. That is why she has the support of the AARP. Older Americans are the ones who get caught. They live on

fixed incomes. When those electricity prices go up, it is not fun and games. This is real people suffering. They suffered in Oregon, they suffered in Washington, and they suffered in California.

So what are we doing in this bill? Nothing to really help them. We are ensuring this cannot happen elsewhere, and that is why we have so many others supporting this amendment, such as the Consumer Federation of America, the Consumers for Fair Competition, the Consumers Union, the Electricity Consumers Resource Council, the National Alliance for Fair Competition, the National Association of State Utility Consumer Advocates, the National Environmental Trust, the National League of Cities, the National Rural Electric Cooperatives Association, the Natural Resources Defense Council, the Physicians for Social Responsibility.

This is a health issue when people cannot turn on the air-conditioning. If we do not protect the consumers, we have problems. Public Citizens supports this amendment, the Sierra Club, the U.S. Conference of Mayors, the Union of Concerned Scientists, and the U.S. Public Interest Research Group. This is the consumer protection package.

My colleague from Washington did a good job. She took amendments from those of us who were looking at different areas where we thought the bill did not reach the level of consumer protection it should and put them into an omnibus amendment. I congratulate her.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, I appreciate the comments of the Senator from California on the amendment. I also appreciate her support for it and her articulation of the problem.

I ask the Senator from California—obviously, both of our States are being greatly impacted from this crisis. I think we have had numerous, thousands, of constituents who ask us how we got into this situation and ask us exactly how this situation occurred to this degree and why there were not more Federal protections in place.

Given the impact to both Washington and California, consumers want to know how is it this kind of deregulation went through at the State level and then certain protections were not in place at the Federal level.

Before the Senator from California leaves the Chamber, I ask if she would answer this question about her constituents' desires to see a safeguard at the Federal level to make sure that further deregulation, and the incurring investigation of high energy prices, are adequately dealt with and whether consumers believe these protections have been adequately up to date, because in my State people have said repeatedly, where is the Federal role and responsibility in making sure these consumers were not gouged?

In California, a new system was put in place. The Federal Energy Regulatory Commission was supposed to oversee that and to judge whether it was going to work as far as market-based rates, and clearly it did not work. Not only did FERC approve it, it did not monitor it after it went into place. It did not stop and say that unjust and unreasonable rates are gouging consumers in California, until the lights went out.

So why would we now say—and I am curious as to the Senator's experience in hearing from constituents about this Federal role—to them, we are going to consolidate and make it even easier; put authority under FERC and weaken the standard? Not only are we going to give them direction, but we are going to say we are going to give them less tools to play that role; we are going to give them a lower legal standard by which to review these; we are going to allow them to make market-based decisions without the criteria of respecting the consumers and protecting and advancing their interests as they look at mergers.

I am curious as to the California experience. I know the experience has been clear in my State. They wanted unjust and unreasonable rates to be looked at when they were being charged 85 percent more. They thought it was very clear that was unjust and unreasonable. In my State, these people have to live with 8- and 9-year Enron contracts.

As my California colleague said, they sold power 15 times to different people. They are literally buying power at a cheap rate and within my State selling it at an increase, double, triple the increase, to other consumers in my State. They are getting away with it, and FERC is doing nothing to make sure those rates are being investigated as unjust and unreasonable, and they are not letting my constituents out of those long-term contracts in the next maybe 8 or 9 years of 85-percent increases in energy prices.

So why would States that have been impacted want to give FERC the direction but say, here are the legal standards, they are less than they were before, so go at this business? So if my colleague from California could comment on her experience in that Federal role and what it is that safeguards constituents who have been harmed in personal situations and in economic businesses.

States' economies have been ruined over this situation, and now we are saying to them that our colleagues are going to provide less protections for them.

Mrs. BOXER. That is the key. The fact is, in our States—I will just talk to my State—the only agency we had to protect us was FERC. FERC, under the Clinton administration, found that the prices were unjust and unreasonable. Then there was a switch in administrations and they never repealed that. They admitted they were unjust

and unreasonable, but they did absolutely nothing to help us—for 1 year. We were talking about billions of dollars of costs. The long-term contracts were signed under duress by our Governor because the spot market was so impossible he tried to get some of the demand away from the spot market, went into these long-term contracts. Fortunately, he has begun to renegotiate those.

We have asked FERC to help us renegotiate most of them. It is stunning to me that this underlying bill gives so much more power to FERC when under the law as it existed they did nothing to help our people for 1 year. They finally put in place the market-based pricing and, by the way, it cured our problem.

After this administration saying for a year that it would not cure our problem, it cured our problem. Those market-based prices are set to expire in September, and already the new Chairman of FERC has hinted that he is not going to reimpose those price caps.

So I say to my colleague, the only agency—because we had deregulated in our State, and believe me there was enough blame to go around. It was a bipartisan deregulation recommended by Pete Wilson, our then-Governor, and it went through. Enron and others had absolutely no one looking over their shoulder, and the only agency that could have done anything to help us against unjust and unreasonable prices was FERC. The bottom line is: They did nothing for a year. It was a disaster.

In this underlying bill, we are giving FERC even more work by repealing PUHCA, which was administered by the SEC, and giving it over to FERC, and having very few requirements on the open books and records.

So a company such as Enron—Enron is gone. They said California would sink, but they sank. We are OK. They sank. But there is going to be Enron II and Enron III and Enron IV because, unfortunately, they showed how it could be dealt with, at least in the short term. When that happens under the underlying bill, there is very little that FERC will be able to get at in terms of the transparency of the records.

The one thing we learned was there was a lot of secrecy going on. The sale of electricity—Enron was a broker, in between the generators and the consumers, so Enron would go buy electricity from a generator at a pretty good price for the generator but then they would sell it to themselves, 14 times to subsidiaries. Each time they showed a profit on the books to make Enron look more successful, more profitable, and each time they jacked up the rates until it got to the final sale at 520 percent—sometimes higher—than it was the year before, and that became the benchmark price. All this was secret.

We have an opportunity in an energy bill to make sure this experience does

not happen again. What do we do? We step back. That is why the consumer groups in this country are absolutely upset about this bill and why they have come together in an unprecedented number. I ask unanimous consent to have the list of organizations supporting this amendment printed in the RECORD.

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

#### SUPPORT THE CONSUMER PROTECTION PACKAGE

Amendment #3097, offered by Senators Dayton, Wellstone, Feingold, Cantwell, Boxer and Wyden, would add crucial consumer protections to the electricity title of the Senate energy bill, incorporating lessons learned from the Western electricity crisis and Enron's collapse.

AARP.  
Air Conditioning Contractors of America.  
Alliance for Affordable Energy.  
American Public Power Association.  
Consumers Federation of America.  
Consumers for Fair Competition.  
Consumers Union.  
Electricity Consumers Resource Council.  
National Alliance for Fair Competition.  
National Association of State Utility Consumer Advocates.  
National Environmental Trust.  
National League of Cities.  
National Rural Electric Cooperatives Association.  
Natural Resources Defense Council.  
Physicians for Social Responsibility.  
Public Citizen.  
Sierra Club.  
Transmission Access Policy Study Group.  
U.S. Conference of Mayors.  
Union of Concerned Scientists.  
US Public Interest Research Group.  
Vote "Yes" on the Consumer Protection Package.

Mrs. BOXER. They have come together behind Senators CANTWELL and DAYTON to say: Please, fix this bill. Do not do what California did.

Just because something is changing does not mean it is changing in a right way. We have to be very careful. Did we learn anything in California, Washington, and Oregon? The word "deregulation" is a beautiful word. I love it. I wish we didn't need regulations, and I wish everyone did everything right. However, in a society where you must have your heat and you must have your air because you must run a business, you must make sure an elderly person in summer does not suffer from the dangers of heat exhaustion, you have to have a way to make sure this important need is not forgone.

I thank my friend. The California experience is forever seared in my mind and heart. I don't want other States to go through the same thing. This amendment will help in that regard. I hope the Senator wins this amendment. The way things are going, we may not make it. But we are on the right side. We are not going to give up. Just as we learned in California, we can vote a lot of things in, but when the people say, What are you doing, we come back here pretty darn quick. From my experience in California, this is not the way to go. This underlying bill is not the way to go. My friend has

pinpointed the need for consumer protections.

I thank the Senator.

Ms. CANTWELL. I thank my colleague from California for her articulate rendering of what has happened in the California market and the complexity of this issue. She is right, the consumers have asked, Where have the Federal role and responsibility been? People in our States did not think FERC responded quickly enough and do not believe FERC has all the tools now necessary to protect other States from this same thing happening again or to conduct the investigation that needs to take place to make sure consumers are not gouged after September when the expiration of this current FERC order occurs.

We are saying: If you are going to give FERC the responsibilities and repeal PUHCA, and also change from SEC to FERC authority, we are giving FERC real responsibility with no statutory guidance. But then we are essentially saying—wink, wink—we are not giving you any of the tools to enforce these authorities; we want you to just be part of the equation but not have any statutory authority to make the investigations. Let's say instead: You can proceed with market-based rates instead of cost-based rates. But if you are going to proceed with market-based rates, you must make sure there are competitive markets. You must make sure you effectively monitor those markets. You must make sure you prevent the abuse of those market powers. You must make sure you are protecting the consumer interests, and you must ensure that there are just and reasonable rates. That seems to me to be very fair, that these consumer issues are protected in legislation. That is all we are asking.

If we are going to give responsibility to FERC, let's make sure we tell them to protect the consumer interests, not the big business interests that have caused so much economic devastation in the West.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. I will speak briefly in response to some of the comments made, and then I will move to table the amendment.

We have had a good debate about it. I will speak about three aspects: First, the argument, the allegation, that we are, in the underlying bill before the Senate, agreed to on a bipartisan basis, lowering the legal standard. That is one of the arguments that has been made. It is simply wrong. We are not lowering the legal standard. The legal standard is, and always has been, that determinations be consistent with the public interest; that acquisitions, mergers, consolidations, be consistent with the public interest.

What we are doing is saying that, for mergers, we have enhanced the authority and responsibility of the Federal Energy Regulatory Commission by saying that not only must they determine

it is consistent with the public interest, which has been the standard in the past, we are requiring them to determine that consumers will not be harmed—that is, consumers, rate-payers of existing utilities, will not be harmed. We are requiring them to make a determination that regulation, either Federal or State regulation, will not in any way be impaired. And we are requiring FERC to make a determination that there will be no cross-subsidy to any other company than the company being acquired or merged.

What we are doing is increasing the responsibilities we are imposing on FERC. A lot of criticism has been leveled against FERC in the way they responded on the west coast. I agree with much of that. I think they were very slow to respond to the spike in prices in California and the Northwest. I was critical at the time, and I continue to be critical that they were slow to respond. We are putting an affirmative duty on FERC to step in anytime there is evidence that a market-based rate is not just and reasonable. It is FERC's responsibility under the language we have to withdraw those market-based rates and to require just and reasonable rates.

That is a new responsibility we are imposing. It is an appropriate responsibility. The argument that, because they did not move quickly enough under current law, we should now go ahead and change the law to give them this new responsibility does not make sense to me.

With regard to the provisions the Senator from California was raising about the transparency of books and records, I agree entirely that the books and records of any and all of these companies that are subject to regulation should be open for inspection. The provisions we have in the bill require each of these companies to maintain and make available to FERC the books, accounts, the memoranda, the records, that the Commission deems relevant to the costs that are incurred by that public utility. Each affiliate company is also required to do the same.

There is a provision saying that the right of States to request books, records, accounts, memoranda, and other records they identify in writing as needed by the State commissioner—that right for them to obtain those is also protected.

We have in this underlying bill the protections that are required for consumers. I am persuaded that the enactment of this legislation, this title 2, this electricity provision, will cure many of the problems the Senators from Washington and California have been concerned with—and very rightly concerned with this last year.

I think the argument that we are not dealing with these issues is wrong. I urge my colleagues to join us in tabling this amendment which would undermine the bipartisan agreement we made on this provision some weeks ago.

I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion to table the amendment No. 3234. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Mrs. MURRAY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 80 Leg.]

#### YEAS—58

|           |            |             |
|-----------|------------|-------------|
| Akaka     | Ensign     | Miller      |
| Allard    | Enzi       | Murkowski   |
| Allen     | Fitzgerald | Nelson (NE) |
| Bayh      | Frist      | Nickles     |
| Bennett   | Gramm      | Roberts     |
| Biden     | Grassley   | Rockefeller |
| Bingaman  | Gregg      | Santorum    |
| Bond      | Hagel      | Sessions    |
| Breaux    | Hatch      | Shelby      |
| Brownback | Hutchinson | Smith (NH)  |
| Bunning   | Hutchison  | Specter     |
| Burns     | Inhofe     | Stevens     |
| Campbell  | Kyl        | Thomas      |
| Carper    | Landrieu   | Thompson    |
| Cleland   | Lincoln    | Thurmond    |
| Cochran   | Lott       | Torricelli  |
| Craig     | Lugar      | Voinovich   |
| Crapo     | McCain     | Warner      |
| DeWine    | McConnell  |             |
| Domenici  | Mikulski   |             |

#### NAYS—39

|          |           |             |
|----------|-----------|-------------|
| Baucus   | Durbin    | Levin       |
| Boxer    | Edwards   | Lieberman   |
| Byrd     | Feingold  | Murray      |
| Cantwell | Feinstein | Nelson (FL) |
| Carmahan | Graham    | Reed        |
| Chafee   | Harkin    | Reid        |
| Clinton  | Hollings  | Sarbanes    |
| Collins  | Inouye    | Schumer     |
| Conrad   | Jeffords  | Smith (OR)  |
| Corzine  | Kennedy   | Snowe       |
| Dayton   | Kerry     | Stabenow    |
| Dodd     | Kohl      | Wellstone   |
| Dorgan   | Leahy     | Wyden       |

#### NOT VOTING—3

|         |       |         |
|---------|-------|---------|
| Daschle | Helms | Johnson |
|---------|-------|---------|

The motion was agreed to.

Mr. BINGAMAN. Madam President, I move to reconsider the vote.

Mr. REID. 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 New Mexico.

Mr. BINGAMAN. Madam President, I believe the clerk was going to report the amendment by the Senator from Nebraska.

AMENDMENT NO. 3140 TO AMENDMENT NO. 2917

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nebraska [Mr. NELSON], for himself, Mr. SMITH of Oregon, and Mr. CRAIG, proposes an amendment numbered 3140 to amendment No. 2917.

Mr. NELSON of Nebraska. Madam President, I ask unanimous consent

that reading of the amendment be dispensed with.

Mr. BINGAMAN. Mr. President, I call up amendment No. 3316 and ask for its immediate consideration.

The PRESIDING OFFICER. Is the Senator objecting to terminating the reading?

Mr. BINGAMAN. I do not object to terminating the reading. I do call up amendment No. 3316 and ask for its immediate consideration.

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

The amendment is as follows:

Strike Title III and insert the following:

#### SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

“(h)(1) Whenever any person applies for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the department under whose supervision such reservation falls (in this subsection referred to as the Secretary) shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

“(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

“(A) provides for the adequate protection and utilization of the reservation, and

“(B) will either—

“(i) cost less to implement or

“(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

“(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the efforts of the condition accepted and alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

“(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions.

“(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

“(1) inserting “(a)” before the first sentence; and

“(2) adding at the end the following:

“(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

“(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of

Commerce, as appropriate, shall accept and prescribe, and the Commission shall require the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the license, that the alternative—

“(A) will be no less protective of the fishery than the fishway initially prescribed by the Secretary; and.

“(B) will either—

“(i) cost less to implement, or

“(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

“(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

“(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative prescriptions.”

AMENDMENT NO. 3316 TO AMENDMENT NO. 3140

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 3316 to amendment No. 3140.

Mr. BINGAMAN. Madam 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:

In lieu of the matter proposed to be inserted, insert the following:

#### TITLE III—HYDROELECTRIC ENERGY

##### SEC. 301. ALTERNATIVE MANDATORY CONDITIONS.

(a) REVIEW OF ALTERNATIVE MANDATORY CONDITIONS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of: (1) options for a process whereby license applicants and third parties to a relicensing proceeding being undertaken pursuant to Part I of the Federal Power Act could propose alternative mandatory conditions and alternative mandatory fishway prescriptions to be included in the license in lieu of conditions and prescriptions initially deemed necessary or required pursuant to section 4(e) and section 18, respectively, of the Federal Power Act; (2) the standards which should be applicable in evaluating and accepting such conditions and prescriptions; (3) the nature of participation of parties other than the license applicants in such a process; (4) the advantages and disadvantages of providing for such a process, including the impact of such a process on the length of time needed to complete the relicensing proceedings and the potential economic and operational improvement benefits of providing for such a process; and (5) the level of interest among parties to relicensing proceedings in proposing such alternative

conditions and prescriptions and participating in such a process.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section. The report shall contain any legislative or administrative recommendations relating to implementation of the process described in subsection (a).

##### SEC. 302. STREAMLINING HYDROELECTRIC RELICENSING PROCEDURES.

(a) REVIEW OF LICENSING PROCESS.—The Federal Energy Regulatory Commission, the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture, in consultation with the affected states and tribes, shall undertake a review of the process for issuance of a license under Part I of the Federal Power Act in order to: (1) improve coordination of their respective responsibilities; (2) coordinate the schedule for all major actions by the applicant, the Commission, affected Federal and State agencies, Indian Tribes, and other affected parties; (3) ensure resolution at an early stage of the process of the scope and type of reasonable and necessary information, studies, data, and analysis to be provided by the license applicant; (4) facilitate coordination between the Commission and the resource agencies of analysis under the National Environmental Policy Act; and (5) provide for streamlined procedures.

(b) REPORT.—Within twelve months after the date of enactment of this Act, the Federal Energy Regulatory Commission and the Secretaries of the Interior, Commerce, and Agriculture, shall jointly submit a report to the Committee on Energy and Natural Resources of the Senate and the appropriate committees of the House of Representatives addressing the issues specified in subsection (a) of this section and reviewing the responsibilities and procedures of each agency involved in the licensing process. The report shall contain any legislative or administrative recommendations relating to improve coordination and streamline procedures for the issuance of licenses under Part I of the Federal Power Act. The Commission and each Secretary shall set forth a plan and schedule to implement any administrative recommendations contained in the report, which shall also be contained in the report.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Madam President, was the amendment offered by the Senator from New Mexico in the spirit of a second degree to the Nelson amendment?

The PRESIDING OFFICER. The amendment is drafted as a substitute for the first-degree amendment.

Mr. CRAIG. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Madam President, this issue, of course, relates to hydroelectric power. This is a subject on which we have been working for several months with interested Members, with the Senator from Idaho, the Senator from Oregon, the Senator from Nebraska, and their staffs, in an effort to achieve consensus on a very difficult issue. I very much thank them for all the work they have put into this effort and their efforts to come to agreement

as to how we should proceed. Unfortunately, we have not been able to resolve the issues.

I know hydropower plays a very significant role in providing needed energy to the entire Nation and particularly to the Northwest. It is a very important energy source in other parts of the country as well, particularly New England.

There are now five first-degree amendments and three second-degree amendments that have been filed to this bill with regard to the topic of hydroelectric relicensing. So the proliferation of amendments reflects the fact that, in spite of a lot of good work that has been done, there is no consensus about how to proceed. Unfortunately, I cannot support the amendment the Senators from Nebraska and Idaho are offering today. In my view, it does not reflect a consensus.

At this juncture, given the procedural posture of the bill, I believe the best course is to adopt the amendment I have offered which provides that there be a review undertaken by the relevant agencies with respect to two aspects of the hydroelectric relicensing process. Let me recount what those are.

First, whether provisions for alternative mandatory conditions such as those included in the Nelson-Craig amendment would work to improve the process and, secondly, methods that should be adopted to streamline the process.

The hydroelectric relicensing process has come under criticism. Much of that criticism is justified due to its complexity and the length of time it takes to issue a renewal license. These delays are not good for government, and they are of great concern to my colleagues and to me as well.

There are interagency efforts in place to try to improve that process. We need to encourage those efforts. We need to try to let those efforts play out.

My amendment would do this by requiring all the involved agencies—that includes the Secretary of the Interior, Federal Energy Regulatory Commission, the Secretary of Commerce, Secretary of Agriculture—to report on whether the alternative would require all the agencies to work together to make recommendations to the Congress on how we can improve the process.

The second thing the amendment does is require the agencies to report on whether the alternative mandatory conditioning authority provisions included in the underlying amendment would work. My amendment would require recommendations as to what standard should apply with respect to alternative mandatory conditions and the nature of participation of interested parties.

In addition, the amendment I have offered would require an assessment of whether this new authority would delay an already complex and slow process, which is a very real concern I have.



The Nelson-Craig amendment would adopt alternative mandatory conditioning authority while doing nothing to streamline the process. I am concerned that the amendment, rather than improving the process, will inadvertently add complexity and delay to an already overly complex and slow relicensing process.

I am also concerned that the Craig amendment undermines protections for Federal lands and resources provided for in the Federal Power Act. Under that act, mandatory conditions and prescriptions are developed by the Federal land management or resource agency for inclusion in the license to protect wildlife refuges, national parks, other Federal lands, and Indian reservations. This conditioning authority and these standards have been in place for over 80 years.

The Senate energy bill provides new flexibility relating to this conditioning authority by including alternative mandatory conditioning authority. But the bill does this in a way that we believe is environmentally protective in an appropriate way.

The amendment by the Senators from Nebraska and Idaho would change this alternative mandatory conditioning authority to make it less protective of Federal lands and resources by modifying the standard for alternative mandatory conditions from that included in the bill.

Finally, the Craig amendment would give greater weight to the views of the license applicants over the views of States and tribes and the public. This is another change we believe is inappropriate and causes me to propose the amendment I have called up for consideration.

I acknowledge these are difficult issues. Consensus has been difficult to achieve. Rather than proceeding with either the Craig amendment or the language in the Senate bill, the one before the Senate now, I believe the sound approach is to learn more about the implications of these provisions and seek expert input from the agencies involved, and that is what the amendment I have called up would do.

I urge my colleagues to support the amendment I offer as an alternative to the Nelson-Craig amendment.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Madam President, I commend my colleague from New Mexico for his very able work on bringing forth an energy bill. It is with some sadness I find myself opposing his substitute amendment.

The substitute amendment is essentially requesting a study in an area where we already know the results. I support studies when we don't know what the study will tell us and we don't know the results and we need to find out what the situation is. But in this case, we know what the situation is.

We have a system that suffers from dispersed decisionmaking authority and an inability to balance competing

values and a system that is certainly jeopardizing the relicensing of many of our hydropower facilities across the Nation.

Nearly every State will have one or more and as much as 99.9 percent of its hydroelectric power facilities come up for the licensing review within the next 15 years. If they have the experience I have had in Nebraska, they won't have to have a study. They can simply look to see what has happened in Nebraska to tell them what the future holds for them.

The future of Nebraska is dimmed because of the past experience we have had with the relicensing process.

We spent \$40 million for one hydroelectric powerplant in 14 years to realize this project—a project built in the 1930s. That experience can tell you that the system is lengthy, expensive, and it doesn't require any of that \$40 million that was spent to go into the environment, habitat, wildlife retainment, or anything of that sort. It was money spent on application fees, filing of papers, lawyer's fees—\$40 million to realize this one project in the State of Nebraska, taking 14 years.

That was when we had both Senators from Nebraska, the congressional Representatives, and I, as Governor, supporting the effort to get it done in an expeditious fashion. That is expedition in reverse.

The truth is, this system is not expedited; it is expensive, costly, and slow. We even had in our situation, nearly at the end of the process, after we had gone through the process with as many alphabet agencies in the Federal Government that I thought we would ever find, another agency that came in and said: All the work you have done is for naught, and we have a requirement we would like to impose at the tail end of the process.

They could have done it at the beginning of the process. This will help alleviate and obviate that need. In the State of Washington alone, you are going to be facing the relicensing of 80 percent of your hydroelectric power in the next 15 years—21 projects. If you multiply that times \$40 million, you can see what the cost really is. Multiply that times the number of staff years, in terms of what it is going to take, and you will see what the internal cost truly is to your power authorities.

I would ordinarily support a study. But in this case, we don't need one. We have had the study, and the study is experience which tells us that we need to make this kind of correction, and we need to make it now, not wait until the study tells us what we already know.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. SMITH of Oregon. Madam President, I rise in opposition to the second-degree amendment being offered by Senator BINGAMAN. Truly, another study of this issue will do nothing more than run out the clock on license

holders who must get 53 percent of the nonfederal hydropower capacity in this Nation relicensed within the next 15 years.

To give you an example of just how grave a situation this is, there are 307 projects under the category, including 49 projects in California, 21 projects in Washington, 23 projects in Wisconsin, 30 projects in New York, 23 projects in Maine, 14 projects in Oregon, and 14 projects in Michigan. This amounts to over 29,000 megawatts of capacity. To put this into context, it takes 1,000 megawatts daily to run the City of Seattle. So when you figure that 29,000 megawatts are at stake, and you figure what it takes to run Seattle, you can imagine how much economic difficulty will ensue if we do not figure out a more reasonable way to bring on hydropower relicensing.

There have been extensive hearings already during the last two Congresses, in the Senate Energy Committee, on the need for hydro relicensing reform. I have attended them all, and there has been a committee that was chartered under the Federal Advisory Committee Act. That committee has concluded that legislative reforms are absolutely critical if we are to make progress and meet the deadlines that are looming over the energy capacity of this country.

There have been administrative attempts to reform the process already. Having the same agencies that have, so far, been able to institute meaningful reforms further study this issue will provide us with no benefit at all. I urge my colleagues from all parts of this country, who have hydroelectric power, to please support the Nelson amendment. It provides modest reforms of a narrow portion of the relicensing process.

The time for study is done. The time to ensure that hydropower remains an important part of our electricity mix is now. Madam President, no one knows better than you and I, from the Pacific Northwest, how critical an issue this is for our neck of the woods. I also say that, while all energy production has an environmental tradeoff, truly, hydropower puts out no global warming and provides our people with the most renewable, inexpensive, and reliable sources of electricity there are, frankly, on the Earth.

I believe if we are serious about reemploying our people, getting our economy moving, we have to be serious about hydro relicensing reform.

Madam President, I know a number of environmental groups have opposed the Nelson amendment. I want to also say we have, for those who are concerned about the environmental issue, as we all are, that there is a second degree that I will be offering that does enjoy the support of many environmental groups, such as Trout Unlimited. I quote their news release today:

Senator Smith's amendment improves the Craig-Nelson amendment by reducing the loss in fishery protection from SA 3140.

While we support Senator Smith's amendment, we still urge opposing an amended SA 3140.

The point I am trying to make is we have improved the underlying amendment, and we have given the environmental community something that will significantly help them in their advocacy. To demonstrate what we are trying to do with the second degree, should the Bingaman study be defeated, this amendment does two important things. While it substantially, like Senator NELSON's, makes the changes I think provide value to all of the stakeholders who follow the relicensing process, the first would substitute the words "fish resources" for "fishery" in the underlying text. We want to make it clear that we are trying to protect all fish resources, not just those fish species that are harvested either commercially already or with sport fishery.

Secondly, the amendment would begin this process in 2008. It would require license applicants to file their applications for a new license with the Federal Energy Regulatory Commission 3 years before the current license has expired. During the hearings before the Energy Committee, it was clear to me that there was frustration with the current statutory requirement to file only 2 years before the expiration of the current licenses. In most instances, this is insufficient time for FERC to review the adequacy of the application and to determine any additional studies that might be needed. The result is a string of annual licenses which do not provide certainty for consumers or the utility and results in delays in environmental mitigation and enhancement.

Licensed applicants are reluctant to spend such funds until they know what will, in fact, be required of them under any new license. So I say to those who care about the environment, the Nelson-Craig amendment will be improved with the second degree that will follow. Truly, what we need, last of all, is another study on a problem that we know only too well through experience.

If you want a study, the study is Senator NELSON, who was Governor Nelson. His experience is all the study we need that we have a broken system and we need to repair it. I remind my colleagues that none of us has a job in any industry unless electricity is produced first. Hydropower is crucial in the mix of America's energy. It is absolutely the backbone of the Pacific Northwest. This is needed, and then we have a way to protect the environment and a way to improve this process.

I yield the floor.

Ms. CANTWELL. Mr. President, over the last 6 weeks, while we have debated essential elements of the energy bill, from ANWR and CAFE to electricity deregulation and ethanol, I have joined the sponsors of this amendment, the chairman and ranking member of the Energy Committee and others in trying to forge a consensus on how best to re-

form the hydroelectric relicensing process.

Let me state at the outset, that I share the sponsor's deep sense of frustration and concern with how the existing hydro relicensing process works for all participants.

With more than 9,300 megawatts of nonfederal hydropower capacity, Washington State is the single most hydro dependent state in the Nation. The power of the great rivers of the Pacific Northwest has contributed to our economy, created industries and even helped to win the Second World War. There is no area of the country where hydropower generation has greater importance.

At the same time, Washington State also relies on the natural abundance of these spectacular rivers. Washington's rivers provide year-round recreation opportunities, including fishing and boating, these features contribute enormously to our economy as well as our environment. Our rivers are also home to salmon and steelhead runs, the cultural soul of the Pacific Northwest.

The rivers serve as an important economic and cultural resource to several Northwest Indian tribes that entered into treaties with the U.S. based on the promise to protect and honor their rights and resources.

Our reliance on hydropower and on the recreational and environmental benefits of our rivers requires us to employ a balanced approach to their use. Utility operators have shared with me horror stories about how the rising costs, loss of operational flexibility, and lost generation due to new operating constraints imposed during relicensing are impacting their ability to bring power to Washington's consumers. At the same time, 12 runs of Washington State salmon are now included on the endangered species list.

We can and must find the right balance to ensure continued survival of these species while maintaining hydropower production.

Many hydropower projects, including some in the Northwest, were built without adequate consideration of impacts on the environment. Most were built prior to the enactment of essential environmental laws like the Clean Water Act and Endangered Species Act. Relicensing offers a unique opportunity to reassess the licenses of these hydropower dams, bring them up to modern standards, and ensure the long-term health of our rivers.

The current process for licensing hydropower projects has had mixed results. On the one hand, we have examples of great successes. The Cowlitz was once home to some of the most bountiful salmon and steelhead runs in the Pacific Northwest. In August 2000, a landmark relicensing settlement was signed that will open up more than 200 miles of renewed habitat. The settlement is supported by Federal and State agencies, conservation groups, and the hydro utility. On the other hand, the

Cushman project has been operating under annual licenses due to disputes over appropriate environmental measures. While Tacoma Power has continued operating the project for over 20 years, there remain a number of serious environmental challenges.

And on all sides we have parties pointing the finger at one another claiming that the other is always to blame. I do not believe that any of the parties to relicensing, Federal resources agencies, FERC, tribes, States, the industry or advocacy groups, are to blame for problems in relicensing. In fact, I believe most parties are good actors caught up in an outdated, bureaucratic process desperately in need of reform.

There is no question that the existing licensing process can be improved. We can make it faster and cheaper without sacrificing environmental quality. Quicker licensing would improve the efficiency of these projects and improve the environment. This is a goal that I would strongly support, if we were debating such measures today.

Unfortunately, that is not what the amendment before us today accomplishes. Instead, the amendment creates a new appeals process, another step, to this flawed process without requiring FERC and the resource agencies to address the fundamental problems contributing to the delays and skyrocketing costs.

I agree with the supporters of this amendment that one part of the solution is to allow participants to propose creative solutions in balancing energy and environmental priorities. While I can't fully agree with the approach taken in this amendment, I do agree that parties should be rewarded for coming together and proposing innovative new solutions. But more importantly, there will be no real improvement until Congress requires or FERC and the resource agencies agree to significant structural reform. This amendment falls far short.

Section 306 of the underlying bill provides an opportunity to streamline the licensing process by requiring agencies to work together with FERC in a more cooperative manner. It also requires the coordination of environmental reviews and places a number of requirements on FERC to maintain a better, more transparent schedule for relicensing proceedings.

But the amendment before us today deletes section 306, the only hope for real fundamental reform of an obviously flawed process.

It is important for the people of Washington State to get this right, and soon. We will have to relicense 19 hydropower projects over the next several years. The resulting licenses will set the terms for hydro projects to operate on our rivers for another 30 years. We need a process that will issue licenses promptly, with full environmental protection, bringing these projects into compliance with modern laws. It is disappointing that this amendment will not do the job.

I reluctantly oppose the Craig amendment because I believe we are missing an opportunity to accomplish real reform. But regardless where the votes are on this amendment, this is not the end of the discussion about hydropower licensing reform, but rather a beginning. I look forward to working with my colleagues in the Senate and those in industry, the environmental community, tribes, States, and other interests in order to maintain the tremendous hydropower assets of our State while protecting and restoring our environmental future.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Madam President, I want to say that a study should ordinarily tell us something we don't know, bring us to conclusions that we have not yet reached, or provide facts that are not otherwise evidence.

But there are no facts that are absent here. There are no conclusions that we cannot draw on the basis of what we know, and there certainly isn't an experience yet to be determined. So a study is unnecessary. It is very clear, though, action is necessary.

Respectfully, I move to table the substitute second-degree amendment offered by the Senator from New Mexico.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I thought the Senator from Nebraska asked for the yeas and nays.

The PRESIDING OFFICER. The motion to table has been made.

Mr. NELSON of Nebraska. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The Chair reminds Senators that the motion to table is not debatable. It will take unanimous consent at this time for further debate.

The question is on agreeing to the motion to table amendment No. 3316. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER (Mr. CLELAND). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 43, as follows:

[Rollcall Vote No. 81 Leg.]

#### YEAS—54

|           |          |          |
|-----------|----------|----------|
| Allard    | Burns    | Craig    |
| Allen     | Campbell | Crapo    |
| Bennett   | Carper   | DeWine   |
| Bond      | Cleland  | Dodd     |
| Breaux    | Cochran  | Domenici |
| Brownback | Collins  | Ensign   |
| Bunning   | Conrad   | Enzi     |

|            |             |            |
|------------|-------------|------------|
| Fitzgerald | Landrieu    | Santorum   |
| Frist      | Lincoln     | Sessions   |
| Gramm      | Lott        | Shelby     |
| Grassley   | Lugar       | Smith (NH) |
| Hagel      | McCain      | Smith (OR) |
| Hatch      | McConnell   | Stevens    |
| Hollings   | Miller      | Thomas     |
| Hutchinson | Murkowski   | Thompson   |
| Hutchison  | Nelson (NE) | Thurmond   |
| Inhofe     | Nickles     | Voinovich  |
| Kyl        | Roberts     | Warner     |

#### NAYS—43

|          |           |             |
|----------|-----------|-------------|
| Akaka    | Edwards   | Murray      |
| Baucus   | Feingold  | Nelson (FL) |
| Bayh     | Feinstein | Reed        |
| Biden    | Graham    | Reid        |
| Bingaman | Gregg     | Rockefeller |
| Boxer    | Harkin    | Sarbanes    |
| Byrd     | Inouye    | Schumer     |
| Cantwell | Jeffords  | Snowe       |
| Carnahan | Kennedy   | Specter     |
| Chafee   | Kerry     | Stabenow    |
| Clinton  | Kohl      | Torricelli  |
| Corzine  | Leahy     | Wellstone   |
| Dayton   | Levin     | Wyden       |
| Dorgan   | Lieberman |             |
| Durbin   | Mikulski  |             |

#### NOT VOTING—3

|         |       |         |
|---------|-------|---------|
| Daschle | Helms | Johnson |
|---------|-------|---------|

The motion was agreed to.

Mr. CRAIG. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

#### ORDER FOR RECESS

Mr. REID. Mr. President, for the information of all Members, I have checked with the minority, and I ask unanimous consent that between the hours of 3 and 4 o'clock this afternoon, the Senate be in recess to listen to Secretary Powell in S-407. I ask that that time count against the postclosure hours under this measure now before the Senate.

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

#### AMENDMENT NO. 3306 TO AMENDMENT NO. 3140

Mr. SMITH of Oregon. Mr. President, I call up amendment No. 3306, the Smith second-degree amendment to the Nelson of Nebraska amendment No. 3140, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The senior assistant bill clerk read as follows:

The Senator from Oregon [Mr. SMITH] proposes an amendment numbered 3306 to amendment No. 3140.

Mr. SMITH of Oregon. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify the definition of renewable energy)

Strike Title III and insert the following:

#### "SEC. 301. ALTERNATIVE CONDITIONS AND FISHWAYS.

"(a) ALTERNATIVE MANDATORY CONDITIONS.—Section 4 of the Federal Power Act (16 U.S.C. 797) is amended by adding at the end the following:

"(h)(1) Whenever any person applied for a license for any project works within any reservation of the United States under subsection (e), and the Secretary of the depart-

ment under whose supervision such reservation falls (in this subsection referred to as the 'Secretary') shall deem a condition to such license to be necessary under the first proviso of such section, the license applicant may propose an alternative condition.

"(2) Notwithstanding the first proviso of subsection (e), the Secretary of the department under whose supervision the reservation falls shall accept the proposed alternative condition referred to in paragraph (1), and the Commission shall include in the license such alternative condition, if the Secretary of the appropriate department determines, based on substantial evidence provided by the license applicant, that the alternative condition—

"(A) provides for the adequate protection and utilization of the reservation; and

"(B) will either—

"(i) cost less to implement, or

"(ii) result in improved operation of the project works for electricity production as compared to the condition initially deemed necessary by the Secretary.

"(3) The Secretary shall submit into the public record of the Commission proceeding with any condition under subsection (e) or alternative condition it accepts under this subsection a written statement explaining the basis for such condition, and reason for not accepting any alternative condition under this subsection, including the effects of the condition accepted and alternatives not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

"(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative conditions."

"(b) ALTERNATIVE FISHWAYS.—Section 18 of the Federal Power Act (16 U.S.C. 811) is amended by—

"(1) inserting "(a)" before the first sentence; and

"(2) adding at the end the following:

"(b)(1) Whenever the Secretary of the Interior or the Secretary of Commerce prescribes a fishway under this section, the license applicant or the licensee may propose an alternative to such prescription to construct, maintain, or operate a fishway.

"(2) Notwithstanding subsection (a), the Secretary of the Interior or the Secretary of Commerce, as appropriate, shall accept and prescribe, and the Commission shall require, the proposed alternative referred to in paragraph (1), if the Secretary of the appropriate department determines, based on substantial evidence provided by the licensee, that the alternative—

"(A) will be no less protective of the fish resources than the fishway initially prescribed by the Secretary; and

"(B) will either—

"(i) cost less to implement, or

"(ii) result in improved operation of the project works for electricity production as compared to the fishway initially prescribed by the Secretary.

"(3) The Secretary shall submit into the public record of the Commission proceeding with any prescription under subsection (a) or alternative prescription it accepts under this subsection a written statement explaining the basis for such prescription, and reason for not accepting any alternative prescription under this subsection, including the effects of the prescription accepted or alternative not accepted on energy supply, distribution, cost, and use, air quality, flood control, navigation, and drinking, irrigation, and recreation water supply, based on such

information as may be available to the Secretary, including information voluntarily provided in a timely manner by the applicant and others.

“(4) Nothing in this subsection shall prohibit other interested parties from proposing alternative prescriptions.”

“(c) TIME OF FILING APPLICATION.—Section 15(c)(1) of the Federal Power Act (16 U.S.C. 808(c)(1)) is amended by striking the first sentence and inserting the following:

“(1) Each application for a new license pursuant to this section shall be filed with the Commission—

“(A) at least 24 months before the expiration of the term of the existing license in the case of licenses that expire prior to 2008; and

“(B) at least 36 months before the expiration of the term of the existing license in the case of licenses that expire in 2008 or any year thereafter.”

Mr. SMITH of Oregon. Mr. President, I yield my time for commentary to the Senator from Idaho.

The PRESIDING OFFICER. The Senator has no such right. The Senator from Idaho can seek recognition at any time.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, we just took a very critical and, I believe, important vote in the Senate pertaining to the Nelson-Craig amendment, and now second-degreed by the Senator from Oregon. While I know the Senator from New Mexico and I have worked long and hard on the issue of hydro relicensing, I think the will of the Senate has spoken as it relates to moving this issue to the forefront and making a legislative determination on what the public policy ought to be as it relates to the relicensing of hydro facilities around this country.

We have now for well over a decade and a half spent a great deal of time looking at the hydro relicensing process. Many of the licensees have spent millions and millions of dollars trying to shape it and determine it. Study after study—and here are about 7 of them, some 1,400 pages of studies over the last decade—have said there is a problem that can only be determined by a legislative fix. That is exactly what the Nelson-Craig amendment, now second-degreed by the Senator from Oregon, does. It maintains the amendment, and the second degree maintains the current standard in section 4(e).

The Secretary of the Interior can determine whether an alternative condition offered by the licensee ensures the adequate protection and utilization of the “Federal reservation.”

“Federal reservation” is a term of art in the Federal licensing of projects as it relates to protecting the resources, protecting the land.

The reason this amendment is important is when we go to conference with this bill, the House has said something very different. The House said, in their version of the hydroelectric relicensing reform, that they would change the standard in 4(e), requiring the Secretary of the Interior to ensure an al-

ternative condition provides no less protection for the reservation than provided by the conditions deemed initially necessary by a midlevel staff person at the Interior. That is a higher threshold than is currently required under licensing.

What is so important is that we take the right language to the conference to make sure if we advance or change the relicensing projects of hydro—and the Senator from Nebraska has spoken eloquently about the problems of Nebraska, the Senator from Oregon has talked about the multitude of projects to be relicensed over the next decade; we know that hydro is about 19 to 20 percent of the electrical base of this country—while we want to modernize these facilities, bring them into compliance under better environmental standards, what we cannot have is a multi-multimillion-dollar process that doesn’t get us anywhere and, in the end, actually reduces the ability of these facilities to produce power.

The Senator from Nebraska spoke of a process in his State that cost \$40 million to relicense a hydro project. My guess is that the project, when it was initially built some 30 years prior, cost a fourth of that amount—\$8 million, \$10 million. And now just to relicense it, just to go through the legal hoops and hurdles and timelines involved it costs \$40 million? That doesn’t talk about the retrofits. That doesn’t talk about new concrete poured or concrete taken away or fish ladders or rescheduling and reprogramming the flows of waters to accommodate fish and habitat downstream. None of that was spoken to—nor the loss of generating capacity. Just the process costs that amount of money.

That is why these studies have shown, time and time again, this is a problem that has to get fixed legislatively. Yes, we have had working groups inside the departments of our Federal Government over the last number of years.

When I first began to examine the hydro relicensing problem 5 years ago, to the Clinton administration’s credit, they began to get all their agencies together to try to streamline the process. That is in the eye of the beholder, and they did work. But there was nothing in the law that required it. What we were hoping to do is to do that.

What we have done instead as an alternative is provide, when the licensee comes up with an approach, and a stakeholder comes up with an different approach, that the licensee can say: We can arrive at the standards and meet the needs of the stakeholder for less money in a different approach, and the Secretary of the Interior, in this instance, can arbitrate that and make those determinations they can now not make.

It ensures a balance and accountability to Federal resource agencies that I think is critically important. Isn’t it fascinating that a third level bureaucrat can make a demand that

even the Secretary cannot act on, that may cost millions and millions of dollars? It may even take down a hydro facility because it can no longer operate in an economically effective way and the licensee would simply walk away and the facility would come down and it would be no longer productive because someone downline in an agency determined they needed something that could not in any way be arbitrated, that could not in any way be accommodated by different approaches, or an alternative review.

That is what we offer in the Nelson amendment. That is why it is critical. The Smith amendment, then, gives a little flexibility in time that we think is important. Trout Unlimited has said it is important.

We are certainly willing to accommodate this. This in no way is an anti-environmental vote. The process itself is still intact. All of the players get to the table. All of the players’ viewpoints are heard.

We said, when the licensee comes forward and says I can meet those new standards for less money in a different way, that is a consideration which becomes part of the process that does not now exist. We think that is right. We think it is reasonable. That is the way government ought to work.

If we lose our hydro base in this country—and we could—how do we replace it? Coal-fired plants? A new nuclear plant? It can never be made up by wind and solar because it can never produce that amount of power. It would have to be replaced. It is replaced, at least in volume, by the current alternatives I have mentioned. In most instances, and in most States, those alternatives today are somewhat unacceptable.

That is why it is so critically important that the Nelson-Craig-Smith amendment move forward as a part of this energy bill and into the conference where we can work out our differences and hopefully resolve a problem that has plagued this process now since it was created nearly two decades ago.

I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending question is the Smith of Oregon substitute to the Nelson first-degree amendment.

Mr. BINGAMAN. Mr. President, I do not object to going ahead with the vote. I don’t believe a rollcall is required at this point.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the substitute.

The amendment (No. 3306) was agreed to.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, that vote was on the Nelson-Craig amendment in the second degree by the Senator from Oregon?

The PRESIDING OFFICER. The Nelson-Craig amendment is now pending, as amended.

Is there further debate on that amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3140), as amended, is agreed to.

Mr. BINGAMAN. Mr. President, I move to reconsider the vote.

Mr. SMITH of Oregon. 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 Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the leader time which I am going to take be counted against the 30 hours on this bill.

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

#### REAL REPUBLICAN SLOGANS

Mr. REID. Mr. President, this morning my counterpart in the House, the Republican whip, TOM DELAY, led a press conference. In that press conference, he talked about the fact that he thought the Democrats have stolen the theme of the Republicans. I do not know anything about that, but I do have some suggestions that I would like to give my friend, my counterpart in the House, Representative DELAY, for a theme. That would be Securing America's Future, the Republican Way.

We came up with what we think is a very apt way to describe what we are trying to do by securing America's future for all our families. I would like to suggest this to Representative DELAY: The Real List of Republican Slogans.

One would be securing a \$254 million tax break for Enron; and securing secret Caribbean tax havens for billionaires.

Another that should go on the list would be securing skyrocketing prices and huge profit margins for large pharmaceutical companies.

The list wouldn't be complete unless we recognize that the prescription drug benefit being talked about is for 6 percent of American seniors leaving out 94 percent of American seniors.

Also on the list we have securing limited well drilling rights in wildlife refuges and national parks.

Also on the list we have securing crowded classrooms and crumbling schools, and leaving those the way they are.

Part of the list also, I suggest to my friend, Representative DELAY, is securing higher levels of arsenic in drinking water, and, of course, securing permanent tax breaks for the wealthy paid for by raiding Social Security, and also having deep Social Security benefit cuts.

Also on that list would have to be the Vice President's records of giveaways to big energy companies.

Also, we could have on the list securing a future with 100,000 shipments of deadly radioactive waste crossing

America's highways, railways, and waterways.

Finally, I would make a suggestion—I have some others, but I know time is short—that we have on that list securing the rights of toxic polluters to pass cleanup costs on to the taxpayers.

I ask that Representative DELAY and others in that press conference with him to go back and look at his own list of slogans and add to that some of these which I have noted.

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

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

#### NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. CARPER. Mr. President, I ask unanimous consent the pending amendment be laid aside.

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

AMENDMENT NO. 3197 TO AMENDMENT NO. 2917

Mr. CARPER. Mr. President, amendment No. 3197 is at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER], for himself, Ms. COLLINS, Mr. LEVIN, Ms. LANDRIEU, Ms. STABENOW, and Mr. JEFFORDS, proposes an amendment numbered 3197 to amendment No. 2917.

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

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

The amendment is as follows:

(Purpose: To encourage the efficient generation of electricity through combined heat and power and to modify the provision relating to termination of mandatory purchase and sale requirements under PURPA)

Beginning on page 47, strike line 23 and all that follows through page 48, line 20, and insert the following:

“(m) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—

“(1) OBLIGATION TO PURCHASE.— After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to purchase electric energy from a qualifying cogeneration facility or a qualifying small power production facility under this section if the Commission finds that the qualifying cogeneration facility or qualifying small power production facility has access to independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy.

“(2) OBLIGATION TO SELL.— After the date of enactment of this subsection, no electric utility shall be required to enter into a new contract or obligation to sell electric energy

to a qualifying cogeneration facility or a qualifying small power production facility under this section if competing retail electric suppliers are able to provide electric energy to the qualifying cogeneration facility or qualifying small power production facility.

“(3) NO EFFECT ON EXISTING RIGHTS AND REMEDIES.— Nothing in this subsection affects the rights or remedies of any party under any contract or obligation, in effect on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

Mr. CARPER. Mr. President, I ask unanimous consent that Senator SNOWE be added as a cosponsor.

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

Mr. CARPER. Senator COLLINS of Maine joins me in offering this amendment.

Mr. President, the issue that is before us involves cogenerating facilities which create both heat and power. They are highly efficient and environmentally attractive. They exist in almost all of our States. Unfortunately, section 244 of the Senate energy bill before us would eliminate the provisions in current law which support both existing combined heat and power generating systems and new ones that are being developed. I believe that until competitive conditions in electricity markets make these existing requirements unnecessary, the changes that are incorporated in this bill are premature.

Today, combined heat and power plants, which typically produce electricity and deliver steam used for manufacturing purposes, produce about 7 percent of our Nation's electricity. Combined heat and power facilities are, on average, twice as fuel efficient as conventional utility plants and thus produce about half the emissions of conventional utility plants.

The U.S. Department of Energy and our Environmental Protection Agency have set the goal of doubling the Nation's capacity from combined heat and power facilities by 2010. Section 244 of the Senate energy bill runs counter to this goal by repealing, perhaps inadvertently, statutory support for existing and new combined heat and power generating facilities.

Under existing law, section 210 of PURPA, the Public Utility Regulatory Policies Act, has, since 1978, required electric utilities to purchase electricity generated by so-called qualifying facilities—which includes cogenerators and renewable energy facilities—at the utility's “avoided cost.” “Avoided cost” is the cost the utility would have paid to generate the same electricity itself or to purchase it elsewhere. PURPA also requires electric utilities to sell qualifying facilities backup power at just and reasonable rates and without discrimination.

So under current law, under PURPA, these qualifying facilities, cogenerating facilities, are permitted to sell

the power that they create at a price that is agreed to at the utility's avoided cost. Also, they have the ability to purchase electricity power as it is needed at a reasonable rate and without discrimination. That is current law. They would lose that ability under the language of the bill that is before us. We do not want them to lose that ability.

Section 244 of the bill would terminate the obligation of electric utilities, under PURPA, to enter into new contracts to either purchase electric energy from these qualifying facilities or to sell electricity to new qualifying facilities.

Some would argue that these PURPA requirements are no longer needed because electricity markets are competitive. In many cases, however, electricity markets are not competitive. I realize in a number of markets they are. Delaware is among them. But in a number of other markets, electricity is not competitive, and these qualifying facilities do not have access to competitive options for buying or selling electricity.

The existing PURPA protections should not be lifted, in my judgment, and that of Senator COLLINS' and our other cosponsors' judgment, until competitive electricity markets are found to render these protections no longer necessary.

The amendment that Senator COLLINS and I offer today would modify section 244 of the bill before us by conditioning the termination of the PURPA obligation for utilities to buy electricity from these qualifying facilities on a finding by the Federal Energy Regulatory Commission, FERC, that the qualifying facility has access to an independent, competitive, wholesale market for the sale of electricity. A FERC finding of a competitive wholesale market assures that there will be real opportunities for a qualifying facility to sell its electrical output, including intermittent power, at a competitive price.

This amendment would also modify section 244 in this bill to clarify that the termination of a utility's obligation to sell backup power to a qualifying facility under PURPA is conditioned on the qualifying facility having the ability to purchase backup power from competing retail electricity suppliers. Until a cogenerator can shop for backup power from competing suppliers, it is critical to maintain the current PURPA obligation for the local utility to sell backup power at just and reasonable rates and without discrimination.

Let me say, in conclusion, I support reform of PURPA, but I do not think we should do it in a way that runs contrary to our other goals of generating efficient electricity and developing competitive markets. This amendment does just that. I urge my colleagues to join us in support of the amendment.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am pleased to join with my distinguished colleague from Delaware, Senator CARPER, in offering an amendment to the energy bill that would keep in place, for a limited time, incentives for the generation of clean, efficient energy using a technology known as combined heat and power, or cogeneration.

Such cogeneration plants use a variety of fuels, from biomass to natural gas, to produce both electricity and steam. Combined heat and power currently produces about 9 percent of our Nation's electricity. According to the U.S. Energy Information Administration, there are more than 1,000 facilities operating combined heat and power units in the United States, including hospitals, universities, and industries. There are 95 cogeneration facilities in my home State of Maine alone.

By capturing the heat that would be rejected by traditional power generators, combined heat and power is extremely efficient. While a typical coal-fired powerplant only achieves about 34 percent efficiency, cogeneration facilities achieve 70 to 85 percent efficiency. On average, combined heat and power facilities are twice as fuel efficient as conventional utility plants.

By keeping in place incentives for using combined heat and power, the Carper-Collins amendment adds to the competitiveness of our domestic manufacturing. Because cogeneration is so efficient, it reduces cost. The President's national energy policy makes clear that combined heat and power offers energy efficiency and cost savings important to many manufacturers that compete in the international marketplace.

Our amendment also increases energy security and electric reliability. Dispersing power generation at manufacturing sites is an important tool to reduce the risk to the electricity supply. Generating electricity close to where it will be used reduces the load on existing transmission infrastructure. It reduces the amount of energy lost in transmission while eliminating the need to construct expensive power lines to transmit power from large central station powerplants.

In addition, cogeneration reduces the U.S. dependency on foreign sources of energy by encouraging energy efficiency and fuel diversity in electric power generation.

Also, our amendment is good for the environment. Because combined heat and power facilities are twice as efficient as conventional plants, they have fewer emissions. They reduce emissions of the chemicals that cause smog and acid rain and cut greenhouse gas emissions in half. For this reason, cogeneration is an important component of any plan to reduce greenhouse gas emissions and is included in the President's climate initiative.

The U.S. Department of Energy and the EPA have set the goal of doubling U.S. cogeneration capacity by 2010. At

industrial facilities alone, cogeneration could reduce annual greenhouse gas emissions by 44 million metric tons. They could also reduce emissions of smog-forming nitrogen oxides by 614,000 tons per year.

Let me now add to the comments made by Senator CARPER on why this amendment is necessary. The Public Utility Regulatory Policy Act, known as PURPA, requires utilities to sell backup power to qualifying nonutility power facilities at just and reasonable rates. It also obligates utilities to purchase excess power from cogeneration facilities at prices equal to that utility's own cost of production, known as the avoided cost. The Senate energy bill, however, repeals PURPA. Repealing PURPA would be a good idea if competitive electricity markets existed all across this Nation. Unfortunately, the legislation before us repeals PURPA even if competitive markets are not achieved.

Our amendment would keep certain PURPA provisions in place until competitive electricity markets were established. For a limited time our amendment would keep in place the PURPA provisions requiring utilities to provide backup power and buy electricity from qualifying cogeneration facilities. As soon as competitive electricity markets were established, these requirements would be repealed.

Without competition, there is no incentive for utilities to provide backup power or purchase electricity from combined heat and power facilities even though that electricity is cleaner and more efficient than most other electricity generation. Until a combined cogeneration facility can shop for backup power from competing suppliers and sell power at a competitive price, PURPA should not be unconditionally repealed.

The amendment Senator CARPER and I are offering today will keep in place incentives that continue to operate combined heat and power facilities until true competition exists in electricity markets.

This amendment is good for the economy, good for the environment, good for our energy policy, and good for the competitiveness of American manufacturing.

I thank my colleague from Delaware for involving me in this amendment. I urge our colleagues to support our proposal.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I know the Senator from Alaska is planning to come to the floor to speak against the amendment. At this point, unless the proponents of the amendment would like to do initial debate, 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.



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

The Senator from Nevada is recognized.

Mr. REID. For Members of the Senate, within the next 15 minutes there will be a rollcall vote, so everybody who is off the Hill should start heading back. The vote will occur probably around 1:05.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, the amendment pending, as I understand it, would extend PURPA's mandatory purchase obligation until such time as FERC determined that a PURPA "qualifying facility" had access to "independently administered, auction-based day ahead and real time wholesale markets for sale of electric energy."

The amendment would also require purchasing utilities to continue to sell backup power to qualified facilities unless competing retail electric suppliers were able to provide electric energy to the qualified facility.

This basically means that FERC is in charge of certain retail sales of electricity—preempting State public utility commissioners on backup retail sales, at least for the foreseeable future. As a consequence, with all due respect, I believe the amendment is flawed. It would continue PURPA's mandatory purchase obligation indefinitely into the future by conditioning repeal on an affirmative FERC finding on a powerplant-by-powerplant basis that the statutory test is met.

There are no requirements in the amendment regarding the process or timing for FERC action. Satisfying this test could take virtually forever, including numerous court challenges. Nor is there any guidance as to how FERC is to define the existence of an "independently administered, auction-based day ahead and real time wholesale market" for electricity.

I guess the question is, Who knows really what it means? It is not a term of art in the Federal Power Act. Moreover, many areas of the country likely do not now meet—and may never meet—this test.

So I suggest that we not be fooled by claims that the only thing the qualifying facilities want is access to the transmission grid. They have that now under FERC order No. 888. It is the law of the land, and it has been upheld by the Supreme Court.

What do the supporters of this amendment really want? In my opinion, they really want to continue PURPA's mandatory purchases at above-market rates. Who pays the cost above market rates? Obviously, the consumer—to have their power purchased at the "avoided cost" rate, even if that rate is far above the market rate.

Well, I think this is wrong policy. The language in the underlying Daschle-Bingaman bill leaves existing contracts in place; but there should be

no new PURPA contracts. I think most Members agree with that. Since its enactment—and we have had this debate previously on the bill—in 1978, PURPA has forced customers to pay lots of money. It is estimated that they have paid tens of billions of dollars more for electricity than would have been the case had it not been enacted.

PURPA is incompatible with competitive wholesale markets. It has been used by the qualifying facilities that are cogenerators—producing both power and steam for industrial uses—in name only.

Further, the last three administrations have proposed the repeal of PURPA's mandatory purchase obligation, and almost every comprehensive electric bill introduced over the past two Congresses has contained nearly identical language to the bipartisan consensus PURPA language contained in the Daschle-Bingaman amendment.

Keeping PURPA is contrary to protecting consumers. Thus, in my opinion, the amendment should be rejected. I propose that we table the amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

At this time, there is not a sufficient second.

Mr. MURKOWSKI. 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. MURKOWSKI. 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. MURKOWSKI. Mr. President, I have no objection if Senator CARPER wants to speak, even though the motion was made. I would certainly defer to my friend.

The PRESIDING OFFICER (Mr. KOHL). The Senator from Delaware is recognized.

Mr. CARPER. Mr. President, I thank the Senator.

With the combined heat and power facilities, we have the ability to generate energy almost twice as efficiently as we generate it from traditional utilities, traditional generating plants. With combined heat and power facilities, we see emissions that are roughly half those of traditional powerplants.

The administration's national energy plan envisions a doubling and relies on combined heat and power facilities in this country because they are so energy efficient and also environmentally friendly.

The downside, unfortunately, is that, inadvertently, the language of this bill before us takes away the ability for FERC to help ensure that these combined heat and power facilities have the opportunity to sell power at reasonable prices into the grid and to buy power, if and when they need to buy it, at reasonable prices.

I think all of us would agree that to have the ability to create more facilities that are twice as energy efficient as traditional generating facilities and produce half the emissions is a good thing. That is why the administration has offered doubling these facilities in their plan.

Unfortunately, if we leave the language as it is in the bill, we are going to find that the potential that is embodied in the generating capability of the combined heat and power facilities will not be realized. Nobody is interested in utilities having to sell electricity at rates that are above market. We want to simply make sure that a combined heat and power facility, which is twice as energy efficient, and twice as environmentally friendly, has the opportunity to expand. That is what we seek to do here.

With that in mind, I ask our colleagues to oppose the motion to table.

Again, I express my thanks to the Senator from Maine, Ms. COLLINS, for joining me and a number of colleagues in offering this amendment today.

I yield the floor.

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

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

The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I move to table the pending amendment, and I 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 to table amendment No. 3197. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 37, nays 60, as follows:

[Rollcall Vote No. 82 Leg.]

YEAS—37

|          |           |             |
|----------|-----------|-------------|
| Allard   | Ensign    | Lugar       |
| Allen    | Enzi      | McCain      |
| Bennett  | Graham    | McConnell   |
| Bingaman | Gramm     | Miller      |
| Bunning  | Grassley  | Murkowski   |
| Burns    | Hagel     | Murray      |
| Cantwell | Hatch     | Nelson (FL) |
| Cochran  | Hutchison | Nickles     |
| Craig    | Inhofe    | Roberts     |
| Crapo    | Kyl       |             |
| Domenici | Lott      |             |

Sessions  
Shelby

Stevens  
Thomas

Thurmond  
Warner

NAYS—60

Akaka  
Baucus  
Bayh  
Biden  
Bond  
Boxer  
Breaux  
Brownback  
Byrd  
Campbell  
Carnahan  
Carper  
Chafee  
Cleland  
Clinton  
Collins  
Conrad  
Corzine  
Dayton  
DeWine

Dodd  
Dorgan  
Durbin  
Edwards  
Feingold  
Feinstein  
Fitzgerald  
Frist  
Gregg  
Harkin  
Hollings  
Hutchinson  
Inouye  
Jeffords  
Kennedy  
Kerry  
Kohl  
Landrieu  
Leahy  
Levin

Lieberman  
Lincoln  
Mikulski  
Nelson (NE)  
Reed  
Reid  
Rockefeller  
Santorum  
Sarbanes  
Schumer  
Smith (NH)  
Smith (OR)  
Snowe  
Specter  
Stabenow  
Thompson  
Torricelli  
Voinovich  
Wellstone  
Wyden

NOT VOTING—3

Daschle

Helms

Johnson

The motion was rejected.

Mr. REID. 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.

Mr. REID. Is there further debate on the amendment?

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3197.

The amendment (No. 3197) was agreed to.

Mr. REID. 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.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Georgia, Mr. CLELAND, be recognized for up to 15 minutes to speak as in morning business, and the time be counted against the postcloture 30 hours.

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

(The remarks of Mr. CLELAND are printed in today's RECORD under "Morning Business.")

Mr. BROWNBAC. Mr. President, I have an amendment I would like to send forward, modify, and set aside.

The PRESIDING OFFICER. The Senator from Kansas.

# MODIFICATION OF SUBMITTED AMENDMENTS NOS. 3239 AND 3146

Mr. BROWNBAC. I call up amendment No. 3239 and ask for its immediate consideration, and I ask unanimous consent to modify amendment No. 3239.

Mr. REID. Mr. President, reserving the right to object, I do not think we have had a chance to see that modification. I have spoken to the Senator from Kansas in the Chamber this morning. I spoke also with Senator HAGEL. We have to do both at the same time. We cannot do them separately.

Mr. BROWNBAC. I spoke with Senator HAGEL and told him I would send it forward, then ask for the modification, and then set it aside. If we want to do those at the same time, that is fine. I just wanted to get the amend-

ment and its modifications forward. It is not to get ahead of anybody. If they want to do the modifications at the same time, I will yield to the distinguished floor leader from Nevada.

Mr. REID. Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. BROWNBAC. Mr. President, to remove the confusion, I withdraw my request at this time.

The PRESIDING OFFICER. The request is withdrawn.

Mr. REID. Mr. President, I say to my friend, it is my understanding what he wants to do is modify his amendment.

Mr. BROWNBAC. That is correct.

Mr. REID. I also want to modify Senator HAGEL's amendment.

I ask unanimous consent, notwithstanding rule XXII, that it be in order to modify amendments Nos. 3239 and 3146. I think that accomplishes what we want to accomplish.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Submitted amendments Nos. 3239 and 3146, as modified, are as follows:

## SUBMITTED AMENDMENT NO. 3239, AS MODIFIED

Strike all after the title heading and insert the following:

### SEC. 1101. PURPOSE.

The purpose of this title is to establish a greenhouse gas inventory, reductions registry, and information system that—

- (1) are complete, consistent, transparent, and accurate;
- (2) will create reliable and accurate data that can be used by public and private entities to design efficient and effective greenhouse gas emission reduction strategies; and
- (3) will acknowledge and encourage greenhouse gas emission reductions.

### SEC. 1102. DEFINITIONS.

In this title:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) BASELINE.—The term "baseline" means the historic greenhouse gas emission levels of an entity, as adjusted upward by the designated agency to reflect actual reductions that are verified in accordance with—

- (A) regulations promulgated under section 1104(c)(1); and
- (B) relevant standards and methods developed under this title.

(3) DATABASE.—The term "database" means the National Greenhouse Gas Database established under section 1104.

(4) DESIGNATED AGENCY.—The term "designated agency" means a department or agency to which responsibility for a function or program is assigned under the memorandum of agreement entered into under section 1103(a).

(5) DIRECT EMISSIONS.—The term "direct emissions" means greenhouse gas emissions by an entity from a facility that is owned or controlled by that entity.

(6) ENTITY.—The term "entity" means—

- (A) a person located in the United States; or
- (B) a public or private entity, to the extent that the entity operates in the United States.

(7) FACILITY.—The term "facility" means—

- (A) all buildings, structures, or installations located on any 1 or more contiguous or adjacent properties of an entity in the United States; and

(B) a fleet of 20 or more motor vehicles under the common control of an entity.

(8) GREENHOUSE GAS.—The term "greenhouse gas" means—

- (A) carbon dioxide;
- (B) methane;
- (C) nitrous oxide;
- (D) hydrofluorocarbons;
- (E) perfluorocarbons;
- (F) sulfur hexafluoride; and

(G) any other anthropogenic climate-forcing emissions with significant ascertainable global warming potential, as—

(i) recommended by the National Academy of Sciences under section 1107(b)(3); and

(ii) determined in regulations promulgated under section 1104(c)(1) (or revisions to the regulations) to be appropriate and practicable for coverage under this title.

(9) INDIRECT EMISSIONS.—The term "indirect emissions" means greenhouse gas emissions that—

(A) are a result of the activities of an entity; but

(B)(i) are emitted from a facility owned or controlled by another entity; and

(ii) are not reported as direct emissions by the entity the activities of which resulted in the emissions.

(10) REGISTRY.—The term "registry" means the registry of greenhouse gas emission reductions established as a component of the database under section 1104(b)(2).

### (11) SEQUESTRATION.—

(A) IN GENERAL.—The term "sequestration" means the capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere.

(B) INCLUSIONS.—The term "sequestration" includes—

- (i) soil carbon sequestration;
- (ii) agricultural and conservation practices;
- (iii) reforestation;
- (iv) forest preservation;
- (v) maintenance of an underground reservoir; and

(vi) any other appropriate biological or geological method of capture, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator.

### SEC. 1103. ESTABLISHMENT OF MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall direct the Secretary of Energy, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of Transportation, and the Administrator to enter into a memorandum of agreement under which those heads of Federal agencies will—

(1) recognize and maintain statutory and regulatory authorities, functions, and programs that—

(A) are established as of the date of enactment of this Act under other law;

(B) provide for the collection of data relating to greenhouse gas emissions and effects; and

(C) are necessary for the operation of the database;

(2)(A) distribute additional responsibilities and activities identified under this title to Federal departments or agencies in accordance with the missions and expertise of those departments and agencies; and

(B) maximize the use of available resources of those departments and agencies; and

(3) provide for the comprehensive collection and analysis of data on greenhouse gas emissions relating to product use (including the use of fossil fuels and energy-consuming appliances and vehicles).

(b) MINIMUM REQUIREMENTS.—The memorandum of agreement entered into under subsection (a) shall, at a minimum, retain the

following functions for the designated agencies:

(1) DEPARTMENT OF ENERGY.—The Secretary of Energy shall be primarily responsible for developing, maintaining, and verifying the registry and the emission reductions reported under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)).

(2) DEPARTMENT OF COMMERCE.—The Secretary of Commerce shall be primarily responsible for the development of—

(A) measurement standards for the monitoring of emissions; and

(B) verification technologies and methods to ensure the maintenance of a consistent and technically accurate record of emissions, emission reductions, and atmospheric concentrations of greenhouse gases for the database.

(3) ENVIRONMENTAL PROTECTION AGENCY.—The Administrator shall be primarily responsible for—

(A) emissions monitoring, measurement, verification, and data collection under this title and title IV (relating to acid deposition control) and title VIII of the Clean Air Act (42 U.S.C. 7651 et seq.), including mobile source emissions information from implementation of the corporate average fuel economy program under chapter 329 of title 49, United States Code; and

(B) responsibilities of the Environmental Protection Agency relating to completion of the national inventory for compliance with the United Nations Framework Convention on Climate Change, done at New York on May 9, 1992.

(4) DEPARTMENT OF AGRICULTURE.—The Secretary of Agriculture shall be primarily responsible for—

(A) developing measurement techniques for—

(i) soil carbon sequestration; and

(ii) forest preservation and reforestation activities; and

(B) providing technical advice relating to biological carbon sequestration measurement and verification standards for measuring greenhouse gas emission reductions or offsets.

(c) DRAFT MEMORANDUM OF AGREEMENT.—Not later than 15 months after the date of enactment of this Act, the President, acting through the Director of the Office of National Climate Change Policy, shall publish in the Federal Register, and solicit comments on, a draft version of the memorandum of agreement described in subsection (a).

(d) NO JUDICIAL REVIEW.—The final version of the memorandum of agreement shall not be subject to judicial review.

#### SEC. 1104. NATIONAL GREENHOUSE GAS DATABASE.

(a) ESTABLISHMENT.—As soon as practicable after the date of enactment of this Act, the designated agencies, in consultation with the private sector and nongovernmental organizations, shall jointly establish, operate, and maintain a database, to be known as the "National Greenhouse Gas Database", to collect, verify, and analyze information on greenhouse gas emissions by entities.

(b) NATIONAL GREENHOUSE GAS DATABASE COMPONENTS.—The database shall consist of—

(1) an inventory of greenhouse gas emissions; and

(2) a registry of greenhouse gas emission reductions.

(c) COMPREHENSIVE SYSTEM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the designated agencies shall jointly promulgate regulations to implement a comprehensive system for greenhouse gas emissions reporting, inventorying, and reductions registration.

(2) REQUIREMENTS.—The designated agencies shall ensure, to the maximum extent practicable, that—

(A) the comprehensive system described in paragraph (1) is designed to—

(i) maximize completeness, transparency, and accuracy of information reported; and

(ii) minimize costs incurred by entities in measuring and reporting greenhouse gas emissions; and

(B) the regulations promulgated under paragraph (1) establish procedures and protocols necessary—

(i) to prevent the reporting of some or all of the same greenhouse gas emissions or emission reductions by more than 1 reporting entity;

(ii) to provide for corrections to errors in data submitted to the database;

(iii) to provide for adjustment to data by reporting entities that have had a significant organizational change (including mergers, acquisitions, and divestiture), in order to maintain comparability among data in the database over time;

(iv) to provide for adjustments to reflect new technologies or methods for measuring or calculating greenhouse gas emissions; and

(v) to account for changes in registration of ownership of emission reductions resulting from a voluntary private transaction between reporting entities.

(3) BASELINE IDENTIFICATION AND PROTECTION.—Through regulations promulgated under paragraph (1), the designated agencies shall develop and implement a system that provides—

(A) for the provision of unique serial numbers to identify the verified emission reductions made by an entity relative to the baseline of the entity;

(B) for the tracking of the reductions associated with the serial numbers; and

(C) that the reductions may be applied, as determined to be appropriate by any Act of Congress enacted after the date of enactment of this Act, toward a Federal requirement under such an Act that is imposed on the entity for the purpose of reducing greenhouse gas emissions.

#### SEC. 1105. GREENHOUSE GAS REDUCTION REPORTING.

(a) IN GENERAL.—An entity that participates in the registry shall meet the requirements described in subsection (b).

(b) REQUIREMENTS.—

(1) IN GENERAL.—The requirements referred to in subsection (a) are that an entity (other than an entity described in paragraph (2)) shall—

(A) establish a baseline (including all of the entity's greenhouse gas emissions on an entity-wide basis); and

(B) submit the report described in subsection (c)(1).

(2) REQUIREMENTS APPLICABLE TO ENTITIES ENTERING INTO CERTAIN AGREEMENTS.—An entity that enters into an agreement with a participant in the registry for the purpose of a carbon sequestration project shall not be required to comply with the requirements specified in paragraph (1) unless that entity is required to comply with the requirements by reason of an activity other than the agreement.

(c) REPORTS.—

(1) REQUIRED REPORT.—Not later than April 1 of the third calendar year that begins after the date of enactment of this Act, and not later than April 1 of each calendar year thereafter, subject to paragraph (3), an entity described in subsection (a) shall submit to each appropriate designated agency a report that describes, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the greenhouse gas emissions from fossil fuel combusted by products manufactured and sold by the entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the designated agency determines in the regulations promulgated under section 1104(c)(1) may be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases.

(2) VOLUNTARY REPORTING.—An entity described in subsection (a) may (along with establishing a baseline and reporting reductions under this section)—

(A) submit a report described in paragraph (1) before the date specified in that paragraph for the purposes of achieving and commoditizing greenhouse gas reductions through use of the registry; and

(B) submit to any designated agency, for inclusion in the registry, information that has been verified in accordance with regulations promulgated under section 1104(c)(1) and that relates to—

(i) with respect to the calendar year preceding the calendar year in which the information is submitted, and with respect to any greenhouse gas emitted by the entity—

(I) project reductions from facilities owned or controlled by the reporting entity in the United States;

(II) transfers of project reductions to and from any other entity;

(III) project reductions and transfers of project reductions outside the United States;

(IV) other indirect emissions that are not required to be reported under paragraph (1); and

(V) product use phase emissions;

(ii) with respect to greenhouse gas emission reductions activities of the entity that have been carried out during or after 1990, verified in accordance with regulations promulgated under section 1104(c)(1), and submitted to 1 or more designated agencies before the date that is 4 years after the date of enactment of this Act, any greenhouse gas emission reductions that have been reported or submitted by an entity under—

(I) section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)); or

(II) any other Federal or State voluntary greenhouse gas reduction program; and

(iii) any project or activity for the reduction of greenhouse gas emissions or sequestration of a greenhouse gas that is carried out by the entity, including a project or activity relating to—

(I) fuel switching;

(II) energy efficiency improvements;

(III) use of renewable energy;

(IV) use of combined heat and power systems;

(V) management of cropland, grassland, or grazing land;

(VI) a forestry activity that increases forest carbon stocks or reduces forest carbon emissions;

(VII) carbon capture and storage;

(VIII) methane recovery;

(IX) greenhouse gas offset investment; and

(X) any other practice for achieving greenhouse gas reductions as recognized by 1 or more designated agencies.

(3) EXEMPTIONS FROM REPORTING.—

(A) IN GENERAL.—If the Director of the Office of National Climate Change Policy determines under section 1108(b) that the reporting requirements under paragraph (1) shall apply to all entities (other than entities exempted by this paragraph), regardless of participation or nonparticipation in the registry, an entity shall be required to submit reports under paragraph (1) only if, in any calendar year after the date of enactment of this Act—

(i) the total greenhouse gas emissions of at least 1 facility owned by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); or

(ii) (I) the total quantity of greenhouse gases produced, distributed, or imported by the entity exceeds 10,000 metric tons of carbon dioxide equivalent (or such greater quantity as may be established by a designated agency by regulation); and

(II) the entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(B) ENTITIES ALREADY REPORTING.—

(i) IN GENERAL.—An entity that, as of the date of enactment of this Act, is required to report carbon dioxide emissions data to a Federal agency shall not be required to re-report that data for the purposes of this title.

(ii) REVIEW OF PARTICIPATION.—For the purpose of section 1108, emissions reported under clause (i) shall be considered to be reported by the entity to the registry.

(4) PROVISION OF VERIFICATION INFORMATION BY REPORTING ENTITIES.—Each entity that submits a report under this subsection shall provide information sufficient for each designated agency to which the report is submitted to verify, in accordance with measurement and verification methods and standards developed under section 1106, that the greenhouse gas report of the reporting entity—

(A) has been accurately reported; and

(B) in the case of each voluntary report under paragraph (2), represents—

(i) actual reductions in direct greenhouse gas emissions—

(I) relative to historic emission levels of the entity; and

(II) net of any increases in—

(aa) direct emissions; and

(bb) indirect emissions described in paragraph (1)(C)(ii); or

(i) actual increases in net sequestration.

(5) FAILURE TO SUBMIT REPORT.—An entity that participates or has participated in the registry and that fails to submit a report required under this subsection shall be prohibited from including emission reductions reported to the registry in the calculation of the baseline of the entity in future years.

(6) INDEPENDENT THIRD-PARTY VERIFICATION.—To meet the requirements of this section and section 1106, a entity that is required to submit a report under this section may—

(A) obtain independent third-party verification; and

(B) present the results of the third-party verification to each appropriate designated agency.

(7) AVAILABILITY OF DATA.—

(A) IN GENERAL.—The designated agencies shall ensure, to the maximum extent practicable, that information in the database is—

(i) published;

(ii) accessible to the public; and

(iii) made available in electronic format on the Internet.

(B) EXCEPTION.—Subparagraph (A) shall not apply in any case in which the designated agencies determine that publishing or otherwise making available information

described in that subparagraph poses a risk to national security.

(8) DATA INFRASTRUCTURE.—The designated agencies shall ensure, to the maximum extent practicable, that the database uses, and is integrated with, Federal, State, and regional greenhouse gas data collection and reporting systems in effect as of the date of enactment of this Act.

(9) ADDITIONAL ISSUES TO BE CONSIDERED.—In promulgating the regulations under section 1104(c)(1) and implementing the database, the designated agencies shall take into consideration a broad range of issues involved in establishing an effective database, including—

(A) the appropriate units for reporting each greenhouse gas;

(B) the data and information systems and measures necessary to identify, track, and verify greenhouse gas emission reductions in a manner that will encourage the development of private sector trading and exchanges;

(C) the greenhouse gas reduction and sequestration methods and standards applied in other countries, as applicable or relevant;

(D) the extent to which available fossil fuels, greenhouse gas emissions, and greenhouse gas production and importation data are adequate to implement the database;

(E) the differences in, and potential uniqueness of, the facilities, operations, and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry; and

(F) the need of the registry to maintain valid and reliable information on baselines of entities so that, in the event of any future action by Congress to require entities, individually or collectively, to reduce greenhouse gas emissions, Congress will be able—

(i) to take into account that information; and

(ii) to avoid enacting legislation that penalizes entities for achieving and reporting reductions.

(d) ANNUAL REPORT.—The designated agencies shall jointly publish an annual report that—

(1) describes the total greenhouse gas emissions and emission reductions reported to the database during the year covered by the report;

(2) provides entity-by-entity and sector-by-sector analyses of the emissions and emission reductions reported;

(3) describes the atmospheric concentrations of greenhouse gases; and

(4) provides a comparison of current and past atmospheric concentrations of greenhouse gases.

#### SEC. 1106. MEASUREMENT AND VERIFICATION.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the designated agencies shall jointly develop comprehensive measurement and verification methods and standards to ensure a consistent and technically accurate record of greenhouse gas emissions, emission reductions, sequestration, and atmospheric concentrations for use in the registry.

(2) REQUIREMENTS.—The methods and standards developed under paragraph (1) shall address the need for—

(A) standardized measurement and verification practices for reports made by all entities participating in the registry, taking into account—

(i) protocols and standards in use by entities desiring to participate in the registry as of the date of development of the methods and standards under paragraph (1);

(ii) boundary issues, such as leakage and shifted use;

(iii) avoidance of double counting of greenhouse gas emissions and emission reductions; and

(iv) such other factors as the designated agencies determine to be appropriate;

(B) measurement and verification of actions taken to reduce, avoid, or sequester greenhouse gas emissions;

(C) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(i) organic soil carbon sequestration practices; and

(ii) forest preservation and reforestation activities that adequately address the issues of permanence, leakage, and verification;

(D) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, the Administrator, and the Secretary of Energy determine to be appropriate; and

(E) other factors that, as determined by the designated agencies, will allow entities to adequately establish a fair and reliable measurement and reporting system.

(b) REVIEW AND REVISION.—The designated agencies shall periodically review, and revise as necessary, the methods and standards developed under subsection (a).

(c) PUBLIC PARTICIPATION.—The Secretary of Commerce shall—

(1) make available to the public for comment, in draft form and for a period of at least 90 days, the methods and standards developed under subsection (a); and

(2) after the 90-day period referred to in paragraph (1), in coordination with the Secretary of Energy, the Secretary of Agriculture, and the Administrator, adopt the methods and standards developed under subsection (a) for use in implementing the database.

(d) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—The designated agencies 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, in the areas of greenhouse gas measurement, certification, and emission trading.

(2) AVAILABLE ARRANGEMENTS.—In obtaining any service described in paragraph (1), the designated agencies may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

#### SEC. 1107. INDEPENDENT REVIEWS.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 3 years thereafter, the Comptroller General of the United States shall submit to Congress a report that—

(1) describes the efficacy of the implementation and operation of the database; and

(2) includes any recommendations for improvements to this title and programs carried out under this title—

(A) to achieve a consistent and technically accurate record of greenhouse gas emissions, emission reductions, and atmospheric concentrations; and

(B) to achieve the purposes of this title.

(b) REVIEW OF SCIENTIFIC METHODS.—The designated agencies shall enter into an agreement with the National Academy of Sciences under which the National Academy of Sciences shall—

(1) review the scientific methods, assumptions, and standards used by the designated agencies in implementing this title;

(2) not later than 4 years after the date of enactment of this Act, submit to Congress a report that describes any recommendations for improving—

(A) those methods and standards; and

(B) related elements of the programs, and structure of the database, established by this title; and

(3) regularly review and update as appropriate the list of anthropogenic climate-forcing emissions with significant global warming potential described in section 1102(8)(G).  
**SEC. 1108. REVIEW OF PARTICIPATION.**

(a) **IN GENERAL.**—Not later than 5 years after the date of enactment of this Act, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry under section 1105(c)(1) represent less than 60 percent of the national aggregate anthropogenic greenhouse gas emissions.

(b) **INCREASED APPLICABILITY OF REQUIREMENTS.**—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of the aggregate national anthropogenic greenhouse gas emissions are being reported to the registry—

(1) the reporting requirements under section 1105(c)(1) shall apply to all entities (except entities exempted under section 1105(c)(3)), regardless of any participation or nonparticipation by the entities in the registry; and

(2) each entity shall submit a report described in section 1105(c)(1)—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) **RESOLUTION OF DISAPPROVAL.**—For the purposes of this section, the determination of the Director of the Office of National Climate Change Policy under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

#### **SEC. 1109. ENFORCEMENT.**

If an entity that is required to report greenhouse gas emissions under section 1105(c)(1) or 1108 fails to comply with that requirement, the Attorney General may, at the request of the designated agencies, bring a civil action in United States district court against the entity to impose on the entity a civil penalty of not more than \$25,000 for each day for which the entity fails to comply with that requirement.

#### **SEC. 1110. REPORT ON STATUTORY CHANGES AND HARMONIZATION.**

Not later than 3 years after the date of enactment of this Act, the President shall submit to Congress a report that describes any modifications to this title or any other provision of law that are necessary to improve the accuracy or operation of the database and related programs under this title.

#### **SEC. 1111. AUTHORIZATION OF APPROPRIATIONS.**

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

#### **SUBMITTED AMENDMENT NO. 3146**

(Purpose: To establish a national registry for accurate and reliable reports of greenhouse gas emissions, and to further encourage voluntary reductions in such emissions)

Strike Title XI and insert the following:

#### **TITLE XI—NATIONAL GREENHOUSE GAS REGISTRY**

##### **SEC. 1101. SHORT TITLE.**

This amendment may be cited as the “National Climate Registry Initiative.”

##### **SEC. 1102. PURPOSE.**

The purpose of this title is to establish a new national greenhouse gas registry—

(1) to further encourage voluntary efforts, by persons and entities conducting business and other operations in the United States, to implement actions, projects and measures that reduce greenhouse gas emissions;

(2) to encourage such persons and entities to monitor and voluntarily report greenhouse gas emissions, direct or indirect, from their facilities, and to the extent practicable, from other types of sources;

(3) to adopt a procedure and uniform format for such persons and entities to establish and report voluntarily greenhouse gas emission baselines in connection with, and furtherance of, such reductions;

(4) to provide verification mechanisms to ensure for participants and the public a high level of confidence in accuracy and verifiability of reports made to the national registry;

(5) to encourage persons and entities, through voluntary agreement with the Secretary, to report annually greenhouse gas emissions from their facilities;

(6) to provide to persons or entities that engage in such voluntary agreements and reduce their emissions transferable credits which, inter alia, shall be available for use by such persons or entities for any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts; and

(7) to provide for the registration, transfer and tracking of the ownership or holding of such credits for purposes of facilitating voluntary trading among persons and entities.

#### **SEC. 1103. DEFINITIONS.**

In this title—

(1) “person” means an individual, corporation, association, joint venture, cooperative, or partnership;

(2) “entity” means a public person, a Federal, interstate, State, or local governmental agency, department, corporation, or other publicly owned organization;

(3) “facility” means those buildings, structures, installations, or plants (including units thereof) that are on contiguous or adjacent land, are under common control of the same person or entity and are a source of emissions of greenhouse gases in excess for emission purposes of a threshold as recognized by the guidelines issued under this title;

(4) “reductions” means actions, projects or measures taken, whether in the United States or internationally, by a person or entity to reduce, avoid or sequester, directly or indirectly, emissions of one or more greenhouse gases;

(5) “greenhouse gas” means—

(A) an anthropogenic gaseous constituent of the atmosphere (including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride) that absorbs and re-emits infrared radiation and influences climate; and

(B) an anthropogenic aerosol (such as black soot) that absorbs solar radiation and influences climate;

(6) “Secretary” means the Secretary of Energy;

(7) “Administrator” means the Administrator of the Energy Information Administration; and

(8) “Interagency Task Force” means the Interagency Task Force established under title X of this Act.

#### **SEC. 1104. ESTABLISHMENT.**

(a) **IN GENERAL.**—Not later than 1 year after the enactment of this title, the President shall, in consultation with the Interagency Task Force, establish a National Greenhouse Gas Registry to be administered by the Secretary through the Administrator in accordance with the applicable provisions

of this title, section 205 of the Department of Energy Act (42 U.S.C. 7135) and other applicable provisions of that Act (42 U.S.C. 7101, et seq.).

(b) **DESIGNATION.**—Upon establishment of the registry and issuance of the guidelines pursuant to this title, such registry shall thereafter be the depository for the United States of data on greenhouse gas emissions and emissions reductions collected from and reported by persons or entities with facilities or operations in the United States, pursuant to the guidelines issued under this title.

(c) **PARTICIPATION.**—Any person or entity conducting business or activities in the United States may, in accordance with the guidelines established pursuant to this title, voluntarily report its total emissions levels and register its certified emissions reductions with such registry, provided that such reports—

(1) represent a complete and accurate inventory of emissions from facilities and operations within the United States and any domestic or international reduction activities; and

(2) have been verified as accurate by an independent person certified pursuant to guidelines developed pursuant to this title, or other means.

#### **SEC. 1105. IMPLEMENTATION.**

(a) **GUIDELINES.**—Not later than 1 year after the date of establishment of the registry pursuant to this title, the Secretary shall, in consultation with the Interagency Task Force, issue guidelines establishing procedures for the administration of the national registry. Such guidelines shall include—

(1) means and methods for persons or entities to determine, quantify, and report by appropriate and credible means their baseline emissions levels on an annual basis, taking into consideration any reports made by such participants under past Federal programs;

(2) procedures for the use of an independent third-party or other effective verification process for reports on emissions levels and emissions reductions, using the authorities available to the Secretary under this and other provisions of law and taking into account, to the extent possible, costs, risks, the voluntary nature of the registry, and other relevant factors;

(3) a range of reference cases for reporting of project-based reductions in various sectors, and the inclusion of benchmark and default methodologies and practices for use as reference cases for eligible projects;

(4) safeguards to prevent and address reporting, inadvertently or otherwise, of some or all of the same greenhouse gas emissions or reductions by more than one reporting person or entity and to make corrections and adjustments in data where necessary;

(5) procedures and criteria for the review and registration of ownership or holding of all or part of any reported and independently verified emission reduction projects, actions and measures relative to such reported baseline emissions level;

(6) measures or a process for providing to such persons or entities transferable credits with unique serial numbers for such verified emissions reductions; and

(7) accounting provisions needed to allow for changes in registration and transfer of ownership of such credits resulting from a voluntary private transaction between persons or entities, provided that the Secretary is notified of any such transfer within 30 days of the transfer having been effected either by private contract or market mechanism.

(b) **CONSIDERATION.**—In developing such guidelines, the Secretary shall take into consideration—

(1) the existing guidelines for voluntary emissions reporting issued under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)), experience in applying such guidelines, and any revisions thereof initiated by the Secretary pursuant to direction of the President issued prior to the enactment of this title;

(2) protocols and guidelines developed under any Federal, State, local, or private voluntary greenhouse gas emissions reporting or reduction programs;

(3) the various differences and potential uniqueness of the facilities, operations and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry;

(4) issues, such as comparability, that are associated with the reporting of both emissions baselines and reductions from activities and projects; and

(5) the appropriate level or threshold emissions applicable to a facility or activity of a person or entity that may be reasonably and cost effectively identified, measured and reported voluntarily, taking into consideration different types of facilities and activities and the de minimis nature of some emissions and their sources; and

(6) any other consideration the Secretary may deem appropriate.

(c) **EXPERTS AND CONSULTANTS.**—The Secretary, and any member of the Interagency Task Force, may secure the services of experts and consultants in the private and non-profit sectors in accordance with the provisions of section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emissions trading. In securing such services, any grant, contract, cooperative agreement, or other arrangement authorized by law and already available to the Secretary or the member of the Interagency Task Force securing such services may be used.

(d) **TRANSFERABILITY OF PRIOR REPORTS.**—Emissions reports and reductions that have been made by a person or entity pursuant to section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)) or under other Federal or State voluntary greenhouse gas reduction programs may be independently verified and registered with the registry using the same guidelines developed by the Secretary pursuant to this section.

(e) **PUBLIC COMMENT.**—The Secretary shall make such guidelines available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them for use in implementation of the registry established pursuant to this title.

(f) **REVIEW AND REVISION.**—The Secretary, through the Interagency Task Force, shall periodically thereafter review the guidelines and, as needed, revise them in the same manner as provided for in this section.

#### **SEC. 1106. VOLUNTARY AGREEMENTS.**

(a) **IN GENERAL.**—In furtherance of the purposes of this title, any person or entity, and the Secretary, may voluntarily enter into an agreement to provide that—

(1) such person or entity (and successors thereto) shall report annually to the registry on emissions and sources of greenhouse gases from applicable facilities and operations which generate net emissions above any de minimis thresholds specified in the guidelines issued by the Secretary pursuant to this title;

(2) such person or entity (and successors thereto) shall commit to report and participate in the registry for a period of at least 5 calendar years, provided that such agreements may be renewed by mutual consent;

(3) for purposes of measuring performance under the agreement, such person or entity

(and successors thereto) shall determine, by mutual agreement with the Secretary—

(A) pursuant to the guidelines issued under this title, a baseline emissions level for a representative period preceding the effective date of the agreement; and

(B) emissions reduction goals, taking into consideration the baseline emissions level determined under subparagraph (A) and any relevant economic and operational factors that may affect such baseline emissions level over the duration of the agreement; and

(4) for certified emissions reductions made relative to the baseline emissions level, the Secretary shall provide, at the request of the person or entity, transferable credits (with unique assigned serial numbers) to the person or entity which, inter alia—

(A) can be used by such person or entity towards meeting emissions reductions goals set forth under the agreement;

(B) can be transferred to other parties or entities through a voluntary private transaction between persons or entities; or

(C) shall be applicable towards any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts.

(b) **PUBLIC NOTICE AND COMMENT.**—At least 30 days before any agreement is final, the Secretary shall give notice thereof in the Federal Register and provide an opportunity for public written comment. After reviewing such comments, the Secretary may withdraw the agreement or the parties thereto may mutually agree to revise it to finalize it without substantive change. Such agreement shall be retained in the national registry and be available to the public.

(c) **EMISSIONS IN EXCESS.**—In the event that a person or entity fails to certify that emissions from applicable facilities are less than the emissions reduction goals contained in the agreement, such person or entity shall take actions as necessary to reduce such excess emissions, including—

(1) redemption of transferable credits acquired in previous years if owned by the person or entity;

(2) acquisition of transferable credits from other persons or entities participating in the registry through their own agreements; or

(3) the undertaking of additional emissions reductions activities in subsequent years as may be determined by agreement with the Secretary.

(d) **NO NEW AUTHORITY.**—This section shall not be construed as providing any regulatory or mandate authority regarding reporting of such emissions or reductions.

#### **SEC. 1107. MEASUREMENT AND VERIFICATION.**

(a) **IN GENERAL.**—The Secretary of Commerce, through the National Institute of Standards and Technology and in consultation with the Secretary of Energy, shall develop and propose standards and practices for accurate measurement and verification of greenhouse gas emissions and emissions reductions. Such standards and best practices shall address the need for—

(1) standardized measurement and verification practices for reports made by all persons or entities participating in the registry, taking into account—

(A) existing protocols and standards already in use by persons or entities desiring to participate in the registry;

(B) boundary issues such as leakage and shifted utilization;

(C) avoidance of double-counting of greenhouse gas emissions and emissions reductions; and

(D) such other factors as the panel determines to be appropriate;

(2) measurement and verification of actions taken to reduce, avoid or sequester greenhouse gas emissions;

(3) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(A) organic soil carbon sequestration practices;

(B) forest preservation and re-forestation activities which adequately address the issues of permanence, leakage and verification; and

(4) such other measurement and verification standards as the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall determine to be appropriate.

(b) **PUBLIC COMMENT.**—The Secretary of Commerce shall make such standards and practices available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them, in coordination with the Secretary of Energy, for use in the guidelines for implementation of the registry as issued pursuant to this title.

#### **SEC. 1108. CERTIFIED INDEPENDENT THIRD PARTIES.**

(a) **CERTIFICATION.**—The Secretary of Commerce shall, through the Director of the National Institute of Standards and Technology and the Administrator, develop standards for certification of independent persons to act as certified parties to be employed in verifying the accuracy and reliability of reports made under this title, including standards that—

(1) prohibit a certified party from themselves participating in the registry through the ownership or transaction of transferable credits recorded in the registry;

(2) prohibit the receipt by a certified party of compensation in the form of a commission where such party receives payment based on the amount of emissions reductions verified; and

(3) authorize such certified parties to enter into agreements with persons engaged in trading of transferable credits recorded in the registry.

(b) **LIST OF CERTIFIED PARTIES.**—The Secretary shall maintain and make available to persons or entities making reports under this title and to the public upon request a list of such certified parties and their clients making reports under this title.

#### **SEC. 1109. REPORT TO CONGRESS.**

Not later than 1 year after guidelines are issued for the registry pursuant to this title, and biennially thereafter, the President, through the Interagency Task Force, shall report to the Congress on the status of the registry established by this title. The report shall include—

(a) an assessment of the level of participation in the registry (both by sector and in terms of national emissions represented);

(b) effectiveness of voluntary reporting agreements in enhancing participation in the registry;

(c) use of the registry for emissions trading and other purposes;

(d) assessment of progress towards individual and national emissions reduction goals; and

(e) an inventory of administrative actions taken or planned to improve the national registry or the guidelines, or both, and such recommendations for legislative changes to this title or section 1605 of the Energy Policy Act of 1992 (42 U.S.C. 13385) as the President believes necessary to better carry out the purposes of this title.

#### **SEC. 1110. REVIEW OF PARTICIPATION.**

(a) **IN GENERAL.**—Not later than 5 years after the date of enactment of this title, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry represent less than 60 percent of the national aggregate greenhouse gas emissions as inventoried



in the official U.S. Inventory of Greenhouse Gas Emissions and Sinks published by the Environmental Protection Agency for the previous calendar year.

(b) **MANDATORY REPORTING.**—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of such aggregate greenhouse gas emissions are being reported to the registry—

(1) all persons or entities, regardless of their participation in the registry, shall submit to the Secretary a report that describes, for the preceding calendar year, a complete inventory of greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted by such person or entity, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the emissions from products manufactured and sold by such person or entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the Secretary determines by regulation to be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases; and

(2) each person or entity shall submit a report described in this section—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) **EXEMPTIONS FROM REPORTING.**—

(1) **IN GENERAL.**—A person or entity shall be required to submit reports under subsection (b) only if, in any calendar year after the date of enactment of this title—

(A) the total greenhouse gas emissions of at least 1 facility owned by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation);

(B) the total quantity of greenhouse gas produced, distributed, or imported by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation); or

(C) the person or entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(2) **ENTITIES ALREADY REPORTING.**—A person or entity that, as of the date of enactment of this title, is required to report carbon dioxide emissions data to a Federal agency shall not be required to report that data again for the purposes of this title. Such emissions data shall be considered to be reported by the entity to the registry for the purpose of this title and included in the determination of the Director of the Office of National Climate Change Policy made under subsection (a).

(d) **ENFORCEMENT.**—If a person or entity that is required to report greenhouse gas emissions under this section fails to comply with that requirement, the Attorney General may, at the request of the Secretary, bring a civil action in United States district court against the person or entity to impose on the

person or entity a civil penalty of not more than \$25,000 for each day for which the entity fails to comply with that requirement.

(e) **RESOLUTION OF DISAPPROVAL.**—If made, the determination of the Director of the Office of National Climate Change Policy made under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

#### SEC. 1111. NATIONAL ACADEMY REVIEW.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, the Secretary, in consultation with the Interagency Task Force, shall enter into an agreement with the National Academy of Sciences to review the scientific and technological methods, assumptions, and standards used by the Secretary and the Secretary of Commerce for such guidelines and report to the President and the Congress on the results of that review, together with such recommendations as may be appropriate, within 6 months after the effective date of that agreement.

Mr. REID. 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. DAYTON. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. DAYTON. Mr. President, I ask unanimous consent that I may be permitted to speak as in morning business for a period of up to 5 minutes.

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

(The remarks of Mr. DAYTON are printed in today's RECORD under "Morning Business.")

Mr. DAYTON. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent the time that was used by the Senator from Minnesota be counted against the 30 hours.

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

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

The PRESIDING OFFICER (Mr. CARPER). Without objection, it is so ordered.

#### AMENDMENT NO. 3256 TO AMENDMENT NO. 2917

Mr. NICKLES. Mr. President, I ask that amendment No. 3256 be considered.

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

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself, Mr. BREAUX, and Mr. MILLER, proposes an amendment numbered 3256.

Mr. NICKLES. 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:

At the appropriate place in Title II, insert the following:

SEC. . Notwithstanding any other provision in this Act, "3 cents" shall be considered by law to be "1.5 cents" in any place "3 cents" appears in Title II of this Act.

Mr. NICKLES. The amendment I called up, sponsored by Senator BREAUX, Senator MILLER, Senator VOINOVICH, and myself, will reduce the penalty if a utility doesn't achieve the renewable standard that is set in the legislation.

The legislation says that 10 percent of the electricity produced has to be from renewable sources. Renewable sources are defined as wind and solar, biomass—interestingly enough, not hydro. That is a very difficult standard to achieve. I am not sure any State can achieve it now or any State will be able to achieve it in the future. We will have to see.

Varying States have different renewable standards. I am all in favor of that, whatever States want to decide. We are getting ready to have a Federal mandate that says: 10 percent of your power has to be from renewable sources. Most people think renewables is nonfossil fuel, but that is not the case here. We are talking about primarily wind, solar, and biomass. Nuclear fuel is not included. Hydro, or at least old hydro, is not included. But if you don't achieve that 10 percent standard, there is a penalty.

How do you get to the 10 percent? Let's say you do everything you can, but primarily most of the production in your State is fossil fuel. You run off coal or natural gas generators. And if you are short of the 10 percent, what do you do? Under the bill, you can buy it from other utilities, if they have surplus credits, or you can pay the Federal Government. You can pay the Government for the credits. You could call them credits. You could call them a tax. You could call them a penalty. But you have to pay, if you don't meet this 10 percent standard. Actually, the standard starts at 1 percent and it is phased up to 10 percent in the year 2019.

If you don't make the standard, you have to pay something. It is a tax. Your utility has to write a check to the Federal Government, a large check. In many cases, it could be hundreds of millions of dollars. In many cases, the cost to the utilities—and I will enter into the RECORD some statements from different utilities—could be billions of dollars, because they have to pay 3 cents per kilowatt hour for whatever they are short of this target we are getting ready to mandate.

How much is 3 cents per kilowatt hour? Most of us don't know. When we pay our utility bill, we don't know how much utilities really cost. The wholesale price of electricity right now, nationwide, is about 3 cents. If you don't meet the target, basically you have to

pay 100 percent of whatever you are short on renewables in electricity cost. That is a lot, for 10 percent of your power.

If you produce no electricity from the renewables, this bill is the equivalent of a 5-percent surcharge because you are paying in effect a 100-percent increase for that last 10 percent. If you average that over your entire cost, it is about a 5-percent increase in your utility bill.

I will tell you, few if any utilities will meet this standard in this bill, even those utilities that are very progressive and aggressive in trying to meet renewable standards and have renewable energy sources such as wind, solar, and biomass. Few are able to meet this standard that is in this bill. So you are going to have to buy these credits and pay a lot of money.

The essence of this amendment is, let's reduce that 3-cent penalty to a penny and a half. You might say, where did you get the penny and a half? It happens to be half of what is in the underlying bill, and it also happens to be half of what the Clinton administration proposed.

President Clinton, in 1999, proposed that we have a renewable standard. Incidentally, he didn't go up to 10 percent; he only went to 7.5 percent of your electricity would have to be renewable. He also said: If you don't meet that objective, the penalty will be a penny and a half. That is the cost of the credits.

Secretary Bill Richardson—many of us got to know him over the years and enjoyed working with him in Congress—when he was Secretary of Energy, that was the penalty, a penny and a half, not 3 cents.

So the amendment Senator BREAUX, Senator MILLER, Senator VOINOVICH, and I have is to reduce the penalty from 3 cents to a penny and a half. That sounds as if we are talking about pennies. We are talking about billions of dollars, because we are talking about, 10 percent of all the electricity that is produced in the United States must come from renewables, and if you don't make it, you have to pay this 3 cents per kilowatt hour.

What does that mean? I will cite a couple of letters. I have them from different companies and different States.

I will start with my State. Oklahoma Gas and Electric said the penalty under the bill, as written right now—their estimate is it would cost \$794 million through the year 2020. We would cut that in half. We have almost every utility in the country supporting of this amendment. This is a rather large utility called Southern Company. I mentioned the largest one in my State, Oklahoma Gas and Electric. Southern Company, which is in several Southern States, said it would cost them from \$676 million to \$1.014 billion annually by the year 2020.

I hope my colleagues understand this. I have a letter I will also have printed in the RECORD from the presi-

dent of Southern Company, one of the largest utilities in America that says the total cost across several states could be over a billion dollars—from \$676 million up to over a billion dollars a year—if the 3-cent penalty stays in the bill. We would cut that in half under our amendment.

I could go on and on. Is it going to cost the utilities ultimately? Probably not. They are going to pass it, if they can; and I expect that they can. Residential consumers and industrial consumers will pay for it. Frankly, if industrial consumers are paying for it, they are going to pass that on, too.

If you want to set about an inflationary spiral, we are doing that. We are increasing utility costs if we allow the Daschle-Bingaman 3-cent penalty per kilowatt hour to stay in the bill. I think it should be zero. Senator KYL had an amendment to strike out the renewable section, but I am coming up with half a loaf. I am saying cut it in half. I am a legislator. If we can pass a bill half as damaging, I am willing to do it. If we can reduce the numbers by half, I think we will have made a big step in the right direction. Why in the world would we have a cap or a penalty higher than the Clinton administration proposed?

Incidentally, it didn't pass. Some people said we should not pass it because it costs too much.

Look at some of the other States that are involved. Kansas City Power and Light said it would cost over \$300 million, and that is the current cap. We would cut that in half.

Different companies have used different ways of stating the costs. Pinnacle West in Arizona talks about it costing billions of dollars to comply. They even said it may have a residential rate increase of 28 percent.

In Pennsylvania, PP&L, which has facilities in Pennsylvania and Montana, estimates penalties at \$178 million per year in 2006, growing to \$260 million by 2020. The reason they start out low is the renewable section starts out low, at 1 percent, but it grows every year, up to the very expensive 10 percent by 2019.

Let me mention a couple letters, which I will enter into the RECORD, so that this won't just be little excerpts from my floor speech. This is a note from Allegheny Energy. It says:

The rates under the restructuring initiative to lower consumer costs may restrict Allegheny Energy, a conservative—1 percent requirement would cost \$13 million annually, and a 10 percent requirement would cost \$135 million annually, assuming no growth in customer electricity consumption.

I think most people would assume the consumption would go up over that period of time. That is a very conservative estimate.

Exelon: I will read various segments of this:

Meeting the Bingaman RPS amendment will cost our customers between \$2.3 billion and \$4.6 billion more than they would otherwise pay for electricity between 2005 and 2020.

I hope my colleagues have a chance to absorb some of these numbers. This is a very large utility, and they are primarily in Illinois and Pennsylvania. They said it could cost \$4.6 billion if we don't change the Bingaman amendment. Our amendment says we will cut it in half. I hope the Senators from Pennsylvania, the Senators from Illinois, and others will stop and say, wait a minute, who pays for that? Are we really passing something where we know what we are doing? Are we going to mandate those cost increases on consumers?

Wait a minute, we are giving people a chance to cut it in half. That is what this amendment does. Listen to this comment made from Bill Richardson before a House committee in June 17 of 1999:

To hold program costs down, the administration's proposal would allow electricity sellers to purchase credits from the Department of Energy at a cost of 1.5 cents per kilowatt hour. As a result, sellers would not be forced to pay excessive amounts for credits that are sold by other electricity providers that exceed the 7.5 percent RPS requirement.

This bill has a 10-percent requirement, and if you don't meet it, it says you have to pay 3 cents per kilowatt hour. As I have mentioned by a few examples, the cost is absolutely enormous.

I want to mention a couple others. This is a the Public Service Commission for the State of Florida:

However, in order to mitigate the "tax impact" of this poorly conceived national program, we support the Nickles amendment to lower the amount of penalty from 3 cents to 1.5 cents per KWH. This would reduce the potential cost of this federal mandate on Florida ratepayers.

That is a copy of a letter to Senator GRAMM.

This is a note from American Electric Power. It says:

AEP is joining in this effort with Allegheny Energy, Console Energy, Peabody Energy, and the U.S. Mineworkers of America. AEP and Allegheny are the two largest utilities in West Virginia and are responsible for all the electricity distributed in the State.

I will enter into the RECORD a letter from Southern Company. This is signed by Allen Franklin, chairman and president and CEO:

The cumulative cost of the RPS mandate to Southern Company through the year 2020 will be from \$3 billion to \$6.5 billion. This does not include substantial transmission and interconnection costs for remote wind turbines located in the upper Midwest. . . .

I will enter this into the RECORD. That is a major company, covering several States, saying this will cost billions of dollars over the next 15 years. I just tell my colleagues that when we talk about a penalty of a penny and a half and 3 cents per kilowatt, that doesn't sound like much. When you multiply it times all the electricity and mandate that 10 percent of the electricity meet the standard and, if it doesn't, they have to pay this 3 cents—basically a 100-percent tax on electricity, equal to the value of 100 percent of wholesale cost of electricity—

you are talking about an enormous utility increase. We have a chance to mitigate that; we have a chance to reduce it by basically agreeing to the same standard that was proposed by the Clinton administration in 1999. I urge my colleagues to do so.

I ask unanimous consent to have the letters to which I referred printed in the RECORD.

There being no objection, the letters were ordered to be printed in the Record, as follows:

SOUTHERN COMPANY,  
Atlanta, Georgia, April 16, 2002.

Hon. DON NICKLES,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR NICKLES: As the Senate continues its consideration of S. 517, the Daschle/Bingaman energy bill, I wanted to thank you for your continued efforts to improve the Renewable Portfolio Standard (RPS) mandate in the bill. This ill-advised policy will mandate the use of un-economic generation and is not practical in several regions of the nation.

In many parts of the country, the RPS mandate can not be achieved due to the lack of wind resources and the intermittent nature of solar energy. The requirement to purchase penalty credits under such circumstances equates to a tax on consumers in those regions with no resulting benefit for those same consumers. The cumulative cost of the RPS mandate to Southern Company through the year 2020 will be from 3 billion dollars to 6.5 billion dollars. This does NOT include substantial transmission and interconnection costs for remote wind turbines located in the upper Midwest, which is the likely location for such an option. Obviously these dramatic costs would increase the price of electricity to our customers and threaten their lifestyles and the economic health of their communities.

One way to reduce these costs would be to lower the 3-cents per kilowatt-hour penalty contained in the Bingaman RPS language. This penalty is double the 1.5-cents per kilowatt-hour renewable credit cost in a renewable portfolio standard proposed by the Clinton Administration. I understand you intend to offer an amendment to lower the RPS penalty to 1.5-cents per kilowatt-hour, and we will support you in that regard. This will not remove the negative impacts on our customers of an ill-advised RPS mandate, but it will at least lessen those costs significantly.

We appreciate your continued efforts to improve energy legislation as it moves through Congress.

Sincerely,

ALLEN FRANKLIN

OGE ENERGY CORP.,  
Oklahoma City, OK, April 16, 2002.

Hon. BLANCHE L. LINCOLN,  
Dirksen Senate Office Building,  
Washington, DC.

DEAR SENATOR LINCOLN: On behalf of Oklahoma Gas & Electric (OG&E) I strongly urge your support of an amendment to be offered by Senator Don Nickles to reduce by half the cost to Arkansas consumers of the mandatory Renewable Portfolio Standard provision in the pending energy bill, S. 517. The Nickles amendment would reduce the cost of the renewable energy credit from 3 cents per kilowatt-hour to 1.5 cents per kw/hour.

Based on the year 2001 actual total retail sales and full implementation of the 10% RPS requirement, we calculate that it would cost our customers an additional \$73 million per year, suggesting an increase of 5% in our retail rates. OG&E opposes such federal man-

date on investor-owned utilities since it will skew the competitive playing field toward cooperatives and public power that have been unfairly exempted from the federal RPS mandate. The exemption of the coops and public power utilities is equivalent to a 5% penalty for our Company and a 5% windfall for coops and public power. Although we are opposed to renewable mandates, OG&E is willing to purchase power generated by renewable sources if customers desire to purchase it. But thus far, our customers in Arkansas and Oklahoma have not evidenced a willingness to purchase higher priced renewable power to justify our investment in these sources. Instead, our customers clearly prefer the highly reliable and much less expensive range of generation options that we currently offer. The RPS provision in the energy bill will force our Arkansas customers to pay more for a renewable product they do not yet want enough to pay for. In so doing, the RPS will raise costs to residential and business customers without countervailing benefit either to them or to the Fort Smith regional economy.

Senator Nickles' amendment would at least reduce the economic impact of the RPS provision by half. It makes real sense to me. I hope you will support Senator Nickles' effort. If you have any questions, please let me know.

Sincerely,

STEVEN E. MOORE,  
Chairman, President and Chief  
Executive Officer.

PROGRESS ENERGY SERVICE COMPANY,  
LLC,  
Raleigh, NC, April 22, 2002.

Senator DON NICKLES,  
Senate Hart Building, U.S. Senate, Washington,  
DC.

DEAR SENATOR NICKLES: As the Senate continues debate on the energy bill (S. 517), I must share with you my company's strong conviction that this legislation is poor energy policy for our customers and the country. The bill represents an enormous policy reversal that gives important state jurisdiction directly to the federal government.

Progress Energy was formed in 2000 when Carolina Power & Light merged with Florida Progress. Through two subsidiaries, the company provides electricity to nearly three [2.8] million customers in the Carolinas and Florida by employing a diverse generation portfolio of more than 20,000 megawatts. Our service territory has enjoyed substantial growth based, in part, on our ability to produce reliable low-cost energy. We use the market to select the best fuel mix for energy production, a process that is grossly jeopardized by the mandated renewable portfolio standards (RPS).

Under the RPS cap of 3 c/kWh, between 2005 and 2020, Progress Energy's customers would be forced to absorb \$3.5 billion in extra costs. This RPS mandate would eventually sidetrack economic growth. Additionally, the RPS could limit the benefits of emissions-free energy our customers currently enjoy since we use a large percentage of electricity generated with nuclear and hydro-power.

Thank you for your interest and concern regarding the RPS amendment and please know that we would be very supportive of any relief you could give on this mandate.

Sincerely,

DAVID G. ROBERTS,  
Director Federal Affairs.

STATE OF FLORIDA,  
PUBLIC SERVICE COMMISSION,  
Tallahassee, FL, April 22, 2002.

RE: S. 517, the Energy Bill

Hon. BOB GRAHAM,  
U.S. Senator, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR GRAHAM: The Florida Public Service Commission (FPSC) appreciates the opportunity to provide comments on three areas of amendments to S. 517, the energy bill. These areas are: (1) The Renewable Portfolio Standards; (2) the Landrieu amendment on participant-funded transmission expansion; and (3) the amendments referred to as the consumer protection package.

(1) NICKLES AMENDMENT TO THE RENEWABLE  
PORTFOLIO STANDARDS SECTION

The FPSC continues to oppose the Federal Renewable Portfolio Standards. Florida utilities will have difficulty meeting the federal standards. We believe that state legislatures are best suited to set policies on renewable standards for their state. In fact, during the current legislative session, the Florida legislature directed the FPSC to complete a study on renewables by February 2003. A strict one-size-fits-all standard could put companies in the position of having to purchase credits from elsewhere or of being in noncompliance. The impact will ultimately be on the retail ratepayer. Again, we oppose the Federal Renewable Portfolio Standard. However, in order to mitigate the "tax impact" of this poorly-conceived national program, we support the Nickles amendment to lower the amount of the penalty from 3 cents to 1.5 cents per KWH. This would reduce the potential cost of this federal mandate on Florida ratepayers.

(2) LANDRIEU AMENDMENT ON "PARTICIPANT-  
FUNDED TRANSMISSION EXPANSION"

We believe this amendment to place the costs of transmission expansion on the cost causer has merit, but we do have some concerns about the provisions included in the amendment. For example, there is a provision on market monitoring that possibly could be interpreted to view the Regional Transmission Organization as the primary market monitor. Surely, that is not the intention of the amendment. Moreover, the FPSC has initiated its own RTO proceeding to address a Florida-specific RTO. That proceeding may also address the entity appropriate to cover market monitoring. The language within that provision is positive regarding the RTO publicizing: (1) Projects that increase capacity or transfer capability of the transmission system, and (2) the tradeable transmission rights and costs associated with the project. Thus, perhaps the section could be revised to address only the "RTO Publication of Information" instead of "Market Monitoring," or the section could be deleted. Thus, we believe the amendment has merit, but should be revised.

(3) CONSUMER PROTECTION PACKAGE

In general, the amendments, referred to as "the Consumer Protection Package" look superior to the language in S. 517, as amended by Senator Thomas. They create a standard on proposed mergers that they must "advance the public interest" which is a higher standard than "consistent with the public interest." Also, the package expands the list of factors to be considered by FERC in reviewing mergers.

In addition, the amendments require public disclosure of transactions, and establish clear standards on affiliate transactions. Also, there would be access to utility holding company books and records. We see benefit to these provisions, and they are consistent with this Commission's Bedrock Principles on National Energy Policy.

We do want to raise a concern, however, that States not be preempted. In particular, there is the provision on market based rates which directs FERC to remedy market flaws

and abuses. To the extent that one of those remedies might be to require divestiture of a utility's assets, we believe the FERC should be required to consult with those state commissions that have statutory authority prior to ordering such a remedy. Thus, in general we commend the "consumer protection" package of amendments, but urge that any potentially preemptive language be closely scrutinized.

We appreciate your staff staying in close contact with FPSC staff, and hope this information is useful.

Sincerely,

LILA A. JABER,  
Chairman.

GREAT PLAINS ENERGY,  
Kansas City, MO, April 17, 2001.

Hon. DON NICKLES,  
U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES: On behalf of the employees of Great Plains Energy, including our regulated subsidiary Kansas City Power & Light, I am writing to express my appreciation for your leadership and support on an issue of great concern.

During the Senate's recent consideration of S. 517, the energy bill, you spoke about the adverse effect a renewable portfolio standard (RPS) would have on utilities and cited information from the Energy Information Administration (EIA) that the cost of purchasing credits in lieu of complying with a renewable mandate would cost KCPL \$16 million—in your words, "a pretty good hit."

Unfortunately, EIA grossly understated the costs of a 10 percent mandate to KCPL, and "the hit" is much worse than that. We project the total costs of purchasing the credit to be more than \$300 million over the 15-year period between 2005 and 2020, when the RPS would ramp up to the full 10 percent. For a company of our size, these costs are intolerable.

While we appreciate the need to diversify our energy mix, doing so by imposing a federal mandate that ignores the availability and cost-effectiveness of renewable resources is not sound public policy. In our area, wind energy, for example, certainly would not be competitive with fuels such as coal, oil, natural gas, or nuclear. That is why we strongly support your efforts to amend the RPS by reducing the credit cost from \$0.03 per kWh to \$0.015 per kWh. Even with the credit cut in half, we would still be saddled with extraordinary costs.

We pride ourselves on providing reliable and affordable electric service, yet the hidden tax imposed by the RPS may be felt by many who can ill afford higher electricity prices.

We appreciate your efforts to reduce the burden of the renewable energy mandate, and offer our assistance to enact a more reasonable approach.

Sincerely,

BERNIE BEAUDOIN.

AMERICAN CORN GROWERS ASSOCIATION,  
Washington, DC, April 16, 2002.

Hon. JOHN B. BREAUX,  
U.S. Senate, Washington, DC.

DEAR SENATOR BREAUX: I am writing to urge your support for the amendment that Senator Nickles plans to offer to the renewable portfolio standard of the energy bill, S. 517. Wind energy is fast becoming a major new "crop" for the farming and ranching community in many areas of the nation. The American Corn Growers Association (ACGA), has developed its Wealth From the Wind Program for farmers, and has strongly supported wind energy tax credits in the Energy Bill as well as other favorable legislative initiatives in the Energy Title of the Farm Bill. ACGA also supports a fair and equitable renewable

portfolio standard (RPS) requiring a portion of the nation's energy to come from renewable sources. However, while we want to do everything we can to promote renewable production by farmers we must oppose undue mandates that will impose additional fuel costs on all rural consumers.

Senator Nickles' amendment will significantly reduce the cost of complying with the standard, and in turn protect rural America from excessive price increases for electricity, by cutting the energy credits from 3 cents per kilowatt-hour to 1.5 cents per kilowatt-hour.

As you know fuel prices have fluctuated wildly over the last two years and some regions have seen shortages of electricity. With the price of gasoline and diesel rising steadily now is not the time to add to these uncertainties.

We urge you to support the amendment offered by Senator Nickles.

Sincerely,

LARRY MITCHELL,  
Chief Executive Officer.

MIDAMERICAN ENERGY HOLDINGS  
COMPANY,  
Omaha Nebraska, April 11, 2002.

Hon. DON NICKLES,  
Assistant Republican Leader, The Capitol,  
Washington, DC.

DEAR SENATOR NICKLES: Thank you for your continued support of the inclusion of electricity modernization provisions in the Senate energy bill. The bipartisan vote yesterday by the Senate to maintain the bill's electricity title was a great step forward.

With regard to your concerns about the renewable portfolio standard (RPS) in the Daschle/Bingaman energy bill, MidAmerican Energy Company has analyzed this proposal and developed estimates of the increase in costs that will result from enactment of the RPS. According to our preliminary calculations, implementing the RPS in S. 517 will begin increasing electricity costs for MidAmerican's regulated and competitive customers in 2007 by almost \$600,000, with costs rising to more than \$40 million in 2019.

Because of the comparatively high availability of affordable renewables in the region served by MidAmerican, we based our calculations on an estimated additional cost of 1.5 cents/kilowatt hour for qualifying sources. As a major developer of renewable electricity through our CE Generation subsidiary, MidAmerican believes that renewables can and should play an increasing role in the nation's electric generation mix, and the Company has expressed its support for Senator Bingaman's overall efforts to promote increased use of these resources. At the same time, MidAmerican has long believed that applying a reasonable cap on the cost of renewable credits would ensure that consumer costs do not escalate beyond those anticipated by RPS proponents.

I understand that you are holding ongoing discussions with Chairman Bingaman about the possibility of adjusting the cost cap in the underlying legislation to address some of your concerns about the RPS. We have contacted Chairman Bingaman's staff to express our hope that a mutually acceptable compromise can be reached on this issue. Thanks again for your inquiry and continued support for PUHCA repeal and other important industry modernizations.

Sincerely,

DAVID L. SOKL,  
Chairman and Chief Executive Officer.

ELECTRIC CONSUMERS' ALLIANCE,

Indianapolis, IN, April 16, 2002.

Re: Consumer support for Sen. Nickles' Amendment to S. 517 regarding Renewable Portfolio Standards

DEAR SENATOR: On behalf of Electric Consumers' Alliance, its more than 300 member organizations representing all 50 states, and its tens of millions of residential and small business constituents, I am writing to indicate our strong support for Senator Nickles' proposed amendment to S. 517, the pending energy bill. Simply put, Sen. Nickles seeks to implement the mandatory Renewable Portfolio Standard in a way that is more equitable and cost effective for consumers across the nation by reducing the renewable energy credit from 3 cents to 1.5 cents per kilowatt-hour.

Renewable energy resources can and will play an important role in America's future energy infrastructure. As such, ECA supports their development, including the creation of subsidies to accelerate their deployment. At the same time, however, we are cognizant that our members will continue to expect a reliable, affordable supply of electricity over the next decade, and this will come predominantly from traditional resources. It is important to encourage the development of new resources, but this must be tempered against the more important goals of maintaining service that is reliable and affordable. There is a danger in transferring too much of the cost burden for development of these resources to consumers, rather than encouraging the market to work.

The mandated RPS requirement will not necessarily lessen the need for or reliance on traditional generation in the short-term. This is because of the intermittent nature of renewable resources. Consumers won't wait for the sun to shine or wind to blow to turn on appliances or flip the lights. The renewable credits that are to be paid under S. 517 will likely be an adder to the cost of electricity for consumers. As a result, these credits—while well-intentioned—will almost certainly have a direct impact on raising the price of electricity for many Americans (assuming reliability is not compromised, which we certainly do not advocate).

The Nickles proposal is a reasonable attempt to mitigate the impact of the almost certain consumer price hike that will be caused by mandated RPS. At a time when energy affordability is an issue for a growing number of residential and small business consumers, it is an appropriate balancing of the interests at stake. If consumers are to shoulder the burden for development of renewable resources through credits, which S. 517 requires, then that cost burden should be mitigated to more reasonable levels. Sen. Nickles' proposal to reduce this impact by reducing the credit from 3 cents to 1.5 cents per kilowatt hour is a reasonable compromise. It deserves your support.

Thank you for your kind consideration.

ROBERT K. JOHNSON,  
Executive Director.

April 18, 2002.

Hon. DON NICKLES,  
Hon. JOHN B. BREAUX,  
U.S. Senate, Washington, DC.

DEAR SENATOR NICKLES AND SENATOR BREAUX: The undersigned associations thank you for your leadership in offering your amendment to reduce the costs of the renewable portfolio standard (RPS) contained in the pending Daschle/Bingaman amendment to the Energy Policy Act of 2002 (S. 517).

Your amendment would make a modest, but economically critical, change to the cost cap aspect of the RPS program. The current RPS provisions mandate that an increasing

percentage of electricity sold be generated from renewable resources. The RPS program further provides that those electricity generators that cannot economically achieve the required level of generation using renewable energy sources can purchase "credits" from the Department of Energy to meet their shortfall. The bill price for these credits is three cents per kilowatt hour. This credit price is intended to act as a cap on the cost increases that will result as demand for renewable power increases in response to the RPS requirement.

Unfortunately, this three-cent credit price is simply set too high. Current wholesale electricity prices are only slightly above three cents per kilowatt hour in most areas of the country. With a three-cent credit, the result will be that in most areas of the country the cost of electricity mandated by the RPS provision could be almost double the current wholesale cost of electricity. These higher costs will be passed on to businesses and homeowners across the country.

Your amendment would halve the credit price to one and one-half cents per kilowatt hour. This is the same price set by the Clinton Administration in its RPS proposals made in 1999. Consumers will still pay more for electricity, but the cost to consumers will be only half as much as it would be with a three cent cost cap. Thus, the Nickles/Breaux amendment would reduce the overall cost of the RPS provision.

Your amendment will ensure that businesses and homeowners alike will have more affordable electricity supplies in the future; reduce the economic costs of the federal renewable portfolio standard program in the energy bill; and to promote economic growth and prosperity for all Americans.

Sincerely,

Alliance for Competitive Electricity, American Chemistry Council, American Gas Association, American Iron and Steel Institute, American Petroleum Institute.

American Portland Cement Association, Associated Petroleum Industries of Pennsylvania, Association of American Railroads, Carpet and Rug Institute, Coalition for Affordable and Reliable Energy.

Edison Electric Institute, Electric Consumers Alliance, Electricity Consumers Resource Council, Greater Raleigh [NC] Chamber of Commerce, Indian River [FL] Chamber of Commerce, International Association of Drilling Contractors, Manhattan [NY] Chamber of Commerce, Massachusetts Petroleum Council, Metropolitan Evansville [IN] Chamber of Commerce, Missouri Oil Council.

Naperville [IL] Chamber of Commerce, National Association of Manufacturers, National Electrical Manufacturers Association, National Federation of Independent Business, National Lime Association.

National Mining Association, National Ocean Industries Association, Natural Gas Supply Association, Nebraska Restaurant Association, Nevada Hotel & Lodging Association.

Nevada Restaurant Association, Nuclear Energy Institute, Oklahoma State Chamber of Commerce & Industry, Stowe [VT] Area Association, Tacoma-Pierce County [WA] Chamber of Commerce, U.S. Chamber of Commerce.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. Mr. President, I did not want to speak if the chairman wanted to speak at this time, but in the absence of his desire to speak at

this particular moment, I will make a few comments on the Nickles-Breaux amendment.

I have joined the Senator from Oklahoma in cosponsoring this amendment. This is a good amendment. It is good for consumers, certainly, it is good for the renewable energy industry in this country, and it is also good for the traditional suppliers of energy in this country.

Let me state at the very beginning that I support the so-called renewable portfolio standard. If I were in Louisiana, I would try to explain it by saying it is a requirement of the Federal Government that power companies have to look for renewable sources of energy in producing energy in this country.

What do we mean by that? Windmill power, for instance, biomass power, renewable alternative forms of energy that should be encouraged in this country. I am for that. I am from a traditional oil-and-gas-producing State, but I found out that we also have one of the largest manufacturers of windmills in Louisiana for the production of energy through wind power. That makes sense. It is not going to solve all of our problems, but it can contribute to a proper mix of renewable energy, as well as traditional forms of energy.

We have a substantial number of tax credits in this energy bill coming from our Finance Committee to encourage these alternative sources of energy. As an example, there is already in the legislation a 1.7 cent production tax credit to be received by wind and biomass producers. Mr. President, 1.7 cents per kilowatt is a lot when one considers that the wholesale price of energy is about 3 cents a kilowatt. When we are giving people who produce alternative sources of energy a 1.7 cent per kilowatt subsidy, that is significant. The person who produces those windmills in Louisiana are going to say: Wow, look, if I get a 1.7 cent per kilowatt tax credit, this is a good deal. People are going to want to buy power from windmill producers if it means 1.7 cents less per kilowatt than the ordinary regular 3 cent per kilowatt wholesale price of energy in this country. The legislation, as it is, encourages these alternative sources of energy through the Tax Code.

This is the second issue we are talking about right now. The legislation also requires energy producers to reach a certain standard, a percentage, required by Congress using these alternative sources of energy by the year 2019. The legislation currently says 10 percent of a power company's production in the year 2019 shall come from these alternative sources of energy. Some people wanted it at 20 percent. It is down to 10 percent. I support that. That is an achievable goal that power companies can reach, especially if we give them a 1.7 cent per kilowatt subsidy to encourage them to do it. That is good public policy.

The concern is there is an additional subsidy that is proposed in the legisla-

tion, and this is what the Nickles-Breaux amendment addresses. The legislation says, if you do not reach that 10-percent goal of using alternative sources of renewable energy, we are going to, in essence, penalize you 3 cents per kilowatt; that you are going to have to make up that 10-percent goal by purchasing power from other producers that have met that goal or purchasing power from the Department of Energy through tax credits, and you are going to have to pay up to 3 cents per kilowatt for that extra energy you will be required to buy from other companies that have met that standard.

What does that mean in the real world, to the person in their home who turns on the light switch every day and is concerned about the cost of electricity? What it means is if you add the 3 cents plus the 1.7 cent tax credit, you are talking about a huge subsidy which I think is far more than it needs to be.

The problem is that if they are required to purchase that tax credit from the Department of Energy at 1.5 cents per kilowatt hour, they could be looking at doubling the cost of electricity per kilowatt hour.

The concern I have is, who is going to pay for this? It is not going to be the power companies. If they have to purchase additional electric tax credits at 3 cents a kilowatt, they are just going to pass the cost on to the consumer, back to the person in the house who flicks the switch. That person is going to pay not 3 cents but double that price per kilowatt for the electricity they use.

Power companies are going to pass it through, and in a deregulated market they are going to add it to their bill at the end of the month. In a regulated market, they are going to go to the public service commission and say: Look, we are having to pay 3 cents more per kilowatt and we want it to be passed on to our rate base; we are just going to charge you 3 cents a kilowatt more than you are paying now. You are already paying 3 cents, so we are going to pay 3 cents more.

That is too much. We do not need more incentives than are necessary.

The tax credit of 1.7 cents per kilowatt hour and the Nickles-Breaux amendment with a penalty, in essence, of another 1.5 cents is a substantial incentive to encourage the development of what we call the renewable portfolio standard on the use of alternative sources of energy.

It is interesting. I have a letter from the Electric Consumers' Alliance which says:

On behalf of Electric Consumers' Alliance, its more than 300 member organizations representing all 50 states, and its tens of millions of residential and small business constituents, I am writing to indicate our strong support for Senator NICKLES' proposed amendment to S. 517, the pending energy bill.

The only disagreement now is the Nickles-Breaux amendment. But the support from consumers is clear. Support from people who provide electricity is very clear. They support it.

The simple fact is that, when put together, the credit price of 1.5 cents, coupled with the tax credit of 1.7 cents, means consumers and taxpayers will be providing a subsidy to wind power and to these biomass producers at a level of 3.2 cents. That is currently above the wholesale cost of power. That is a huge subsidy and incentive to developing sources of power.

With the Nickles-Breaux amendment, we will still have a substantial subsidy, but it will be at a less cost to taxpayers and consumers of electric power. Bear in mind, every time we add 1 cent or half a cent, it is going to be passed on to the consumers of electricity in this country.

The Nickles-Breaux amendment is a good approach and one that should be supported.

I ask unanimous consent to have printed in the RECORD the letter from the Electric Consumers' Alliance, to which I referred.

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

ELECTRIC CONSUMERS' ALLIANCE,

Indianapolis, IN, April 16, 2002.

Re Consumer support for Sen. Nickles' Amendment to S. 517 regarding Renewable Portfolio Standards.

DEAR SENATOR: On behalf of Electric Consumers' Alliance, its more than 300 member organizations representing all 50 states, and its tens of millions of residential and small business constituents, I am writing to indicate our strong support for Senator Nickles' proposed amendment to S. 517, the pending energy bill. Simply put, Sen. Nickles seeks to implement the mandatory Renewable Portfolio Standard in a way that is more equitable and cost effective for consumers across the Nation by reducing the renewable energy credit from 3 cents to 1.15 cents per kilowatt-hour.

Renewable energy resources can and will play an important role in America's future energy infrastructure. As such, ECA supports their development, including the creation of subsidies to accelerate their deployment. At the same time, however, we are cognizant that our members will continue to expect a reliable, affordable supply of electricity over the next decade, and this will come predominantly from traditional resources. It is important to encourage the development of new resources, but this must be tempered against the more important goals of maintaining service that is reliable and affordable. There is a danger in transferring too much of the cost burden for development of these resources to consumers, rather than encouraging the market to work.

The mandated RPS requirement will not necessarily lessen the need for or reliance on traditional generation in the short-term. This is because of the intermittent nature of renewable resources. Consumers won't wait for the sun to shine or wind to blow to turn on appliances or flip on lights. The renewable credits that are to be paid under S. 517 will likely be an adder to the cost of electricity for consumers. As a result, these credits—while well-intentioned—will almost certainly have a direct impact on raising the price of electricity for many Americans (assuming reliability is not compromised, which we certainly do not advocate).

The Nickles proposal is a reasonable attempt to mitigate the impact of the almost certain consumer price hike that will be caused by mandated RPS. At a time when

energy affordability is an issue for a growing number of residential and small business consumers, it is an appropriate balancing of the interests at stake. If consumers are to shoulder the burden for development of renewable resources through credits, which S. 517 requires, then that cost burden should be mitigated to more reasonable levels. Sen. Nickles' proposal to reduce this impact by reducing the credit from 3 cents to 1.5 cents per kilowatt hour is a reasonable compromise. It deserves your support.

Thank you for your kind consideration.

ROBERT K. JOHNSON,

Executive Director.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I will be very brief. I wish to recognize the effort by Senator NICKLES to remind us all of the obligation we have with regard to the cost of renewables. We have had an extended debate previously. This amendment obviously would change the fee and the renewable portfolio standard from 3 cents to 1.5 cents.

We have already seen the estimate by the Energy Information Administration, from the Department of Energy, relative to the calculation of what a 3-cent renewable would cost the economy and the consequence to the ratepayers, \$88 billion over the next 20 years. Changing the credit from 3 cents to 1.5 cents will save about \$44 billion through the year 2020.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I will take a few minutes to respond to the comments that have been made and to oppose the amendment that my colleague from Oklahoma has offered.

First, to put this in perspective for Senators, this is the fourth amendment we have seen that is designed to either eliminate or dramatically weaken the renewable portfolio standard we have in the bill. There were three others we voted on earlier that were not successful. A majority of Senators did not favor weakening the standard, and accordingly those amendments were not successful.

I think the structure we have in the bill is important if we are going to actually accomplish the purpose of bringing renewable technologies into use in this country, and that is the purpose of the renewable portfolio standard. What we are saying in the renewable portfolio standard is each utility is directed to begin, starting in the year 2005, to produce or obtain some of the power that it sells from renewable sources. They do not have to produce it from those sources, but they have to obtain it from those sources.

We are saying you do not have to do anything this year, you do not have to do anything next year, you do not have to do anything the next year, but in the year 2005 you have to achieve 1 percent. One percent of the power you sell must come from renewable sources.

There are obvious ways that one can go about this. First, one can add some

renewable power generation capability to the mix of sources for generating power. That is one option. That is, of course, what we are intending to facilitate and to incentivize with this provision.

A second thing that can be done is if one does not want to add it themselves, they can contract with someone who has that power or who is willing to provide that power from renewable sources. That is a second option.

A third option, under the bill, the way we have it drafted, is one can buy a credit from somebody who does have more than the 1 percent—and there are a lot of utilities today that are in a position, beginning in the year 2005, to try to sell their credits. That is good. We are providing for that. We are saying, OK, if a particular utility does not want to either produce the power from renewable sources or buy the power, someone who is producing it from renewable sources can then go buy a credit.

The provision we have in the bill is patterned after the provision in the Texas renewable portfolio standard legislation that President Bush signed into law, and that has been acclaimed by all as a model kind of a bill. It has had great success in Texas in encouraging more use of renewables and diversifying the supplies of energy upon which they depend.

What that Texas provision said was we would not charge 3 cents per credit. What we charge in Texas is 5 cents per credit. That is what President Bush signed into law, in Texas, when he was Governor of Texas. It would either be 5 cents per credit or 200 percent of the average price of traded credits, whichever is less, so that if one could not go ahead and buy the credit from someone who is producing power, who has an extra credit, then as sort of a last option, they could go to the State of Texas and say, OK, I will pay 5 cents per credit or I will pay 200 percent of the tradable price of credits at this time.

What has the tradable price of credits turned out to be in Texas? It is five-tenths of 1 cent. Half of a cent is the tradable price of credits today in Texas.

So essentially what the Texas provision says is that one would have to pay 200 percent of the trading price for credits, which would be a full cent, so 200 percent of the half cent would be a full cent, and that would be the price that would have to be paid to the State of Texas to get a credit; not the 5 cents but the 1 cent. That is under their provision.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. Let me finish my comments and then I will be glad to yield for a question.

We took that provision and we said, let's do the same thing at the Federal level and try to say we do not need to have a 5-cent credit; let us have a 3-cent credit, but let us also put that



provision in 3 cents or 200 percent of the average price of traded credit, whichever is less.

So if, in fact, the same thing happens nationally that has happened in Texas, which I think it likely would—credits would be trading for substantially less than the 3 cents—then it is very likely the credits that would be purchased from the Government, if a utility decided to go that step and purchase credits from the Government, would be substantially cheaper.

All of this, to some extent, is estimating where we think things will be once this legislation becomes law, if it does become law. I am glad to join with my colleague from Oklahoma or any other Senator in urging the Energy Information Agency to update their models, update their studies, and give us good information about what the right amount of credit ought to be. I am not certain 3 cents is the right amount, but it seems like the right amount based on what we know today.

Based on the review of the numbers of different economic analyses, we have determined that 5 cents is too much. We have also determined that the 1.5 cents is probably too little. So our estimate is the 3 cents is about where it ought to be.

The reason we think it ought to be at 3 cents is because we believe all of the different types of renewable energy ought to be encouraged to be developed under this proposal.

We have a chart, which I would like to put up, to make the point. The renewable portfolio standard requirement can be met; renewable energy can be generated from any of a variety of sources. The main ones we think about are biomass and biofuels resources, solar insulation resources, geothermal resources, and wind resources. Those are the four logical areas.

The concern is that if we lower the cost of this credit too much, the price of this credit too much, that this will skew away from the use of several of these and wind up favoring one over the others. In that regard, let me cite a letter to my colleagues. This is a letter directed to all Senators, I believe. This was dated April 18 and it is from a large group of organizations. It is from the Alliance for Affordable Energy, Louisiana; American Bioenergy Association; Citizen Action Coalition of Indiana; Citizen Action/Illinois; Dakota Resource Council; Hoosier Environmental Council, Iowa Citizen Action Network; Iowa SEED Coalition; I-Renew, Iowa; Michigan Environmental Council; Minnesotans for an Energy-Efficient Economy; North Dakota SEED. There are a whole range of organizations that have signed on to this letter.

Their letter says:

The undersigned environmental, consumer, and industry groups urge you to oppose an amendment that would be offered by Senator NICKLES to further weaken the renewable portfolio standard contained in Senate bill S. 517. The Nickles amendment is the latest in a sustained attempt by power companies to undermine efforts to diversify America's energy supply with clean renewable energy.

Then they go on to say further down in the letter:

Under a lower priced cap—

And that is what Senator NICKLES is recommending here, 1.5 cents—

only the very lowest-cost renewable energy technologies can benefit from the RPS—primarily wind power at the very best sites. Biomass, geothermal, and solar would be at a significant disadvantage to meet this standard.

That is three of the four on this chart.

They say biomass would be a substantial disadvantage; solar, geothermal. The Nickles amendment would reduce benefits to Western States with good geothermal resources, to the Midwest, Southeast, and Northeast that have good biomass resources, and reduce benefits to all other States with good solar resources.

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

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

APRIL 18, 2002.

DEAR SENATOR: The undersigned environmental, consumer, and industry groups urge you to oppose an amendment that may be offered by Senator Don Nickles to further weaken the renewable portfolio standard (RPS) contained in Senate Energy Bill (S. 517).

The Nickles amendment is the latest in a sustained attempt by power companies to undermine efforts to diversify America's energy supply with clean renewable energy. The Nickles amendment would reduce the cost cap for procuring renewable energy credits under the RPS from 3 cents per kilowatt-hour to 1.5 cents per kilowatt-hour. This provision would:

Reduce the number of technologies and states that would benefit from the RPS—states with biomass, geothermal and solar resources would be especially disadvantaged;

Reduce the amount of renewable energy developed by encouraging companies to pay a penalty rather than developing or procuring more renewable energy; and

Undermine the RPS competitive mechanism and potentially even increase costs to consumers.

The Nickles amendment would reduce diversity of technologies and states that benefit from the RPS.—Under a lower price cap, only the very lowest-cost renewable energy technologies can benefit from the RPS—primarily wind power at the very best sites. Biomass, geothermal and solar would be at a significant disadvantage to meet the standard. The Nickles amendment would therefore reduce benefits to Western states with good geothermal resources; reduce benefits to the Midwest, Southeast and Northeast states which have good biomass resources, and reduce benefits to all other states with good solar resources.

The Nickles amendment would reduce the amount of renewable energy developed.—An Energy Information Administration (EIA) study of a 1.5-cent price cap (in a stronger RPS than the Bingaman proposal) found that it could reduce the amount of new renewable energy generated by the RPS by 84%. (AEO 2000)

As Governor of Texas, President Bush signed a RPS law that included a 5-cent per kWh price cap for renewable energy credits. That law is working well and is one of the most successful examples of a state RPS in existence today. The Bingaman 3-cent price

cap represents a reasonable compromise between the 1.5 cent price cap proposed in the 1999 Clinton RPS and the 5 cent price cap signed by President Bush as Governor of Texas.

The Nickles amendment would undermine the RPS competitive mechanism and potentially even increase costs to consumers.—The RPS is designed to create competition among many renewable energy technologies to reduce their costs. EIA also found that it would create new competition for fossil fuels—reducing fossil fuel prices for electricity generators and consumers. According to the most recent EIA analysis, these reduced prices will save energy consumers over \$13 billion through 2020.

By setting the price cap too low, the Nickles amendment would reduce competition among many types of renewable energy. It would reduce the total amount of renewable energy developed, undermining the potential of renewable energy to restrain fossil fuel price increases. Electric companies would have to buy credits from DOE for 1.5 cents, but without new renewables necessarily being developed. Therefore, the Nickles amendment could actually increase electricity prices.

Please don't believe the industry's claim that the RPS will cost too much. The Bush Administration's EIA found that a 10% RPS would save consumers money. Please reject the Nickles amendment and any other weakening amendments, and preserve the diversity, environmental and consumer benefits of the Daschle/Bingaman RPS.

Sincerely,

Alliance for Affordable Energy, Louisiana.  
American Bioenergy Association.  
Citizen Action Coalition of Indiana.  
Citizen Action/Illinois.  
Dakota Resource Council.  
Environmental & Energy Study Institute.  
Environmental Law & Policy Center of the Midwest.

Hoosier Environmental Council.  
Iowa Citizen Action Network.  
Iowa SEED Coalition.  
I-Renew, Iowa.  
Michigan Environmental Council.  
Minnesota Project.  
Minnesotans for an Energy-Efficient Economy.

National Environmental Trust.  
Natural Resources Defense Council.  
North Dakota SEED.  
Renewable Northwest Project.  
Sierra Club.  
Solar Energy Industry Association.  
Southern Alliance for Clean Energy.  
Union of Concerned Scientists.  
U.S. Public Interest Research Group.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. I am happy to yield.

Mr. NICKLES. Did we have a hearing on any proposal to have this penalty?

Mr. BINGAMAN. I don't believe there was a specific hearing on it, and that is why I have suggested we request the Energy Information Agency to update their studies and recommend whether they think this is the appropriate level or not. We certainly would have time to do that between now and any conference with the House of Representatives on this bill. If there is a need to make an adjustment to come in line with what the Energy Information Agency recommends, I would be glad to work with my colleagues to try to do that in the conference.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. I am happy to yield.

Mr. NICKLES. Did we have a hearing on the renewable portfolio standards as proposed by the Senator in this bill, period?

Mr. BINGAMAN. Mr. President, we have had a hearing on the subject of renewable energy and renewable portfolio standards, not on the specific language in the bill.

Mr. NICKLES. In the last 2 years, did we have a hearing on a mandate of 10 percent and a cost of 3 cents?

Mr. BINGAMAN. Mr. President, I don't know that we had a hearing on a specific level of required mandate or specific level of cost of credit. I don't believe we did.

Mr. NICKLES. I know the House had a hearing in 1999. The Clinton administration proposed a 1.5-cent credit penalty per kilowatt hour. Why did the chairman come up with a 3-cent penalty, double what the Clinton administration proposed a couple of years ago?

Mr. BINGAMAN. What we did, in response to my friend's question, we modeled our proposal on the successful program legislated into effect in Texas. That is the basis upon which we came up with our estimate. It was very different from the Clinton administration recommendation, not just with the credits but in various other aspects. We did not follow the Clinton administration proposal with regard to renewable portfolio standards in fashioning ours.

Mr. NICKLES. Correct me if I am wrong; Texas has a requirement that has a goal of 2,000 megawatts of new renewable energy by the year 2009. That represents 2.6 percent of their present generating capacity. Also correct me if I am wrong, but Texas has their whole basis on capacity, not on electricity produced. So that Texas mandate is a whole lot less than the 10 percent mandate as proposed by the Senator from New Mexico.

Mr. BINGAMAN. Mr. President, my understanding is that is inaccurate; that, in fact, although the Texas language does talk about capacity, the calculation as put in place by their utility commission was on the basis of actual power produced. My information is that through the period that is covered by the Texas law, the percentage requirement for renewable energy is higher than the one we require.

Mr. NICKLES. If the Senator will require the Texas utility code section 39.904, goals for renewable energy is 2,000 megawatts of generating capacity. I mention this because capacity is one thing, to generate electricity is another. For wind, you need three times the facilities to actually generate because they don't operate 24 hours a day. The wind does not always blow. Capacity is less intrusive and less expensive. And factually, the amount of megawatts produced equals right now 2.6 percent of the Texas generating capacity and less than 2 percent anticipated by the year 2009.

I heard my colleague say this is modeled after Texas. But it is not modeled

after Texas. It did not follow Texas in any way, shape, or form. That is an editorial comment.

Mr. BINGAMAN. Mr. President, let me once again try to put this in perspective for my colleagues. As I indicated, this is an effort, another effort, to weaken the renewable portfolio standards we have in the bill. We put the renewable portfolio standards in here because we believe strongly it is in our national interest that we diversify the sources from which we obtain energy and that we encourage the development and improvement of the new technologies which we know can be sources of energy as we move into the future. That is why we have a renewable portfolio standard in the bill.

The requirement we have is not that onerous. When we require 1 percent of the power sold by a utility by the year 2005 to be generated from renewable sources, that is not an unduly onerous requirement. All of the numbers we have been hearing about how it will cost such enormous amounts for the utilities to comply, assuming they are going to do nothing to meet excess demand in the future—the truth is, they are going to be adding generating capacity in the future to meet increased consumer demand. That is as it should be.

All we are saying is, as they make those decisions about adding new generating capacity in the future, they should be encouraged, they should be incentivized, to look at renewable energy as the source for some of that power. That is, to my mind, a responsible course to follow. We are way behind other industrial allies, the countries in Europe, in beginning to use renewable energy in our country. It is time we began to use these new technologies, began to improve these technologies. They have proven themselves to be effective. It would be extremely unfortunate, in my view, if we further weakened the renewable portfolio standard at this time.

Mr. NICKLES. Mr. President, I know my colleague from Ohio desires to speak, but I wish to make a couple of rebuttals to the comments made by the Senator from New Mexico. Then I am delighted to have my friend from Ohio speak.

We didn't reduce the renewable portfolio standard. It is still 10 percent. I don't think it should be there, but my decision was to minimize the damage under the Bingaman proposal, and we decided to cut the penalty in half, the same amount the Clinton administration proposed—the only proposal that had a hearing before Congress, and that happened to be a hearing not before this Congress but the last Congress in 1999. To think we would even have a proposal that has an indirect tax on utility users and consumers of billions of dollars, estimated by the Energy Information Agency of \$88 billion, without even having a hearing, I find ridiculous.

I hear colleagues say it was based on Texas, and it was not; there is a world

of difference between capacity and generated electricity, especially when you talk about renewables. Texas has a standard that would equal 2 percent of their generation, and we are talking about a 10 percent mandate. There is a lot of difference. There is a lot of difference when the cost impact is in the millions and billions of dollars for utilities all across the country. And I will put in more estimates.

When I made this speech earlier, trying to strike the provision, I said something about a chart we got from the Department of Energy that said Kansas City Power and Light said it would cost \$16 million—that is per year—when fully implemented. I mentioned that was pretty good for the consumers of Kansas City Power and Light.

They said, in a letter: Unfortunately, EIA grossly understated the cost of 10 percent mandate to Kansas City Power and Light. The hit is much worse than that. We project total costs being more than \$300 million over the 15-year period between 2005 and 2020 for the full 10 percent. For a company of our size, these costs are intolerable.

So for people to say we don't think it will be very much, Senator BREAUX, Senator VOINOVICH, Senator MILLER, and I are at least trying to reduce the cost and trying to keep the cost at somewhat more affordable levels as proposed by the previous administration.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise to support the Nickles-Breaux amendment on renewable portfolio standards.

Last month, the Senate debated the renewable portfolio standard included in the legislation before us today. I want to make it clear that I applaud the efforts of my colleagues to encourage the use of renewable electricity generation.

I agree that renewable energy is an important part of the future and should be developed. I also strongly believe renewable sources are vital as this country seeks to diversify energy supplies and decrease our dependence on foreign sources to meet our energy needs.

As my colleagues know, the Bingaman amendment that was accepted last month stipulates that we must develop a mandatory minimum standard for renewable energy of 10 percent by the year 2019. At the time, I opposed the requirement because I believed it mandated an unrealistic level of renewable usage in a short period of time, at the virtual expense of other sources of electricity generation.

I think one point that seems to get lost over the use of renewables in America is that, right now, very little of our power in this Nation is generated by renewables. As a matter of fact, it is 1.6 of 1 percent. My colleagues should understand when we are talking renewables in this bill, we are

talking solar, we are talking wind, we are talking geothermal and we are talking biomass; that is it.

When I stood to oppose the original mandate, I pointed out that in my home State of Ohio, our use of renewable energy is much lower than the national average. Renewables, including hydropower, generate 1 percent of our electricity.

I also pointed out there are many other States which rely on renewable sources for electricity generation. According to the 1998 data from the Energy Information Administration—and this is really important because it gets at the regionalism and how unfair this mandate is, as it is written, to certain regions of the country—at least 10 percent of the electricity generated in 16 States comes from renewable power. Of these 16, 5 States receive more than 50 percent of their electricity from renewable sources, and the primary source is hydroelectric power. Four of the five States—Idaho, Oregon, South Dakota, Washington—rely on hydroelectric power for more than 60 percent of their electricity. Maine is the only State east of the Mississippi to rely on renewables for more than 50 percent of its electricity, 30 percent coming from hydro and 30 percent from other renewables.

Regions and even individual States that currently have a high percentage of renewable energy sources would be less impacted by the underlying provisions. However, forcing a mandatory minimum would unduly burden States such as Ohio.

Let me tell you a little about my State and States in the Midwest. We rely heavily on coal. Mr. President, 86 percent of our energy comes from coal. As Members of this Senate know, there are bills that have been introduced that will increase and require us to reduce NO<sub>x</sub>, SO<sub>x</sub>, mercury, and some are even talking about carbon. In our State, we are putting our money into clean coal technology, not into switching to renewables.

What this underlying bill requires is that, in a place such as Cleveland, OH, my kilowatt—maybe some of my colleagues are not aware of this—my cost per kilowatt hour in Cleveland is 4.7 cents. This bill is talking about increasing that by 3 cents per kilowatt hour. That is a tremendous increase we are going to have to bear in States such as Ohio.

AEP, which has its home office in Ohio, American Electric Power, estimates that they would have to install an additional cumulative total of 2,100 megawatts of renewables by 2011, a total of 4,100 megawatts by 2015, and a total of 7,000 megawatts by 2020 under this requirement. This should be compared with their total generation, which is 38,000 megawatts. That is in 11 States. And this calculation does not include a safety valve or cost cap. The cost impact on AEP alone would range from \$100 million to \$400 million net present value.

One of the things that bothers me when we debate these things in the Senate is, we are talking about the utilities. The utilities are the rate-payers.

In my State, our manufacturers are taking it in the back of the neck. We are losing manufacturing jobs in the Midwest. One of the things that triggered this was a year ago we had a spike in gas prices, which put most of the small businesses in a negative position. Then, with the high cost of the dollar, they are in deep trouble, especially if they export.

So we are talking about adding costs on a specific segment of our economy, which happens to fall heavily in my State. We use a lot of electricity. It also puts a negative burden on the people who live in my inner cities.

People just talk about these things as if it didn't matter. But the people who make less than \$10,000 a year pay about 30 percent of whatever they have for energy costs. This kind of legislation, as it is written, is going to drive those costs up. Let's talk about those people who are going to pay the cost.

What I am saying today, to my colleagues, is give me a break. Give us a break. Some of you are from regions that do not have the problems we have. We have 23 percent of the manufacturing jobs in this country in the Midwest. In my State alone, we have more manufacturing jobs than they have in the entire northeastern part of the country.

What we are trying to do today is come up with a reasonable number in terms of this mandate. It may not mean a lot to some people who live in some of the other States that do not have manufacturing, but it does mean a great deal in States like my State. I think of Paul's Letter to the Romans, Chapter 12: We are all part of one body. We have different functions.

It would be really nice if on the floor of this Senate we would start to give a little more consideration to some of the specific problems some of us have in our States so we could continue to survive and prosper and have reasonable energy costs, continue our manufacturing, and not drive up the cost for the least of our brethren.

I urge my colleagues to really give serious consideration to this. This is a reasonable proposal we are making today. It does not eliminate the mandate. It just says, if we have to comply with it, we comply with it in a way that is less oppressive than what is contained in the underlying bill.

Mr. REID. Under the previous order, the Senate is going to stand in recess so we can all listen to our Secretary of State in room 407. I ask, however, that the recess be extended until the hour of 4:15. I cleared this with my colleague, Senator NICKLES. I ask that that time count against the 30 hours.

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

# RECESS

Mr. REID. I ask unanimous consent the Senate now stand in recess.

There being no objection, the Senate, at 2:59 p.m., recessed until 4:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. NELSON of Florida).

## NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

Mr. REID. Mr. President, for the information of all Senators, we hope to be able to have a vote on the Nickles amendment within the next half hour. We do not know for sure how long people will speak. We have had a number of Members indicate they wanted to speak on the Nickles amendment. We have several of them in the Chamber right now. We will proceed on that. There should be a vote within the next half hour.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 3256

Mr. KYL. Mr. President, if none of my colleagues are prepared to take the floor, let me spend a couple of minutes in support of the Nickles amendment.

As you know, the Nickles amendment, which is the pending business, would reduce the amount of penalty in effect that a public utility would bear if it did not produce the required amount of electricity for retail sales with so-called renewable energy resources. This has to do, again, with the portfolio that we call the renewable resources that would be required to account for 10 percent of the retail sales of all the investor-owned utilities in the country.

Bear in mind that the publicly owned utilities are exempted only because a point of order would have been effective against the inclusion of the public utilities in the amendment due to the unfunded mandate nature of the underlying provision. Ultimately, this probably will apply both to investor-owned and public utilities, but for the moment it applies only to the investor-owned utilities.

When I talk about a penalty on the utilities, of course, I am really talking about a penalty on the utility customers because utilities are not in the business of losing money—at least not very long. As a result, their expenses are charged back to their customers.

What we are really talking about in the underlying bill is a requirement that these utilities produce 10 percent of their retail power from so-called renewable resources, such as wind, solar, or biomass energy. Then, if they don't do so, they have to buy that amount from other available resources or, if they can't do that, pay an amount equal to 3 cents per kilowatt hour to make up the difference.

Let us say that the requirement when the bill is fully effective is 10 percent and they are able to generate 1

percent from the renewable resources; let us say they are able to buy another 1 percent from somewhere else. That means they would have 8 percent that would have to be accounted for by a penalty of 3 cents per kilowatt hour of that retail sale.

How much would that cost the utility customers around the country? That is the question. The Nickles amendment would cut the cost in half. The Nickles amendment would say, instead of 3 cents per kilowatt hour, it would be 1½ cents per kilowatt hour.

I am informed by Senator NICKLES that is the amount the Clinton administration had proposed when it had a similar proposal.

We would be talking about cutting in half the penalty that otherwise would pertain.

I cited earlier in this debate the statistics by utility and by State. I have these statistics again. I will recite a few of them and insert in the RECORD at the appropriate point and make available for all of my colleagues exactly how the customers in each State would be required to pay, again just for the penalties of the public utilities; that is to say, the investor-owned utilities.

Let me cite some examples.

In the State of Alabama, the cost to the customers is \$156-plus million or, under the Nickles amendment, these customers in Alabama would save \$78 million per year.

Since I see my colleague from Vermont in the Chamber, let me look at Vermont. In Vermont, the utility customers of the investor-owned utilities would save over \$7 million per year under the amendment of the Senator from Oklahoma.

Let me look at Florida, the State from which the Presiding Officer comes. Florida is a big State with a lot of utility customers—a mix of both public and private utilities—but the private utilities annually would suffer an expense of over \$451 million, so that the savings from the Nickles amendment for the utility customers in Florida, the investor-owned utilities, would be more than \$225 million.

In my own State of Arizona, the cost is almost \$100 million. So the savings per year would be just under \$50 million.

Let me pick a couple of other States.

For the State of Nevada, the State of the distinguished majority whip, the savings would be over \$37 million because the expense there is over \$75 million.

Let me pick another couple States at random.

For New York State, the savings would be almost \$132 million.

Let me take my neighboring State of California, another large State. Californians, obviously, are going to get clobbered by this renewable portfolio requirement. The estimate is, therefore, that for the State of California, just cutting this penalty in half, reducing it to 1½ cents per kilowatt hour,

would save the customers in California over \$243 million per year.

These savings illustrate that there is a cost to what we are imposing in the Senate. We come up with a lot of good ideas. In fact, our ideas are so good we want to impose them on everybody else.

I offered amendments to make this voluntary, but my proposals were rejected. So this is a mandatory requirement. This is required of all of the electric customers in this country, so I thought it would be important to know how much it is going to cost—in other words, by our action, what costs are we imposing on the electric customers of our country?—so that we can then make a judgment of whether it is worth it.

What we are doing here has significant consequences to people. We pass bills all the time to try to help people in need. People need help with their housing, so we provide them assistance for housing. People need help with their heating bills, so we provide them assistance under a program called LIHEAP. And there are any number of other programs.

So why, then, would we be imposing this kind of a big cost on them? Of course, the bigger the family, the more your expenses are going to be; therefore, the more this is going to cost you.

What sense does it make for us to impose this kind of cost on consumers with this legislation and then turn right around under the LIHEAP bill and say: Well, we know you are having to pay a lot for your electric bill, so we are going to help you make up for part of that. This just does not make any sense. It is incoherent policy, and it damages real people. That is why I am citing these statistics.

In a relatively small State—let me just take the State of the honorable chairman of the Energy Committee—the State of New Mexico, by passing the Nickles amendment, the people of New Mexico would save over \$19 million a year because they are going to have to pay almost \$40 million as a penalty because New Mexico cannot generate the requisite 10 percent that we are going to mandate under this bill.

These are not my figures. This comes from the Department of Energy, from the Energy Information Administration, which is a branch of the U.S. Department of Energy. These are up-to-date figures. I had figures in this Chamber before when we were debating this issue. These are even more updated figures than that.

So it seems to me that we in this body have to think about the consequences of our mandates. If we are going to make Americans pay more, we better have a darn good excuse or a good reason for making them do that.

Doesn't it make sense that we would say to people—let's just take the State of California, for example—Look, Californians, you are going to have to pay \$243 million under the Nickles amend-

ment, but if the Nickles amendment does not pass, you are going to have to pay \$487 million a year in penalties. You may think it is worth it in order to encourage the development of wind energy or solar energy. If you do think it is worth it, would you be willing to pay that cost on an individual basis?

My guess is, you would have, out of, say, 100 people, probably 5 or 10 who would say: We feel like we are in a contributing mood, and we would like to pay for our share of what it will really cost us—the real cost to generate more of this energy from these so-called renewable resources—so we will pay a higher electric bill.

I have not broken this down per customer, but, obviously, each customer is going to pay a fairly significant amount. But if you say to the people of California, Are you willing to pay almost \$500 million a year more—if you put that to a vote—most of them would say: No, we don't think so. Why don't you figure out another way to make this happen. This represents a substantial increase in our power bill, and we don't want to do it.

What we are doing in this body—I am going to call it arrogant because I think it is a certain degree of arrogance that must affect our willingness to impose these kinds of financial burdens on the American people for the sake of, what, to generate more energy with wind, to do what, save some oil or gas or coal maybe that we would otherwise use to produce power.

Of course, we are not willing to expand our energy production, but we are going to require this use of renewable resources. And the incentive is going to be: If you don't do it, then you all are going to have to pay a big penalty. I think that is arrogance on our part. The reason I use that harsh word is because I think if you put that question to your constituents—I know if I put that question to the constituents that I represent, I am very certain most of them would say: No, thank you. We would just as soon you not impose that additional tax on us.

This is a tax on energy. It is a tax on energy use for individual retail customers. But most of our constituents will not know that is what we have done. That is why I am going to make it a point to let them know. We are going to publicize this in every way that I know, in every State that I know, to make sure that the constituents of all of my colleagues understand what their Senator imposed upon them in the way of a new tax and what it is going to cost them.

These figures are going to be in every State in the country so that there will be no question that it is understood what the costs are, on our constituents, that we are imposing upon them in the name of good, to produce more wind energy and more solar energy. I just want the folks in California to know it is going to cost them almost \$500 million a year—\$487 million to be exact—and the same thing for every other State.

The figures are actually understated because, as I said, this only represents what the investor-owned utilities will have to pay in penalties. We know there will be additional penalties, assuming the publicly owned utilities are also added to this at a later time.

So I think it is important for the American people who buy energy to understand what we are imposing on them by way of cost. The best way to do that is by bringing it out, with the amendment of the Senator from Oklahoma, by demonstrating what we can save them by simply cutting this penalty in half, from 3 cents per kilowatt hour to 1½ cents per kilowatt hour.

It is still a lot of money. I have not added it all up, but it adds up to an awful lot of money. It is clearly in the multiples of billions of dollars.

But we have these statistics by State so we will at least be able to show people what they will save by State as a result of the adoption of the Nickles amendment. We will have a copy of this at the party desks at the time that the vote is called on the Nickles amendment.

Any Member wishing to see how much he or she is willing to save his or her constituents, if you would like to see how much you will save your con-

stituents by voting for the Nickles amendment, we will have that here for you. Conversely, if you would like to see how much of a tax you will impose upon your constituents, we have that column as well.

I hope my colleagues will take advantage of the information we have. This is information from the Department of Energy on how much this electric tax is going to cost the ratepayers all over this country. We could at least do them a favor by cutting the penalty in half. And if you want to know how much you will save your constituents by doing that, by supporting the Nickles amendment, we have all the figures right here.

I see the Senator from Oklahoma is here. I have been referring to his amendment. Let me see if the State of Oklahoma would save any money here. It turns out we are going to tax the utility customers there over \$112 million a year. So at least he is going to save his constituents over \$56 million a year. That ain't peanuts. That is real savings. Equivalent numbers apply to all of the rest of the States.

I hope my colleagues will support the Nickles amendment and do their constituents a favor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. REID. Will the Senator yield for a unanimous consent request?

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I thank my friend and colleague from Arizona for his statement, for his homework, for his research and knowledge on the issue. I hope all Senators will pay attention because we are talking about an amendment that will have a real impact on utility rates, on electric rates all across the country. It will cost millions. Actually, I think my colleague from Arizona will agree, utility companies don't really pay those rates. They may be assessed, but they will pass them on to consumers. They will pass them on to ratepayers in Florida, in Arizona, in Illinois, in Oklahoma, and in Nevada.

I appreciate my colleague's homework and also his very strong statement.

Mr. KYL. Mr. President, I ask unanimous consent to print in the RECORD the table to which I referred.

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

RETAIL SALES, REVENUE, AND POTENTIAL COST OF PURCHASING CREDITS

| State                | Consumers  | Retail sales (in millions of dollars) | Retail sales (MWh) | Retail rate (cents per kWh) | Maximum credit purchase cost (in millions of dollars) | Maximum potential rate increase (percent) | Savings by Nickles amendment (per year) |
|----------------------|------------|---------------------------------------|--------------------|-----------------------------|---|---|---|
| Alaska               | 25,160     | 57,418                                | 446,293            | 12.87                       | 1,339   | 2.33                                      | \$669,500                               |
| Alabama              | 1,322,172  | 2,952,707                             | 52,067,783         | 5.67                        | 156,203   | 5.29                                      | 78,101,500                              |
| Arkansas             | 807,898    | 1,532,386                             | 25,714,924         | 5.96                        | 77,145  | 5.03                                      | 38,572,500                              |
| Arizona              | 1,250,550  | 2,640,775                             | 33,224,190         | 7.95                        | 99,673  | 3.77                                      | 49,836,500                              |
| California           | 9,392,462  | 16,306,188                            | 162,352,407        | 10.04                       | 487,057   | 2.99                                      | 243,528,500                             |
| Colorado             | 1,310,550  | 1,512,893                             | 26,072,373         | 5.80                        | 78,217  | 5.17                                      | 39,108,500                              |
| Connecticut          | 1,439,185  | 2,712,489                             | 28,094,031         | 9.66                        | 84,282  | 3.11                                      | 42,141,000                              |
| District of Columbia | 225,522    | 798,345                               | 10,615,521         | 7.52                        | 31,847  | 3.99                                      | 15,923,500                              |
| Delaware             | 268,512    | 481,564                               | 8,409,335          | 5.73                        | 25,228  | 5.24                                      | 12,614,000                              |
| Florida              | 6,201,773  | 10,384,739                            | 150,469,636        | 6.90                        | 451,409   | 4.35                                      | 225,704,500                             |
| Georgia              | 2,029,531  | 4,566,067                             | 78,410,565         | 5.82                        | 235,232   | 5.15                                      | 117,616,000                             |
| Hawaii               | 427,108    | 1,359,755                             | 9,690,596          | 14.03                       | 29,072  | 2.14                                      | 14,536,000                              |
| Iowa                 | 1,042,106  | 1,748,968                             | 29,672,171         | 5.89                        | 89,017  | 5.09                                      | 44,508,500                              |
| Idaho                | 529,224    | 828,594                               | 20,190,466         | 4.10                        | 60,571  | 7.31                                      | 30,285,500                              |
| Illinois             | 4,787,291  | 8,032,121                             | 115,334,741        | 6.96                        | 346,004   | 4.31                                      | 173,002,000                             |
| Indiana              | 2,145,265  | 4,104,112                             | 81,161,466         | 5.06                        | 243,484   | 5.93                                      | 121,742,000                             |
| Kansas               | 920,868    | 1,582,619                             | 26,053,970         | 6.07                        | 78,162  | 4.94                                      | 39,081,000                              |
| Kentucky             | 1,130,058  | 1,728,643                             | 42,790,408         | 4.04                        | 128,371   | 7.43                                      | 64,185,500                              |
| Louisiana            | 1,580,399  | 4,463,903                             | 69,479,189         | 6.42                        | 208,438   | 4.67                                      | 104,219,000                             |
| Massachusetts        | 2,500,731  | 4,028,951                             | 41,828,995         | 9.63                        | 125,487   | 3.11                                      | 62,743,500                              |
| Maryland             | 2,018,170  | 3,772,670                             | 56,457,358         | 6.68                        | 169,372   | 4.49                                      | 84,686,000                              |
| Maine                | 240,605    | 610,219                               | 6,005,478          | 10.16                       | 18,016  | 2.95                                      | 9,008,000                               |
| Michigan             | 4,031,301  | 6,722,444                             | 94,191,371         | 7.14                        | 282,574   | 4.20                                      | 141,287,000                             |
| Minnesota            | 1,352,070  | 2,310,741                             | 40,791,277         | 5.66                        | 122,374   | 5.30                                      | 61,187,000                              |
| Missouri             | 1,774,796  | 3,084,596                             | 50,364,934         | 6.12                        | 151,095   | 4.90                                      | 75,547,500                              |
| Mississippi          | 591,022    | 1,300,929                             | 22,434,100         | 5.80                        | 67,302  | 5.17                                      | 33,651,000                              |
| Montana              | 324,989    | 369,137                               | 6,493,525          | 5.68                        | 19,481  | 5.28                                      | 9,740,500                               |
| North Carolina       | 2,761,911  | 5,583,562                             | 91,831,679         | 6.08                        | 275,495   | 4.93                                      | 137,747,500                             |
| North Dakota         | 211,223    | 266,432                               | 4,661,341          | 5.72                        | 13,984  | 5.25                                      | 6,992,000                               |
| Nebraska             | (1)        | (1)                                   | (1)                | (1)                         | (1)   | (1)                                       | (1)                                     |
| New Hampshire        | 551,061    | 1,017,886                             | 9,182,528          | 11.09                       | 27,548  | 2.71                                      | 13,774,000                              |
| New Jersey           | 3,501,933  | 5,852,654                             | 61,734,317         | 9.48                        | 185,203   | 3.16                                      | 92,601,500                              |
| New Mexico           | 595,083    | 878,927                               | 13,161,860         | 6.68                        | 39,486  | 4.49                                      | 19,743,000                              |
| Nevada               | 860,471    | 1,602,964                             | 25,132,075         | 6.38                        | 75,396  | 4.70                                      | 37,698,000                              |
| New York             | 6,199,843  | 10,772,137                            | 87,985,541         | 12.24                       | 263,957   | 2.45                                      | 131,978,500                             |
| Ohio                 | 4,563,007  | 9,456,943                             | 145,679,640        | 6.49                        | 437,039   | 4.62                                      | 218,519,500                             |
| Oklahoma             | 1,155,222  | 2,120,652                             | 37,552,508         | 5.65                        | 112,568   | 5.31                                      | 56,284,000                              |
| Oregon               | 1,237,619  | 1,825,143                             | 34,579,587         | 5.28                        | 103,739   | 5.68                                      | 51,869,500                              |
| Pennsylvania         | 4,797,660  | 7,351,474                             | 94,598,197         | 7.77                        | 283,795   | 3.86                                      | 141,897,500                             |
| Rhode Island         | 462,946    | 722,418                               | 7,077,982          | 10.21                       | 21,234  | 2.94                                      | 10,617,000                              |
| South Carolina       | 1,185,320  | 2,779,379                             | 50,322,355         | 5.52                        | 150,967   | 5.43                                      | 75,483,500                              |
| South Dakota         | 204,358    | 297,778                               | 4,581,465          | 6.50                        | 13,744  | 4.62                                      | 6,872,000                               |
| Tennessee            | 44,781     | 81,005                                | 1,846,070          | 4.39                        | 5,538   | 6.84                                      | 2,769,000                               |
| Texas                | 6,420,510  | 15,872,458                            | 249,502,909        | 6.36                        | 748,509   | 4.72                                      | 374,254,500                             |
| Utah                 | 646,728    | 865,412                               | 18,858,674         | 4.59                        | 56,576  | 6.54                                      | 28,288,000                              |
| Virginia             | 2,590,554  | 4,916,679                             | 84,375,562         | 5.83                        | 253,127   | 5.15                                      | 126,563,500                             |
| Vermont              | 250,227    | 477,304                               | 4,678,429          | 10.20                       | 14,035  | 2.94                                      | 7,017,500                               |
| Washington           | 1,240,194  | 1,820,509                             | 30,840,107         | 5.90                        | 92,520  | 5.08                                      | 46,260,000                              |
| Wisconsin            | 2,161,626  | 3,139,087                             | 54,767,754         | 5.73                        | 164,303   | 5.23                                      | 82,151,500                              |
| West Virginia        | 939,290    | 1,393,543                             | 27,538,329         | 5.06                        | 82,615  | 5.93                                      | 41,307,500                              |
| Wyoming              | 173,275    | 356,151                               | 8,706,113          | 4.09                        | 26,118  | 7.33                                      | 13,059,000                              |
| National total       | 92,424,160 | 169,444,470                           | 2,437,982,165      | 6.95                        | 7,313,946   | 4.32                                      | 3,656,973,000                           |

<sup>1</sup> Nebraska does not include any privately owned utilities.

Note.—Assumes a 10% Renewable Portfolio Standard (RPS) applied to privately owned utilities with a maximum credit price of 3 cents per kilowatt-hour. Does not account for potential fuel cost savings from lower fossil fuel bills as a result of increased renewable generation as required by the RPS. Since many utilities will likely be renewable credit sellers, the impact on the prices in their states will be much lower than shown.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I would give to the Senator from Nevada the hour that was reserved under postclosure for Senator AKAKA of Hawaii.

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

The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in opposition to this amendment. This is very complicated stuff, all these things trading around and all that. It is very difficult for people to understand. It sounds good.

I think under the circumstances, even though it is the opposition, the administration is somewhere we should look, in the form of the Department of Energy, as to what the facts are. If you do that, you will find that the facts are quite different from those represented by the Senator from Arizona and obviously the Senator from Oklahoma. It is also clear that in different areas of the country, this works differently. It depends on what your production is, what is available to you in renewables and all that. I will rely upon the Department of Energy and expect, with this administration being in control of that Department, that the facts they give us ought to be fairly accurate.

It seems to me we have brought forth these arguments several times now. However, I will reiterate that the U.S. Department of Energy, in its most recent analysis, has found that a 10-percent renewable energy requirement will, by the year 2020, save the American consumers up to \$3 billion, save consumers up to \$3 billion in electricity costs. Imposing a Federal renewable energy mandate of 10 percent will cost \$3 billion less for consumers by the year 2020 as compared to business as usual. This result is an overall cost savings to consumers from 2002 to 2020 of \$13.2 billion. This is what the most recent studies of the U.S. Department of Energy, Energy Information Administration have found.

It escapes me why we are spending so much time arguing about cost. I have heard some of my colleagues claim that the cost to consumers will be off the charts. This is at odds with the repeated findings of the U.S. Department of Energy of this administration.

A number of my colleagues have referred to Energy Information Administration statistics to the effect that renewable energy will cost Americans \$88 billion. However, these EIA numbers are referring to the gross cost of the price of renewable energy, not the increased cost to consumers of using renewable energy versus using other forms of energy.

The relevant question is not whether, if you bought only renewable energy, it would add up to a total cost of \$88 billion. The question is, How much more is that amount than what you would be paying anyway from fossil fuel or other energy sources without a renewable energy mandate?

As I have stated, the studies completed in February of this year by the U.S. Energy Information Administration, which are consistent with the previous studies, say that under a 10-percent renewable energy mandate, consumer costs will actually go down by close to \$3 billion per year by the year 2020, compared to energy costs if no renewable energy mandate existed.

I will also point out that although the 1.5-cent cap Senator NICKLES is now proposing was indeed the amount contained in the bill put forward by the Clinton administration, that bill also would have imposed a far more aggressive renewable mandate than the one currently in the Senate bill.

Under the Clinton administration's bill, renewable energy would have been required to reach 7.5 percent by the year 2010. This is compared to only a roughly 4-percent requirement by 2010 in the energy bill currently before us. The renewable energy provision currently in the bill does not even get to an actual 10-percent renewable energy standard by the year 2020. By the time all of the various exceptions and deductions are added in, the amount of mandated renewable energy required in this bill by the year 2020 is actually closer to 5 percent. This amount is disappointingly close to what American business is likely to achieve anyway with no additional support from the Federal Government.

I must say, I find the continued attempt to weaken this marginal requirement baffling. I, along with my colleagues, have repeatedly made the argument on the floor for the many benefits of renewable energy. These include environmental and health benefits which have not been taken into consideration. They include making our American businesses competitive in a booming European market in wind and other renewable energy. This should be the example at which we are looking. As the EIA has shown, they include benefits to the American consumer, ultimately making the costs to consumers actually decrease.

Few of my colleagues dispute these benefits. Even those supporting this amendment have recognized the great national benefits to promoting renewable energy. It seems painfully difficult for us to change our old ways of looking at things and to take steps that will bring these modern and beneficial energy sources to our door.

These arguments over the price of cost caps are just another attempt to dismantle the existing renewable energy position. The Senate has already voted several times against attempts to destroy this position, and I hope we will recognize the amendment for what it is—another side-door attempt to do just that.

Different States have different problems. Oil-producing States naturally want to sell all the oil they can. If we look at the program as it is, look at the advantages it has, and look at the end results as reported by the Depart-

ment of Energy, that it will save money in the years ahead, I say this bill should stay as it is.

I urge my colleagues to join me in keeping this really modest provision in the bill.

Mr. NICKLES. Will the Senator yield for a question?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. NICKLES. Will the Senator from Vermont yield?

Mr. JEFFORDS. Yes, I am happy to yield.

Mr. NICKLES. I thank my colleague.

I heard you say this amendment was an attempt to destroy the renewable section. Are you aware of the fact that we didn't change the 10-percent requirement so the bill still requires that 10 percent of the electricity generated would have to be in the form of renewables? And I remind you that the Clinton administration only proposed 7.5 percent. So we didn't change that. And I might say that the penalty, the cap, is the same amount that was proposed by the Clinton administration. It was a penny and a half per kilowatt hour. If you missed the target of 10 percent, that target amount, the penalty amount, would be the same as required by the Clinton administration. So I don't think this amendment guts the renewables. I wanted to make sure you were aware of it. This isn't the same vote we had previously on renewables.

Mr. JEFFORDS. I think it is 7.5 percent by 2010. Other than that, I stand by the speech I made and the results I said will be there and our understanding of the bill, as the U.S. Department of Energy understands it.

Mr. NICKLES. Further, to clarify, the Senator is aware, then, that the renewable standard is higher than that proposed by the Clinton administration because it is 10 percent instead of 7.5 percent. Is the Senator aware that the penalty in the Bingaman-Daschle proposal is twice as high as that proposed by the Clinton administration?

Mr. JEFFORDS. I think the times that it went into effect were different. It depends on how you compare it. I stand by my statement.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, before my friend leaves the Chamber, the distinguished chairman of the Environment and Public Works Committee, I express my appreciation for his work on this bill and other matters that have come before this body, and that he has had the opportunity to move forward to do something about a renewable portfolio.

On the appropriations bill that I have had the pleasure of working with Senator DOMENICI for a number of years, the Senator has always come there making sure our conscience was clear and that the Appropriations Subcommittee on Energy and Water did everything it could for development of renewable energy resources. He has always been there asking us to do more. I appreciate that. I think one of the big



problems with this bill is that we haven't done more to increase the renewables portfolio. The Senator and I tried to increase it to 20 percent. Ten percent is a bare minimum. What I say to my friend from Oklahoma, through the Chair, is that, sure, the 10% requirement hasn't changed, but with this amendment that 10% is not directed toward the development of renewables. The amendment will encourage the use of credits. So with Senator NICKLES amendment you wind up having a program in this country where you don't really develop renewables.

I say to my friend from Vermont, thank you very much for making us keep our eye on this. We need to develop more renewables. This is the fourth attempt of what I believe is the oil companies of this country trying to get us to back off of the renewables portfolio.

The oil companies love this amendment that is before us. But the American people don't like it. Why? Because when it is explained to them, energy has a price other than just the cost at the production level. What do I mean by that?

Mr. President, a few years ago in Nevada, a company came to Nevada. They owned a plant near Barstow, CA—the largest solar energy production facility in America, with 200 megawatts of electricity. They wanted to build a production facility in the Eldorado Valley between Las Vegas and Boulder City, in a relatively remote place. They went before the Nevada Public Service Commission. The company was called the Luz Company. It was named from the Old Testament, where Jacob's Ladder was; that is where it came down, Luz. The public service commission could not allow them to build that facility because all they were allowed to consider at that time was the cost of production. It had nothing to do with the smog and junk that the coal-fired and oil-fired generating plants produced in the Las Vegas Valley. They could not take that into consideration. That is one of the problems we have had all over America today.

The fact is, since then, the Nevada Legislature has changed that. It is tremendous that they have done that. They have now, in Nevada, a 15-percent renewable portfolio standard. That is excellent. I am proud of what the State of Nevada has done. That has only been at the time of the last legislature.

Our Nation needs to diversify its energy policy. The Senate passed a renewables portfolio standard—we call it the RPS—requiring that 10 percent of the electricity produced comes from clean, renewable energy resources. What is that? The Sun—the warmth of the Sun, the warmth of the Earth, geothermal.

Wind used to bother me but I kind of like it now. Wind always got on my nerves; it would never be there when I wanted it. I now like the wind. I have come to the realization that it cleans the air. I have also come to the realiza-

tion that we in Nevada can use that wind to produce electricity. In fact, we are doing that at the Nevada Test Site, where almost a thousand bombs have been detonated.

We are building, with the permission of the DOE, a wind farm there. Within 3 years, with the work done by the Finance Committee—and I appreciate the work by Senators BAUCUS, GRASSLEY, and other members of that committee on a tax credit for wind—that will allow that generating facility to go forward. Within 3 years, they will produce enough electricity to supply electricity to 250,000 homes in Las Vegas. That is good.

So, Mr. President, the RPS in this bill is too weak. As I have already said to my friend, the distinguished Senator JEFFORDS, it is not as much as I had hoped for, not as much as I wanted. I voted for 20 percent, which Senator JEFFORDS and I propounded.

One provision in the renewable portfolio standard allows for a system of tradeable, renewable energy credits. For this system to effectively work—and we have not talked about it that much today—the cost of renewable energy credits must encourage the growth of renewable energy.

The Nickles amendment lowers the cost of these renewable energy tax credits to the point where a utility will choose to buy credits rather than produce renewable energy. In this country, I want more renewable energy. We have spent trillions of dollars in the oil business—utilities are heavily invested in that. Let's change a little and spend a little money on renewable energy so my friend, my children, and my children's children can breathe clean air. That is what this is all about. Ask my children whether they are interested in using the worst-case scenario. The EIA analysis reflected the worst-case scenario—that the cost of electricity might increase 0.1 cents per kilowatt-hour. Every one of my five children—let them vote on it. They will go for renewable energy because they want clean air for their children, my 12 grandchildren. I want them to have clean air. They are not going to have it if we keep firing generators with coal, gas, and oil.

We need to do something different—Sun, geothermal, wind. That is what this amendment is about. This is the fourth time they have tried to whack this very small amount that we have in this bill, 10 percent for renewable energy. I am glad, if for no other reason, cloture has been invoked. Maybe this will be the end of it. Maybe not.

What this amendment attempts to do makes no sense. This is not the goal of the renewable portfolio standard. This amendment is basically, in my opinion, interested in damage control.

I am interested in expanding our energy resources through clean renewable energy. The DOE's Energy Information Administration suggests that the renewable portfolio standard may raise the price—worst-case scenario—of elec-

tricity consumers by 0.1 cents per kilowatt hour. That is the estimate. It doesn't include the stimulative effect of section 45, the production tax credit that the Senate adopted yesterday.

This bill isn't perfect. It is far from perfect. But there are some good things in the bill. One of the good things is what was done yesterday in adopting the Finance Committee's energy tax provisions.

The chairman of this committee, Senator BINGAMAN, is a member of that Finance Committee. That was good work they did, because they had provisions in there to help production and they also had provisions in there to help the renewable portfolio. With the production tax credit, there is likely to be no increase in consumer prices resulting from the renewable portfolio. After pouring billions of dollars—I say trillions—into oil and gas, we need to invest in a clean energy future. Other nations in the world are developing renewable energy sources much faster than the United States is. America needs to reestablish leadership in renewable energy.

I oppose this amendment and, contrary to earlier statements, the renewable portfolio standard provision in this bill, as modified, is as close to the Texas RPS as possible, while accommodating regional differences. Why do I say that? Because under the Texas RPS statute, the amount of new renewables is based on capacity. However, as implemented by the Texas Public Utility Commission, the regulations convert the capacity obligation to a generation standard.

I cite Chapter 25.173(h)(1) from the Texas RPS:

The total statewide renewable energy credit requirement for each compliance period shall be calculated in terms of megawatt hours and shall be equal to the renewable capacity target multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor. . . .

It says it all.

The section goes on to spell out exactly how the capacity standard is converted to a generation standard. I ask unanimous consent that the regulations from the State of Texas be printed in the RECORD.

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

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

*Division 1. Renewable energy resources and use of natural gas*

§25.173. Goal for Renewable Energy

(a) Purpose. The purpose of this section is to ensure that an additional 2,000 megawatts (MW) of generating capacity from renewable energy technologies is installed in Texas by 2009 pursuant to the Public Utility Regulatory Act (PURA) §39.904, to establish a renewable energy credits trading program that would ensure that the new renewable energy capacity is built in the most efficient and economical manner, to encourage the development, construction, and operation of new renewable energy resources at those sites in

this state that have the greatest economic potential for capture and development of this state's environmentally beneficial resources, to protect and enhance the quality of the environment in Texas through increased use of renewable resources, to respond to customers' expressed preferences for renewable resources by ensuring that all customers have access to providers of energy generated by renewable energy resources pursuant to PURA §39.101(b)(3), and to ensure that the cumulative installed renewable capacity in Texas will be at least 2,880 MW by January 1, 2009.

(b) Application. This section applies to power generation companies as defined in §25.5 of this title (relating to definitions), and competitive retailers as defined in subsection (c) of this section. This section shall not apply to an electric utility subject to PURA §39.102(c) until the expiration of the utility's rate freeze period.

(c) Definitions.

(1) Competitive retailer—A municipally-owned utility, generation and transmission cooperative (G&T), or distribution cooperative that offers customer choice in the restricted competitive electric power market in Texas or a retail electric provider (REP) as defined in §25.5 of this title.

(2) Compliance period—A calendar year beginning January 1 and ending December 31 of each year in which renewable energy credits are required of a competitive retailer.

(3) Designated representative—A responsible natural person authorized by the owners or operators of a renewable resource to register that resource with the program administrator. The designated representative must have the authority to represent and legally bind the owners and operators of the renewable resource in all matters pertaining to the renewable energy credits trading program.

(4) Early banking—Awarding renewable energy credits (RECs) to generators for sale in the trading program prior to the program's first compliance period.

(5) Existing facilities—Renewable energy generators placed in service before September 1, 1999.

(6) Generation offset technology—Any renewable technology that reduces the demand for electricity at a site where a customer consumes electricity. An example of this technology is solar water heating.

(7) New facilities—Renewable energy generators placed in service on or after September 1, 1999. A new facility includes the incremental capacity and associated energy from an existing renewable facility achieved through repowering activities undertaken on or after September 1, 1999.

(8) Off-grid generation—The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(9) Program administrator—The entity approved by the commission that is responsible for carrying out the administrative responsibilities related to the renewable energy credits trading program as set forth in subsection (g) of this section.

(10) REC offset (offset)—An REC offset represents one MWh of renewable energy from an existing facility that may be used in place of an REC to meet a renewable energy requirement imposed under this section. REC offsets may not be traded, shall be calculated as set forth in subsection (i) of this section, and shall be applied as set forth in subsection (h) of this section.

(11) Renewable energy credit (REC or credit)—An REC represents one megawatt hour (MWh) of renewable energy that is physically metered and verified in Texas and meets the requirements set forth in subsection (e) of this section.

(12) Renewable energy credit account (REC account)—An account maintained by the renewable energy credits trading program administrator for the purpose of tracking the production, sale, transfer, and purchase, and retirement of RECs by a program participant.

(13) Renewable energy credits trading program (trading program)—The process of awarding, trading, tracking, and submitting RECs as a means of meeting the renewable energy requirements set out in subsection (d) of this section.

(14) Renewable energy resource (renewable resource)—A resource that produces energy derived from renewable energy technologies.

(15) Renewable energy technology—Any technology that exclusively relies on an energy source that is naturally regenerated over a short time and derived directly from the sun, indirectly from the sun, or from moving water or other natural movements and mechanisms of the environment. Renewable energy technologies include those that rely on energy derived directly from the sun, on wind, geothermal, hydroelectric, wave, or tidal energy, or on biomass or biomass-based waste products, including landfill gas. A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(16) Repowering—Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(17) Settlement period—The first calendar quarter following a compliance period in which the settlement process for that compliance year takes place.

(18) Small producer—A renewable resource that is less than two megawatts (MW) in size.

(d) Renewable energy credits trading program (trading program). Renewable energy credits may be generated, transferred, and retired by renewable energy power generation, competitive retailers, and other market participants as set forth in this section.

(1) The program administrator shall apportion a renewable resource requirement among all competitive retailers as a percentage of the retail sales of each competitive retailer as set forth in subsection (h) of this section. Each competitive retailer shall be responsible for retiring sufficient RECs as set forth in subsections (h) and (k) of this section to comply with this section. The requirement to purchase RECs pursuant to this section becomes effective on the date each competitive retailer begins serving retail electric customers in Texas.

(2) A power generating company may participate in the program and may generate RECs and buy or sell RECs as set forth in subsection (j) of this section.

(3) RECs shall be credited on an energy basis as set forth in subsection (j) of this section.

(4) Municipally-owned utilities and distribution cooperatives that do not offer customer choice are not obligated to purchase RECs. However, regardless of whether the municipally-owned utility or distribution cooperative offers customer choice, a municipally-owned utility or distribution cooperative possessing renewable resources that meet the requirements of subsection (e) of this section may sell RECs generated by such a resource to competitive retailers as set forth in subsection (j) of this section.

Except where specifically stated, the provisions of this section shall apply uniformly to all participants in the trading program.

(e) Facilities eligible for producing RECs in the renewable energy credits trading program. For a renewable facility to be eligible to produce RECs in the trading program it must be either a new facility or a small pro-

ducer as defined in subsection (c) of this section and must also meet the requirements of this subsection:

(1) A renewable energy resource must not be ineligible under subsection (f) of this section and must register pursuant to subsection (n) of this section;

(2) The facility's above-market costs must not be included in the rates of any utility, municipally-owned utility, or distribution cooperative through base rates, a power cost recovery factor (PCRF), stranded cost recovery mechanism, or any other fixed or variable rate element charged to end users;

(3) For a renewable energy technology that requires fossil fuel, the facility's use of fossil fuel must not exceed 2.0% of the total annual fuel input on a British thermal unit (BTU) or equivalent basis;

(4) The output of the facility must be readily capable of being physically metered and verified in Texas by the program administrator. Energy from a renewable facility that is delivered into a transmission system where it is commingled with electricity from non-renewable resources can not be verified as delivered to Texas customers. A facility is not ineligible by virtue of the fact that the facility is a generation-offset, off-grid, or on-site distributed renewable facility if it otherwise meets the requirements of this section; and

(5) For a municipally owned utility operating a gas distribution system, any production or acquisition of landfill gas that is directly supplied to the gas distribution system is eligible to produce RECs based upon the conversion of the thermal energy in BTUs to electric energy in kWh using for the conversion factor the systemwide average heat rate of the gas-fired units of the combined utility's electric system as measured in BTUs per kWh.

(6) For industry-standard thermal technologies, the RECs can be earned only on the renewable portion of energy production. Furthermore, the contribution toward statewide renewable capacity megawatt goals from such facilities would be equal to the fraction of the facility's annual MWh energy output from renewable fuel multiplied by the facility's nameplate MV capacity.

(f) Facilities not eligible for producing RECs in the renewable energy credits trading program. A renewable facility is not eligible to produce RECs in the trading program if it is:

(1) A renewable energy capacity addition associated with an emissions reductions project described in Health and Safety Code §382.5193, that is used to satisfy the permit requirements in Health and Safety Code §382.0519;

(2) An existing facility that is not a small producer as defined in subsection (c) of this section; or

(3) An existing fossil plant that is repowered to use a renewable fuel.

(g) Responsibilities of program administrator. No later than June 1, 2000, the commission shall approve an independent entity or serve as the trading program administrator. At a minimum, the program administrator shall perform the following functions:

(1) Create accounts that track RECs for each participant in the trading program;

(2) Award RECs to registered renewable energy facilities on a quarterly basis based on verified meter reads;

(3) Assign offsets to competitive retailers on an annual basis based on a nomination submitted by the competitive retailer pursuant to subsection (n) of this section;

(4) Annually retire RECs that each competitive retailer submits to meet its renewable energy requirement;

(5) Retire RECs at the end of each REC's three-year life;

(6) Maintain public information on its website that provides trading program information to interested buyers and sellers of RECs;

(7) Create an exchange procedure where persons may purchase and sell RECs. The exchange shall ensure the anonymity of persons purchasing or selling RECs. The program administrator may delegate this function to an independent third party. The commission shall approve any such delegation;

(8) Make public each month the total energy sales of competition retailers in Texas for the previous month;

(9) Perform audits of generators participating in the trading program to verify accuracy of metered production data;

(10) Allocate the renewable energy responsibility to each competitive retailer in accordance with subsection (h) of this section; and

(11) Submit an annual report to the commission. Beginning with the program's first compliance period, the program administrator shall submit a report to the commission on or before April 15 of each calendar year. The report shall contain information pertaining to renewable energy power generators and competitive retailers. At a minimum, the report shall contain:

(A) the amount of existing and new renewable energy capacity in MW installed in the state by technology type, the owner/operator of each facility, the date each facility began to produce energy, the amount of energy generated in megawatt-hours (MWh) each quarter for all capacity participating in the trading program or that was retired from service; and

(B) a listing of all competitive retailers participating in the trading program, each competitive retailer's renewable energy credit requirement, the number of offsets used by each competitive retailer, the number of credits retired by each competitive retailer, a listing of all competitive retailers that were in compliance with the REC requirement, a listing of all competitive retailers that failed to retire sufficient REC requirement, and the deficiency of each competitive retailer that failed to retire sufficient RECs to meet its REC requirement.

(h) Allocation of REC purchase requirement to competitive retailers. The program administrator shall allocate REC requirements among competitive retailers. Any renewable capacity that is retired before January 1, 2009 or any capacity shortfalls that arise due to purchases of RECs from out-of-state facilities shall be replaced and incorporated into the allocation methodology set forth in this subsection. Any changes to the allocation methodology to reflect replacement capacity shall occur two compliance periods after which the facility was retired or capacity shortfall occurred. The program administrator shall use the following methodology to determine the total annual REC requirement for a given year and the final REC requirement for individual competitive retailers:

(1) The total statewide REC requirement for each compliance period shall be calculated in terms of MWh and shall be equal to the renewable capacity target multiplied by 8,760 hours per year, multiplied by the appropriate capacity conversion factor set forth in subsection (j) of this section. The renewable energy capacity targets for the compliance period beginning January 1, of the year indicated shall be:

- (A) 400 MW of new resources in 2002;
- (B) 400 MW of new resources in 2003;
- (C) 850 MW of new resources in 2004;
- (D) 850 MW of new resources in 2005;
- (E) 1,400 MW of new resources in 2006;
- (F) 1,400 MW of new resources in 2007;
- (G) 2,000 MW of new resources in 2008; and

(H) 2,000 MW of new resources in 2009 through 2019.

(2) The final REC requirement for an individual competitive retailer for a compliance period shall be calculated as follows:

(A) Each competitive retailer's preliminary REC requirement is determined by dividing its total retail energy sales in Texas by the total retail sales in Texas of all competitive retailers, and multiplying that percentage by the total statewide REC requirement for that compliance period.

(B) The adjusted REC requirement for each competitive retailer that is entitled to an offset is determined by reducing its preliminary REC requirement by the offsets to which it qualifies, as determined under subsection (i) of this section, with the maximum reduction equal to the competitive retailer's preliminary REC requirement. The total reductions for all competitive retailers is equal to the total usable offsets for that compliance period.

(C) Each competitive retailer's final REC requirement for a compliance period shall be increased to recapture the total usable offsets calculated under subparagraph (B) of this paragraph. The additional REC requirement shall be calculated by dividing the competitive retailer's adjusted REC requirement by the total adjusted REC requirement of all competitive retailers. This fraction shall be multiplied by the total usable offsets for that compliance period and this amount shall be added to the competitive retailer's adjusted REC requirement to produce the competitive retailer's final REC requirement for the compliance period.

(i) Nomination and calculation of REC offsets.

(1) A REP, municipally-owned utility, G&T cooperative, distribution cooperative, or an affiliate of a REP, municipally-owned utility, or distribution cooperative, may apply offsets to meet all or a portion of its renewable energy purchase requirement, as calculated in subsection (h) of this section, only if those offsets are nominated in a filing with the commission by June 1, 2001. A G&T may nominate the combined offsets for itself and its member distribution cooperatives upon the presentation of a resolution by its Board authorizing it to do so.

(2) The Commission shall verify any designations of REC offsets and notify the program administrator of its determination by December 31, 2001.

(3) REC offsets shall be equal to the average annual MWh output of an existing resource for the years 1991–2000 or the entire life of the existing resource, whichever is less.

(4) REC offsets qualify for use in a compliance period under subsection (h) of this section only to the extent that:

(A) The resource producing the REC offset has continuously since September 1, 1999 been owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative nominating the resource under paragraph (1) of this subsection or, if the resource has been committed under a contract that expired after September 1, 1999 and before January 1, 2002, it is owned by or its output has been committed under contract to a utility, municipally-owned utility, or cooperative on January 1, 2002; and

(B) The facility producing the REC offsets is operated and producing energy during the compliance period in a manner consistent with historic practice.

(5) If the production from a facility producing the REC offset energy ceases for any reason, the competitive retailer may no longer claim the REC offset against its REC requirement.

(j) Calculation of capacity conversion factor. The capacity conversion factor used by

the program administrator to allocate credits to competitive retailers shall be calculated as follows:

(1) The capacity conversion factor (CCF) shall be administratively set at 35% for 2002 and 2003, the first two compliance periods of the program

(2) During the fourth quarter of the second compliance year (2003), the CCF shall be re-adjusted to reflect actual generator performance data associated with all renewable resources in the trading program. The program administrator shall adjust the CCF every two years thereafter and shall:

(A) be based on all renewable energy resources in the trading program for which at least 12 months of performance data is available;

(B) represent a weighted average of generator performance;

(C) use all valid performance data that is available for each renewable resource; and

(D) ensure that the renewable capacity goals are attained.

(k) Production and transfer of REC's. The program administrator shall administer a trading program for renewable energy credits in accordance with the requirements of this subsection.

(1) A REC will be awarded to the owner of a renewable resource when a MWh is metered at that renewable resource. A generator producing 0.5 MWh or greater as its last unit generated should be awarded one REC on a quarterly basis. The program administrator shall record the amount of metered MWh and credit the REC account of the renewable resource that generated the energy on a quarterly basis.

(2) The transfer of RECs between parties shall be effective only when the transfer is recorded by the program administrator.

(3) The program administrator shall require that RECs be adequately identified prior to recording a transfer and shall issue an acknowledgement of the transaction to parties upon provision of adequate information. At a minimum, the following information shall be provided:

(A) identification of the parties;

(B) REC serial number, REC issue date, and the renewable resource that produced the REC;

(C) the number of RECs to be transferred; and

(D) the transaction date.

(4) A competitive retailer shall surrender RECs to the program administrator for retirement from the market in order to meet its REC allocation for a compliance period. The program administrator will document all REC retirements annually.

(5) On or after each April 1, the program administrator will retire RECs that have not been retired by competitive retailers and have reached the end of their three-year life.

(6) The program administrator may establish a procedure to ensure that the award, transfer, and retirement of credits are accurately recorded.

(l) Settlement process. Beginning in January 2003, the first quarter following the compliance period shall be the settlement period during which the following actions shall occur:

(1) By January 31, the program administrator will notify each competitive retailer of its total REC requirement for the previous compliance period as determined pursuant to subsection (h) of this section.

(2) By March 31, each competitive retailer must submit credits to the program administrator from its account equivalent to its REC requirement for the previous compliance period. If the competitive retailer has insufficient credits in its account to satisfy its obligation, and this shortfall exceeds the applicable deficit allowance as set forth in

subsection (m)(2) of this section, the competitive retailer is subject to the penalty provisions in subsection (o) of this section.

(m) Trading program compliance cycle.

(1) The first compliance period shall begin on January 1, 2002 and there will be 18 consecutive compliance periods. Early banking of RECs is permissible and may commence no earlier than July 1, 2001. The program's first settlement period shall take place during the first quarter of 2003.

(2) A competitive retailer may incur a deficit allowance equal to 5.0% of its REC requirement in 2002 and 2003 (the first two compliance periods of the program). This 5.0% deficit allowance shall not apply to entities that initiate customer choice after 2003. During the first settlement period, each competitive retailer will be subject to a penalty for any REC shortfall that is greater than 5.0% of its REC requirement under subsection (h) of this section. During the second settlement period, each competitive retailer will be subject to the penalty process for any REC shortfall greater than 5.0% of the second year REC allocation. All competitive retailers incurring a 5.0% deficit pursuant to this subsection must make up the amount of RECs associated with the deficit in the next compliance period.

(3) The issue date of RECs created by a renewable energy resource shall coincide with the beginning of the compliance year in which the credits are generated. All RECs shall have a life of three compliance periods, after which the program administrator will retire them from the trading program.

(4) Each REC that is not used in the year of its creation may be banked and is valid for the next two compliance years.

(5) A competitive retailer may meet its renewable energy requirements for a compliance period with RECs issued in or prior to that compliance period which have not been retired.

(n) Registration and certification of renewable energy facilities. The commission shall register and certify all renewable facilities that will produce either REC offsets or RECs for sale in the trading program. To be awarded RECs or REC offsets, a power generator must complete the registration process described in this subsection. The program administrator shall not award offsets or credits for energy produced by a power generator before it has been certified by the commission.

(1) The designated representative of the generating facility shall file an application with the commission on a form approved by the commission for each renewable energy generation facility. At a minimum, the application shall include the location, owner, technology, and rated capacity of the facility and shall demonstrate that the facility meets the resource eligibility criteria in subsection (e) of this section.

(2) No later than 30 days after the designated representative files the certification form with the commission, the commission shall inform both the program administrator and the designated representative whether the renewable facility has met the certification requirements. At that time, the commission shall either certify the renewable facility as eligible to receive either RECs or offsets, or describe an insufficiency to be remedied. If the application is contested, the time for acting is extended by 30 days.

(3) Upon receiving notice of certification of new facilities, the program administrator shall create an REC account for the designated representative of the renewable resource.

(4) The commission may make on-site visits to any certified unit of a renewable energy resource and may decertify any unit if it is not in compliance with the provisions of this subsection.

(5) A decertified renewable generator may not be awarded RECs. However, any RECs awarded by the program administrator and transferred to a competitive retailer prior to the decertification remain valid.

(o) Penalties and enforcement. If by April 1 of the year following a compliance year it is determined that a competitive retailer with an allocated REC purchase requirement has insufficient credits to satisfy its allocation, the competitive retailer shall be subject to the administrative penalty provisions of PURA §15.023 as specified in this subsection.

(1) Except as provided in paragraph (4) of this subsection, a penalty will be assessed for that portion of the deficient credits.

(2) The penalty shall be the lesser of \$50 per MWh or, upon presentation of suitable evidence of market value by the competitive retailer, 200% of the average market value of credits for that compliance period.

(3) There will be no obligation on the competitive retailer to purchase RECs for deficits, whether or not the deficit was within or was not within the competitive retailer's reasonable control, except as set forth in subsection (m)(2) of this section.

(4) In the event that the commission determines that events beyond the reasonable control of a competitive retailer prevented it from meeting its REC requirement there will be no penalty assessed.

(5) A party is responsible for conducting sufficient advance planning to acquire its allotment of RECs. Failure of the spot or short-term market to supply a party with the allocated number of RECs shall not constitute an event outside the competitive retailer's reasonable control. Events or circumstances that are outside of a party's reasonable control may include weather-related damage, mechanical failure, lack of transmission capacity or availability, strikes, lockouts, actions of a governmental authority that adversely effect the generation, transmission, or distribution of renewable energy from an eligible resource under contract to a purchaser.

(p) Renewable resources eligible for sale in the Texas wholesale and retail markets. Any energy produced by a renewable resource may be bought and sold in the Texas wholesale market or to retail customers in Texas and marketed as renewable energy if it is generated from a resource that meets the definition in subsection (c)(14) of this section.

(q) Periodic review. The commission shall periodically assess the effectiveness of the energy-based credits trading program in this section to maximize the energy output from the new capacity additions and ensure that the goal for renewable energy is achieved in the most economically-efficient manner. If the energy-based trading program is not effective, performance standards will be designed to ensure that the cumulative installed renewable capacity in Texas meets the requirements of PURA §39.904.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I want to finish. We have had these battles since I came to Congress in 1975. We recognized at that time we were so vulnerable with respect to our oil supplies that it was essential we put ourselves on a course that could make us much more independent. We have made very little progress in that time.

The PRESIDING OFFICER. Will the Senator suspend? The Chair inquires, did the Senator from Nevada relinquish the floor?

Mr. REID. I had not finished.

Mr. JEFFORDS. Fine, let me finish quickly.

Mr. REID. I am not finished, though. If I can proceed.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I will be very quick. I apologize.

Mr. President, the manager of this bill, Senator BINGAMAN, has noted that this amendment is opposed by numerous organizations, some of which are energy coalitions, not just environmental groups, although they join with us also in opposing this amendment:

The Nickles amendment is the latest in a sustained attempt by power companies to undermine efforts to diversify America's energy supply with clean renewable energy.

It is wrong.

The Nickles amendment would reduce diversity of technologies and states that benefit from the RPS.

Under a lower price cap, only the very lowest-cost renewable energy technologies can benefit from an RPS—primarily wind power at the very best sites. Biomass, geothermal and solar would be at a significant disadvantage to meet the portfolio standard if these lower credits are adopted.

And that affects Western States. Not only would it be geothermal and solar, but, of course, wind. The wind blows a lot in the West. The Nickles amendment would reduce benefits to Western States with good resources about which I have spoken. The Nickles amendment would reduce the amount of renewable energy developed.

It is from all perspectives undermining what we are trying to accomplish in this legislation, which is develop renewable energy for this country and having not only incentives, but there would be a requirement to do it. Voluntarism simply has not worked.

Do not believe the industry's claim that this will cost too much money. The Bush administration's EIA found that a 10-percent RPS would save consumers money.

I hope my colleagues will reject this amendment. I hope this is the last weakening amendment to the RPS that is in this bill. The bill as it now stands is good, and I think we should vote like we have the previous three times and not let this amendment weaken the standards in this bill relating to renewables.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I have a few more comments. Logic should make this obvious. If you can provide energy that does not cost you any money—solar and wind, for example—is it not logical to put it in the mix? That is all we are saying. The Department of Energy agrees with us and says it will save money.

I understand those from the oil-producing States do not want this provision, but common sense tells us it is the best thing we can do. Therefore, I urge my colleagues to vote against the amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, for the information of my colleagues, we are going to vote on this amendment shortly. Staff should notify their Senators.

I wish to make a couple comments.

One, the Department of Energy supports this amendment. It does not oppose it.

Two, as to colleagues saying this amendment does not cost anything, they are not talking about the people who know something about the amendment. The Energy Information Administration talks about the cost to States in the millions and millions of dollars. The State of Florida shows about a \$450 million increase.

For my colleagues' information, I have a letter from the Public Service Commission in the State of Florida. The letter says they support this amendment to lower the amount of the penalty from 3 cents to 1.5 cents, and that it would reduce the cost of the Federal mandate on the Florida ratepayers. I happen to think those people know something about this issue.

I have letters from utility companies. Some people say these are oil companies. I am talking about utility companies. This is not oil companies versus other companies. This is about an assault on ratepayers because we are getting ready to say you have to have 10 percent of your power from renewables. We did not change that. But if you do not make it—and I will tell my colleagues, it is not easy to make that.

There was an article in the Wall Street Journal about the city of Jacksonville. The city of Jacksonville has a renewable standard of 7.5 percent. They have tried a lot of alternative sources of power. Guess what. They are not there yet. I hope they get there, but they have found out that some of these alternative sources of power cost a lot of money, and the ratepayers are objecting.

Nantucket, a very pristine area a lot of us have enjoyed off the coast, wants to have renewables. They talked about having a wind farm. Wind farms are subsidized a lot through the Tax Code. There was an effort to build a wind farm off the coast, but there is a lot of objection from environmentalists because of what it would do to bird, migration and to the environment as well.

The point is, yes, there is a desire by many to go to renewables, but there is also a penalty. This bill has a very high penalty. It has a penalty twice as high as that proposed by the Clinton administration.

What Senator BREAUX, myself, Senator MILLER, and Senator VOINOVICH have offered is a compromise. It does not eliminate the renewable standard. It says let's reduce the penalty to the same number the Clinton administration proposed.

How much is the penalty? It is 1.5 cents a kilowatt hour. How much is that? The wholesale cost of electricity is 3 cents around the country. In some

areas, it is as low as 2.2 cents, and in other areas it is closer to 4 cents. The nationwide wholesale cost of electricity is right around 3 cents.

The penalty under the Bingaman proposal in the underlying bill for not complying is 3 cents. That is a lot. That is 100 percent of the cost of electricity. We are telling people you have to pay that kind of penalty if you do not make the target. That is a heck of a gun at your head. As a matter of fact, the penalty is so high on some utilities that produce a lot of electricity—and, yes, maybe electricity is primarily produced by coal, oil, and gas—it is a heavy hit. It is not insignificant when the CEO of Southern Company estimates the cumulative cost of this mandate on Southern Company through the year 2000 will be from \$3 billion to \$6.5 billion. That is not insignificant.

For somebody to say they think it will not cost anything is absurd. Did the CEO of Southern Company put his name on this letter, and is he factually wrong? I do not think that is the case. It is the reason this amendment is supported by almost every utility in the country. It is the reason this amendment is supported by the Chamber of Commerce, the NFIB, and the National Association of Manufacturers. Somebody is going to have to pay the bill. Guess what. It is not the utilities that pay the bill. They are going to pass it on to their ratepayers.

If we do not adopt this amendment, there is going to be a significant hit on ratepayers. It is going to happen and people should know it. They should know we are voting on whether we are going to have electric rates go up significantly. This amendment tries to mitigate it. They are still going to go up because there is a penalty of 1.5 cents. That is about 50 percent of the wholesale price of electricity. That is still pretty significant. If we do 3 cents, it is 100 percent. That is a big hit, not to mention the fact in addition to the 3 cents, there is also already in the Tax Code—it has already been agreed upon—a 1.7-cent tax credit for renewables.

So we give a tax credit. That is great. But to have this heavy a mandate is a big hit on consumers. It is in the hundreds of millions of dollars in almost every State, including States in the Northeast.

I am going to correct my colleague on the Texas renewable standard. I have the greatest respect for my colleague from Nevada. I love him like a brother. The Texas renewable standard—and maybe we should have the Senator from Texas present because he argued this before in this Chamber, and he said the underlying bill—to paraphrase Senator GRAMM of Texas—is so far from being the Texas renewable standard it is remarkable. What we have in Texas is capacity, not energy-produced, and what we have in Texas is equal to a 2-percent standard, not a 10-percent standard. There is a big difference.

I believe I understood the Senator from Nevada to say there was a 15-percent renewable. My guess is that includes hydro. The underlying bill does not include hydro. Hydro is pretty clean power. We have Hoover Dam. That is pretty clean power. It generates a lot of electricity. It is water. It is great power. It is cheap. It is very good power. It is not included as renewable under the definition of the underlying bill.

So I urge my colleagues to support this amendment.

I am going to insert in the RECORD several statements. I want to insert a letter from the American Corn Growers Association, very big advocates of renewable sources, but they are also supportive of this amendment because they believe this is a proper mix. They also know that their ratepayers, their users, the ones who grow corn, buy a lot of electricity, think this is the proper blend. They want renewable sources.

I will read a part of this letter.

ACGA also supports a fair and equitable renewable portfolio standard requiring a portion of the Nation's energy to come from renewable sources. However, while we want to do everything we can to promote renewable production by farmers we must oppose undue mandates that will impose additional fuel costs on all rural consumers.

Senator Nickles' amendment will significantly reduce the cost of complying with the standard, and in turn protect rural America from excessive price increases for electricity, by cutting the energy credits from 3 cents per kilowatt-hour to 1.5 cents per kilowatt-hour.

I also wanted to mention a company called Mid-America Energy Company. This is a company that is based in Omaha, NE. They have analyzed this proposal and developed estimates on increased costs that will result from its enactment of RPS.

According to our preliminary calculations, implementing RPS in S. 517 will begin increasing electricity costs for Mid-America's regulated and competitive customers in 2007 by 600,000, with costs rising to more than \$40 million in the year 2019.

This is in rural America. This is in Middle America. This is in the corn-growing areas. This is one of the largest utilities in the area that said this is going to be a big hit that they are going to pass on to their consumers.

I am surprised there is any opposition to this amendment because this amendment does not eliminate the RPS standard, it does not eliminate the 10-percent standard; all it does is say, let us reduce the penalty to 1.5 cents per kilowatt hour. It is the same proposal the Clinton administration supported.

I do not say things lightly on this floor. I want to be as accurate as possible, and if I am ever inaccurate, I want to be corrected, and I will stand corrected. This amendment will save billions of dollars. I had one letter from one company, Southern Company, that said it was billions of dollars of expense to them and their customers. That is a

few States. I cannot say that is one State. It is a few States. It is a big utility. In my State, for one company, it is something like \$60 million. They showed it each year: Here is the production. Here is their cost of compliance. And it increases substantially. By the last year, it is something like \$60 million.

Senator KYL alluded to the fact that in my entire State it is over \$100 million. The State of Vermont, I believe he said, was \$7 million.

This also came from the Energy Information Agency. So maybe people are able to distort figures and say it does not cost anything. It does cost something. One cannot say that companies are going to have to pay 3 cents per kilowatt hour if they do not meet a target and say it does not cost anything. There are significant costs, and ratepayers will pay for it. I do not think the utilities pay for it, I think the ratepayers pay for it, and I think it is time we stand up for ratepayers.

So I urge my colleagues to support the amendment I have offered with Senator BREAUX, Senator MILLER, and Senator VOINOVICH.

I yield the floor.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from New Mexico.

Mr. BINGAMAN. Madam President, I will make a few more comments and then move to table the amendment. I think we have had a lot of debate. Everyone knows the issues. I think it is clear this is the fourth amendment we have dealt with on the Senate floor in an attempt to undermine the renewable portfolio standard we have in the bill. There are a lot of figures that have been cited, many of which have no basis in fact, as far as I can tell.

One of the statements we heard was that this was going to cost—if we go ahead and keep the bill as it is currently—the ratepayers of California \$243 million a year, or some such figure. The reality is, in our bill we are saying by the year 2005 each State will generate 1 percent of the power they sell—each utility will generate 1 percent of the power they sell from renewable sources.

In California, 12.19 percent of the power sold today is from renewable sources.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. Yes.

Mr. NICKLES. Does that 12 percent include hydro?

Mr. BINGAMAN. Yes, it includes the hydro that is given credit for in this bill.

Mr. NICKLES. I did not think hydro was included in this bill.

Mr. BINGAMAN. No, hydro is included in this bill, to an extent, and this includes the hydro that is given credit for.

Mr. NICKLES. If the Senator will yield further, existing hydro is not included in the bill. Only incremental new hydro is included in the bill, and I

do not know how the Senator can count that for existing percentages.

Mr. BINGAMAN. As I understand it, the existing hydro is deducted from the base before the calculation is made. So to that extent, existing hydro is included in the bill.

Mr. NICKLES. I know the Senator is going to move to table this amendment, and I think that is fine. I think we are ready to vote. The Senator has mentioned this is the fourth amendment we have dealt with in regard to renewables. One of the reasons I think we have had a few amendments dealing with this is that it costs so much money, and we have never had a hearing, and we never had a markup.

I happen to be a member of the Energy Committee. I would have loved to have participated in a hearing and a markup on this section. I would love to hear from experts on both sides of this aisle how much this amendment would really cost, but we were denied that opportunity. So it is one of the reasons we have to legislate on the floor of the Senate, because we did not have the opportunity to do it in committee.

Mr. BINGAMAN. Reclaiming my time, my colleague has had ample opportunity to argue his side of the case today and several weeks ago. We know his view on it. He is not in favor of the renewable portfolio standard. This amendment would undermine the renewable portfolio standard we have in the bill because what it would do is make it much less likely that renewables, other than wind, to be very specific, would be used to any significant degree. So those States that depend upon biomass as a renewable, those States that depend upon biothermal as a renewable, those States that depend upon solar power as a renewable might find it more difficult.

We do not think the amendment makes sense. We think it will undermine the renewable portfolio standard. On that basis, I urge my colleagues—

Mr. NICKLES. Before the Senator moves to table—

Mr. BINGAMAN. On that basis, I urge my colleagues to—if the Senator wants further debate, I am not trying to cut off debate, but he has concluded his debate, as I understand it.

Mr. NICKLES. Will the Senator yield?

Mr. BINGAMAN. I will yield for one additional question, if it is a question.

Mr. NICKLES. I want to insert something into the RECORD.

Mr. BINGAMAN. If he wants to insert something into the RECORD, I am glad to have him do that.

Mr. NICKLES. I appreciate my colleague yielding for this request. I know he wants to move to table.

Earlier, I was looking for a letter I could not find. This is a letter from the Northeast Utilities. I ask unanimous consent that this letter be printed in the RECORD.

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

I recognize that many of the Senators from New England supported the federal RPS portfolio. While NU believes that renewable programs should be developed on the state level, we support the further development of renewable sources of energy. We are concerned, however, that our consumers in New England will be penalized by the program included in the Senate bill. As you know, the RPS provision in the bill applies only to shareholder-owned utilities that sell more than 1 million megawatt-hours per year at the retail level. Federal agencies, state and municipal utilities and electric cooperatives are exempt from meeting the RPS requirements currently included in the bill. It also appears that self-generators are exempt.

Given these exemptions, PSNH will be the only utility in New Hampshire that would be required to participate in the program. It creates a very uneven field for us and will cost our customers an estimated \$22 million a year. This provision goes directly against the intent of current NH law which encourages PSNH and other energy companies to find ways to mitigate the high cost of purchases from renewable sources.

Also, the federal penalty that is set forward in the bill for not submitting the required number of credits will hit consumers in Connecticut and Massachusetts with a "double whammy," as they already have to pay penalties if they do not achieve the levels set forth in the state programs that are already in existence. It would in essence, penalize Connecticut and Massachusetts for having state programs.

Though it would be our preference to see these provisions changed dramatically in conference, the Senate will likely have the opportunity to vote for an amendment by Senator Nickles that reduces the penalty in the bill from 3 cents to a more reasonable 1.5 cents. Remember, the goal is not only to increase the number of renewable sources, but to also to lower costs to consumers. Please support the Nickles RPS amendment.

MIKE MORRIS

Mr. NICKLES. The key point of this letter says:

PSNH will be the only utility in New Hampshire that would be required to participate in the program. It creates a very uneven field for us and will cost our consumers an estimated \$22 million a year.

It talks about the impact on the northeastern part of the country, including New Hampshire, Vermont, Massachusetts, and Connecticut.

Mr. BINGAMAN. Madam President, I move to table the amendment, and I 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 to table amendment No. 3256. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE) and the Senator from South Dakota (Mr. JOHNSON) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 59, as follows:



(Rollcall Vote No. 83 Leg.)

## YEAS—38

|          |           |             |
|----------|-----------|-------------|
| Baucus   | Dorgan    | Mikulski    |
| Biden    | Durbin    | Murray      |
| Bingaman | Edwards   | Nelson (NE) |
| Boxer    | Feingold  | Reed        |
| Cantwell | Harkin    | Reid        |
| Carnahan | Inouye    | Rockefeller |
| Carper   | Jeffords  | Sarbanes    |
| Chafee   | Kennedy   | Snowe       |
| Clinton  | Kerry     | Stabenow    |
| Collins  | Kohl      | Torricelli  |
| Conrad   | Leahy     | Wellstone   |
| Dayton   | Levin     | Wyden       |
| Dodd     | Lieberman |             |

## NAYS—59

|           |            |             |
|-----------|------------|-------------|
| Akaka     | Enzi       | McConnell   |
| Allard    | Feinstein  | Miller      |
| Allen     | Fitzgerald | Murkowski   |
| Bayh      | Frist      | Nelson (FL) |
| Bennett   | Graham     | Nickles     |
| Bond      | Gramm      | Roberts     |
| Breaux    | Grassley   | Santorum    |
| Brownback | Gregg      | Schumer     |
| Bunning   | Hagel      | Sessions    |
| Burns     | Hatch      | Shelby      |
| Byrd      | Hollings   | Smith (NH)  |
| Campbell  | Hutchinson | Smith (OR)  |
| Cleland   | Hutchison  | Specter     |
| Cochran   | Inhofe     | Stevens     |
| Corzine   | Kyl        | Thomas      |
| Craig     | Landrieu   | Thompson    |
| Crapo     | Lincoln    | Thurmond    |
| DeWine    | Lott       | Voinovich   |
| Domenici  | Lugar      | Warner      |
| Ensign    | McCain     |             |

## NOT VOTING—3

|         |       |         |
|---------|-------|---------|
| Daschle | Helms | Johnson |
|---------|-------|---------|

The motion was rejected.

Mr. NICKLES. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

The amendment (No. 3256) was agreed to.

Mr. REID. I move to reconsider the vote.

Mr. NICKLES. 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 Louisiana.

AMENDMENT NO. 3274 TO AMENDMENT NO. 2917

Ms. LANDRIEU. Madam President, I call up amendment No. 3274, the participant funding amendment, for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside, and the clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Louisiana [Ms. LANDRIEU] proposes an amendment numbered 3274.

Ms. LANDRIEU. Madam President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To increase the transfer capability of electric energy transmission systems through participant-funded investment)

At the appropriate place, insert the following:

## SEC. . TRANSMISSION EXPANSION.

Section 205 of the Federal Power Act is amended by inserting after subsection (h) the following:

“(i) RULEMAKING.—Within six months of Enactment of this Act, the Commission shall issue final rules governing the pricing of transmission services.

“(1) TRANSMISSION PRICING PRINCIPLES.—Rules for transmission pricing issued by the Commission under this subsection shall adhere to the following principles:

“(A) transmission pricing must provide accurate and proper price signals for the efficient and reliable use and expansion of the transmission system; and

“(B) new transmission facilities should be funded by those parties who benefit from such facilities.

“(2) FUNDING OF CERTAIN FACILITIES.—The rules established pursuant to this subsection shall, among other things, provide that, upon request of a regional transmission organization or other Commission-approved transmission organization, certain new transmission facilities that increase the transfer capability of the transmission system may be Participant Funded. In such rules, the Commission shall also provide guidance as to what types of facilities may be participant funded.

“(3) PARTICIPANT-FUNDING.—The term ‘participant-funding’ means an investment in the transmission system controlled by a RTO, made after the date that the RTO or other transmission organization is approved by the Commission, that—

“(A) increases the transfer capability of the transmission system; and

“(B) is funded by the entities that, in return for payment, receives the tradable transmission rights created by the investment.

“(4) TRADABLE TRANSMISSION RIGHT.—The term ‘tradable transmission right’ means the right of the holder of such right to avoid payment of, or have rebated, transmission congestion charges on the transmission system of a regional transmission organization, the right to use a specified capacity of such transmission without payment of transmission congestion charges, or other rights as determined by the Commission.”.

Ms. LANDRIEU. Madam President, I see my colleague, Senator DURBIN, in the Chamber. I would not mind yielding 1 minute necessary for him to just lay down an amendment, if that would be in order.

The PRESIDING OFFICER. Is there objection?

The Senator from New Mexico.

Mr. BINGAMAN. Madam President, what is the request?

Ms. LANDRIEU. I say to the Senator, I was recognized to offer an amendment. The amendment has been called up. We are on amendment No. 3274, which we discussed and is in order. But Senator DURBIN has asked to lay down an amendment that will take 1 minute, and then we will go back to this amendment, if that would be OK with you and the Senator from Alaska.

Mr. BINGAMAN. I thank the Senator from Louisiana. I have no objection.

The PRESIDING OFFICER. Is there objection?

The Senator from Alaska.

Mr. MURKOWSKI. Reserving the right to object—and I may not object—my concern is we have six pending amendments, I am told. I would like to try to work through the amendments. I

am sure the manager of the bill feels the same way. I did not hear the request.

Ms. LANDRIEU. It is 2 minutes to Senator DURBIN, and then I will get right on with my amendment, and we will move through with others who are waiting.

Mr. MURKOWSKI. Madam President, I yield the floor.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I did not hear the unanimous consent request. I am standing here, and I have an amendment that I have been wanting to offer. I would like to know what the unanimous consent request is, if the Chair could so inform me.

The PRESIDING OFFICER. The Senator from Louisiana sought consent that she might yield for 2 minutes to the Senator from Illinois in order to allow the Senator to offer an amendment.

Mr. DURBIN. If the Senator from Iowa will yield.

Mr. HARKIN. I will yield to get a clarification.

Mr. DURBIN. I am asking for 2 minutes to call up an amendment and lay it aside—no speeches, no debate, no vote.

The PRESIDING OFFICER. Is there objection?

Mr. MURKOWSKI. Reserving the right to object, Senator FITZGERALD has been waiting quite a while. I am sure he would certainly be willing to accommodate the two Senators with 2 minutes each, but I would propose that we go back and forth, if the Senator from Iowa has an amendment.

I remind all Members, we have a limited amount of time. So as we begin to accept amendments, without disposing of them, we are going to run into a time constraint.

I yield the floor.

Mr. REID. Reserving the right to object, I say to my friend from Alaska, we now have pending, 1, 2, 3, 4, 5, 6, 7 amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Illinois.

Mr. DURBIN. Madam President, I thank the Senator from Louisiana—and this goes to prove that the Good Samaritan never goes unpunished—for yielding 2 minutes.

AMENDMENT NO. 3342 TO AMENDMENT NO. 2917

Madam President, I ask unanimous consent that the pending business be set aside so that I can call up amendment No. 3342.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 3342.

Mr. DURBIN. Madam President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To strike the nonbusiness use limitation with respect to the credit for the installation of certain small wind energy systems)

In Division H, on page 98, line 16, strike "If" and insert "Except in the case of qualified wind energy property expenditures, if".

Mr. DURBIN. Madam President, I am grateful that I have had the chance to work with Senators BAUCUS and GRASSLEY to provide a small tax incentive for installation of small wind systems in America's farms, ranches, and other places in rural areas that have wind potential. Specifically, my amendment would give wind power—a limitless and clean energy source—a level playing field with solar, geothermal energy, which are in current law, and fuel cell energy, which is included in the underlying tax title. All of these renewable energies are eligible for a 10 percent business investment credit under section 48 of the tax code. And I think we should give people who wish to tap into wind energy the same credit. With my amendment, farmers, ranchers and other business owners who wish to install a small wind energy system up to 75 kilowatts can do so, and get a credit on their tax return worth 10 percent of the cost of installing the wind system. I applaud the work of Senators BAUCUS and GRASSLEY, as well as the rest of the Finance Committee, which put together a package of energy tax incentives. I am hopeful that the small wind system amendment that I have filed will be accepted as part of the tax incentive package. I know Senators BAUCUS and GRASSLEY are working diligently to make this happen in the near future.

However, in the event that the Finance Committee and bill managers do not succeed in working something out on this provision, I am calling up this amendment so that it may be considered by the Senate at the appropriate time. This amendment makes small changes to the underlying tax title, so that farmers, ranchers, and small business owners will be eligible for a tax incentive when they choose to install a wind energy system on their property. This amendment would have an effect similar to adding wind to section 48 of the tax code, where solar, geothermal, and now fuel cell energy already receive a business investment credit.

Madam President, I ask unanimous consent that the amendment be laid aside.

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

Mr. DURBIN. Madam President, I yield to the Senator from Louisiana with gratitude.

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 3274

Ms. LANDRIEU. Madam President, I am now prepared, after that slight detour, to get back on amendment No. 3274, which is a very important amend-

ment. Many of us have worked on this amendment now for many weeks in an attempt to try to find and establish a fairer way to fund the new transmission lines that are necessary to move electricity from one part of this country to another, to meet the growing demand of our transmission grid system.

Let me begin by sharing a chart that I have used several times in this Chamber to show what the problem is and to ask the Senate to consider, very strongly, this proposed solution to our current dilemma.

We have a great dilemma on our hands. We have, some people might describe, a crisis on our hands. We have a system that we are moving to, a deregulated, more market-based system, which I believe ultimately, with the right safeguards, will be very good for all of us, for all of our States. Most importantly, our constituents and our businesses, both large and small—our consumers, our retailers—all of us will benefit from this new efficient system. Why? Because costs will be lowered, efficiencies will be increased. And we can make sure that when people go to turn their light switch on, the light will actually come on.

It is very important. Part of the problem is that we are not producing enough energy or electricity in our own country. Part of the problem is we are not doing our part at conserving what we should. So there is a mismatch between what we need and what we are producing.

But also, even if we got that balance right, which I hope we are going to try to do through this bill, the problem is, because we are producing electricity in some parts of the country and using it in others, some parts of the country produce more than they use, and some parts of the country do not produce as much as they need, we have to move it.

As you can see from this chart I have in the Chamber, the demand for electricity, represented by this blue line, has been increasing substantially. But the investment in building these transmission lines has been decreasing. So this gap right here is a real problem.

It has to be closed or even if we would drill the way the Senator from Alaska and I would hope we would drill, and produce more oil and gas and other fuels for electricity, and invest in more nuclear power, we still need to have more transmission lines built. The reason we are not is because there is a flaw in the system where the incentives are not in the right place.

My amendment, in short, will create a participant funding mechanism so that the Federal Energy Regulatory Commission can issue rules governing the pricing of these transmission services. I am reminded of a quote I have become familiar with and actually like that says: All some folks want is their fair share, and yours.

The problem is, we have to create a system that is very fair and smart so that we put the incentives in the right

places, and when the cost allocations to build these transmission lines are set by FERC, that they are set in a way that whomever is using them, pays for them. If we don't do that, there will be no incentive to build them because people who don't need them won't build them. The people who need them won't get charged for them, and they won't get built. And blackouts and brownouts will become more of the rule as opposed to the exception.

This amendment will provide a platform for true fairness in electricity pricing, paving the way for much needed transmission expansion at the national level. Over the past 10 years, as I have shown, peak demand growth for electricity has increased by 17 percent, while transmission investment has declined by 45 percent. What is even more troubling is that current demand for electricity is projected to increase by 25 percent over the next 10 years with only a modest increase in transmission capacity. Again, if we don't do something, we are going to continue to have a situation where power does not reach the people who need it.

The current transmission pricing mechanism at wholesale levels still employs an old, what I would call, socialized rate method of pricing. Its effect is to continuously increase the rates for local customers, even though most of the beneficiaries may be outside of the region.

This antiquated pricing method has dampened the push to enhance capacity in energy-producing States such as Louisiana and others—and this is not just a Louisiana-specific amendment; it affects us all in many States—as State regulators are reluctant, understandably so, to pass excessive transmission costs off to local customers when the beneficiaries will primarily be out-of-State or out-of-region customers.

Meanwhile, energy-dependent regions—and there are some regions that are more dependent than others—are denied cheap and reliable electricity.

Electricity price spikes in the Midwest in the summer of 1998 were caused in part by transmission constraints, limiting the ability of the region to import electricity from other regions of the country. You may remember during the summer of 2000, our dilapidated transmission infrastructure limited the ability to sell low-cost power from the Midwest to the South during a period of peak demand, resulting in higher prices. I could go on and on with examples.

In California, path 15 is a notorious transmission bottleneck. The east coast has also suffered. So no region of the country has been spared.

Surely there must be a fairer and smarter way to allocate costs which would stimulate growth instead of having this decline. It is not fair to expect customers in energy-generating States such as Louisiana to pay for transmission expansion when it is primarily being developed for out-of-State use.

In addition, the lack of transmission capacity under this archaic pricing method continues to deny customers in energy-importing States the benefit of cheaper electricity from other regions of the country. The best policy for efficient, competitive wholesale pricing is therefore participant-funded expansion. In this system, market participants fund expansions to the transmission network in return for transmission rights created by that investment. This approach gives proper economic incentives for new generator location and transmission expansion decisions.

The participant funding concept is not new. This is not something we have dreamed up in the last few weeks. It is not something with which the industry itself is not familiar. It has been a concept that has been successfully implemented in the natural gas industry through incremental pricing.

As a result of incremental pricing in the natural gas industry, proposed annual additions in 2002 to natural gas pipeline capacity have increased by 100 percent relative to 1999. In other words, we are in the process in this energy bill of building national systems to move fuel and energy and power from States that produce it to States that need it. Just as we built an interstate highway system, we are building an interstate natural gas pipeline system. We also have to build an interstate electric grid system. And we are moving from something that was very regulated and very parochial and very State oriented to one that regional and national.

We have to create that grid. If we do not put this in place, the incentives simply will not be there, and much of our work will be for naught.

It is important to note this amendment provides FERC with the option. There are many people who think this amendment is a mandate. It is an option to permit participant funding for certain new transmission facilities upon request of RTOs or other FERC-approved transmission organizations. The amendment does not make participant funding mandatory. It is simply a pricing option for FERC.

Initially, I knew there were many different opinions about this amendment. We tried to build a consensus. But unfortunately, there is a lot of self-interest and parochialism in this debate. We have struggled to overcome it.

Electricity policymaking should not be governed by what is popular, but what is necessary. There is not unanimous consensus in Louisiana for this amendment. It is not going to win me a popularity contest. But I know there has to be a better system of pricing for electric transmission so that we can move power from one part of the country to the other and get everybody what they need when they need it at a fair and reasonable price. The growth of our economy depends on it. Jobs depend on it. Businesses depend on it. This is what we should do.

I realize this amendment has unfortunately been the subject of a pretty strong campaign of disinformation. I hope what I have shared and shown, in as simple a way as I can, helps to clear up the fact that it is not a mandate. The current path has us going in the wrong direction. We have to come up with something new, something that is flexible, something that is fair, something that will work. I hope most certainly that we can get past the inertia.

Therefore, I have consulted with Senator BINGAMAN of New Mexico and the Senator from Alaska. I have proposed, instead of calling for a vote at this particular time, that the Energy Committee take up further study of transmission pricing; that the committee would hold a hearing in a short period of time with the Commissioners of the Federal Energy Regulatory Commission, as well as industry leaders.

I believe this issue has significant merit, and it is the right approach to solving a real and serious problem for our Nation.

We need to build a stronger, more reliable transmission grid. So I want to, at this time, ask Senator BINGAMAN for his comments and thank him for his cooperation. We must push forward with a good system.

He has indicated that he would be amenable to a hearing, et cetera. At this time, I ask him if that is his understanding.

Mr. BINGAMAN. Madam President, in response, let me say, first, I compliment the Senator from Louisiana for raising this very important issue. It is an important issue and also a very complicated issue. It is one that we have had the chance to talk about to some extent. But, clearly, we do need, in the Energy Committee, to look at this issue and allow witnesses to come in and explain it in more depth. Before we take action, that would be my preference.

So I would be glad to commit that we will schedule a hearing later on, once we get back to some kind of opportunity to have hearings in the Energy Committee on issues such as this. I would be anxious to have a hearing and hear from the witnesses that the Senator from Louisiana believes are most informed on this issue.

I do think it is premature—at least for me, and perhaps for many Senators—to be making a judgment on what to do at this point. But it is an important issue.

Again, I commend the Senator from Louisiana for raising it, and I hope, following a hearing in the committee, we will be in a much better position to craft legislation to deal with it or determine what is the proper course.

Ms. LANDRIEU. I thank the Senator for his willingness to work with me and with the coalition of Senators—both Democrats and Republicans—and believe this is the right step to take to create the kind of transmission grid necessary. I look forward to working with him at that hearing to focus more attention on this important subject.

Madam President, at this time, after submitting more material for the RECORD, I would like to ask unanimous consent that amendment No. 3274 be laid aside.

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

The Senator from Illinois is recognized.

Mr. FITZGERALD. Madam President, I ask for the yeas and nays on my amendment, No. 3124.

The PRESIDING OFFICER. The amendment must be pending to make that request.

AMENDMENT NO. 3124

Mr. FITZGERALD. Madam President, I call up amendment No. 3124.

If I may have a couple of moments, then I will proceed to put the question to the body.

The PRESIDING OFFICER. The Senator is recognized.

Mr. FITZGERALD. Madam President, my amendment removes subsidies and incentives currently in the pending bill for garbage incinerators.

Many of my colleagues may not realize it, but built into this energy bill is the promotion of more waste incineration around the country by defining waste incinerators as a form of renewable energy.

Waste incineration is not a form of renewable energy. It is not really renewable, and it certainly isn't clean and environmentally friendly in the way of wind or solar power energy. The Daschle substitute, which is now pending, defines garbage incineration as renewable energy. Garbage incineration is, therefore, eligible for all the incentives—or what amounts to subsidies, I would say—as though it were a clean and renewable source of energy.

My amendment removes the subsidies and incentives for garbage incineration by excluding solid waste incineration from the bill's definition of renewable energy. I tell my colleagues that it would be, in my judgment, a very serious mistake to allow the bill to leave this Chamber with an incentive for waste incinerators all over the country.

Back in the 1980s, the Illinois Legislature passed an incentive for waste incineration, and within a matter of a few years waste incinerators were planned for all parts of Illinois. A couple of them, in fact, were built. They were spewing harmful, toxic pollutants, and people were up in arms and demanded that the legislature of Illinois repeal the incentives and subsidies they had for waste incinerators.

We do not want to make the same mistake nationwide that my State made at one time. Let's learn from their mistake and let's also stick with common sense. We don't need subsidies and incentives for waste incinerators. We don't want to subsidize the pollution of the United States of America.

With that, I see my good friend and colleague from New Jersey who should be recognized.

I yield the floor.

(Mr. DAYTON assumed the Chair.)

Mr. REID. Mr. President, he has no right to do that. Mr. President, I have no problem with the Senator from New Jersey speaking, but today we have been doing too much yielding and that is not appropriate, unless you have a question or something like that.

I have spoken to the Senator from Florida, Mr. GRAHAM. He wishes to speak in opposition to my friend from Illinois for about 15 minutes. It is my understanding that the Senator from New Jersey is speaking in favor of the amendment of the Senator from Illinois. I ask the Senator from New Jersey how long he wishes to speak.

Mr. CORZINE. Roughly a minute.

Mr. REID. Mr. President, the Senator from New Jersey wishes to speak for up to 5 minutes and the Senator from Florida for up to 15 minutes. So I ask that we vote on this matter at 6:25. I ask that at that time Senator BINGAMAN be recognized to offer a motion to table, with no second-degree amendments in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I rise to strongly support this amendment that would recognize what I think is a very commonsense principle—that solid waste is not considered a renewable in the way that we are intending with regard to this legislation.

It seems to me that when we are putting dioxins, mercury, lead, and arsenic into the air, somehow or another we should not be using that as a basis for alternative energy sources—at least in my commonsense interpretation. We were trying to get solar and wind—things that are clean alternatives—to produce energy as substitutes for fossil fuels and other focuses on production of energy.

So it seems to me that we are taking a step backward in dealing with our environment at the same time we are defining biomass or alternative energies as garbage. Certainly, in our State, where air quality issues are an extraordinary concern to the public, we have a number of these incinerators, about which the public has great protest.

I believe this amendment is conforming to what the intent, at least, of how I have felt about alternative energy sources, and I wholly support pulling back this incentive and subsidization for garbage as an alternative energy source.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I rise today in opposition to the amendment that has been offered by the Senator from Illinois. The fact that the two proponents have used their own States and their experience as the reasons for their opposition makes my point. My point is this is not an issue where one size fits all. It is not an issue where we can require uniformity of treatment

across the entire mass of the United States of America. I will try to explain, using illustrations from my own State, why I think that is inappropriate policy.

What this amendment would do is exclude the small amount of municipal solid waste to energy which is part of the current renewable portfolio standard. Over my objection, this bill does not allow new waste-to-energy incineration to count as renewable. We are only talking about whether you can include in the base amount for your State that which is already in place.

A few weeks ago, in a statement I submitted for the RECORD, I pointed out how difficult it is going to be for many States to reach the 10-percent standard which this bill requires by the year 2020. I will add to that statement that I gave previously by saying Senator FITZGERALD's amendment makes the current renewable standard even more inequitable and more unfair in its treatment of particular States.

The ability of the investor-owned electrical generators, which is the only class covered by this renewable portfolio, within a particular State to be able to meet the 10-percent standard by the year 2020 is substantially affected by conditions over which those same investor-owned electrical generators have no control.

As an example, they have no control over the availability of renewables within their State. They have no control over the environmental characteristics that are peculiar to their State. They have no control over the growth patterns. If a State is stagnant or declining in its population, it is going to be a lot easier to meet these standards than if a State is required to add substantially to its generation capacity in order to meet demographic or economic growth.

Let me use my own State of Florida as an example of some of those peculiarities.

Florida, as many other States, particularly in the southeastern region, does not have conditions which are appropriate for hydropower. We are a flat State. We do not have any high, elevated water sources that can fall over and generate hydropower. Surprisingly, we are not a State which is very adaptable to wind power. We do not have winds that are reliable enough or sustainable enough to make wind power a commercially adaptable renewable source. In fact, the largest investor-owned utility in America for wind power is Florida Power and Light Company.

Florida Power and Light Company is the largest wind power electrical utility in the Nation. It produces zero wind power in the State that bears its name, not because they are not interested in wind power, not that they have not had a lot of technical experience, it just does not work in the environmental conditions of Florida.

Solar, which some think would be the silver bullet for renewables in Flor-

ida—I had a solar panel in my house when I was a boy, and that was a few years ago. Sixty years later, it still has not developed into a reliable source of energy at anywhere near economic cost.

These factors are going to make it difficult for my State and others to meet the 10-percent renewable standard as currently included in the bill.

In addition, 87 percent of what in the base is defined as renewable energy in Florida comes from waste to energy. Florida is in the course of building its 14th waste-to-energy plant, making it second only to New York State in the number of these plants.

In my judgment, waste to energy is undoubtedly a renewable source of energy. Our cities and towns will continue to produce solid waste that must be disposed of in some manner. Waste to energy is a viable means of dealing with the problem of disposal.

In my State, over 80 percent of our water supply is subsurface. It is in large aquifers that are just a few feet below the surface. That is the nature of our geology. One of the reasons that incineration has become such a popular alternative is not that people love to have incinerators or are not cognizant of the fact there are some negative implications, but the alternative of putting on top of our water supply mass amounts of solid waste is intolerable. So we have been moving away from that and towards incineration as a means of disposing of our pollution.

I would describe myself as an environmentalist but an environmentalist who looks at what the reality is of the options before me. In my State, the options are we bury it or we burn it. I think the case is unquestionable that it is environmentally less offensive to burn it than it is to bury it right over your water supply.

This method has the added benefit of being able to generate not a great part but approximately 1.6 percent of our electrical supply.

I thought one of the purposes of this was to displace fossil fuels, and that is 1.6 percent of energy which, but for incineration, would have been produced through fossil fuel. It is 1.6 percent of energy that, if it were not being produced through incineration, would be lost and would be in a large landfill posing a continuous threat to our water supply.

I believe in the principle of some flexibility in this law. I had a colloquy with the chairman of the committee a few days ago urging that when this got into conference committee, one of the areas that would be looked at would be how to take the differences that exist from State to State, region to region within our country into greater control, greater consideration in arriving at what is an appropriate renewable energy inventory.

Also, our experience in terms of incineration has not been as dire as that of Illinois and New Jersey apparently. Our facilities are relatively new, as

witnessed by the fact we have our 14th currently under construction. They use the maximum achievable control technology, including scrubbers, bag houses, selective noncatalytic reduction, and carbon injection. All of these are designed to reduce the amount of emissions, including the reduction of greenhouse gases.

Emission data that has been circulated recently, in my judgment, is grossly out of date in terms of what modern waste to energy and efficient sources of biomass have been doing in reducing pollution while contributing substantially to alternatives to fossil fuels for energy.

This is not just a Florida-specific issue. In 1993, the Los Angeles District Sanitation Department concluded that the waste-to-energy facility in Commerce, CA, created less pollution than the trucks used to haul the trash to a nearby landfill without regard to the environmental damage once it gets in the ground in the landfill.

According to EPA calculations, if half of the trash produced annually in the United States were used to generate electricity, 1.4 billion fewer pounds of pollutants would be discharged into the atmosphere compared to the energy generation through coal or oil burning.

Waste-to-energy has also been historically treated as a biomass, at least as far back as the FERC rules of 1978.

I ask unanimous consent to have printed in the RECORD the number of States which today have defined for their own State law that waste-to-energy is a renewable energy source.

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

#### STATE RENEWABLE PORTFOLIO STANDARDS

Currently many states have established renewable portfolio standards, either through state statute, executive orders or public utility commission regulations. Of those states eleven define waste-to-energy as a renewable energy source. They are: Maine, Connecticut, New Jersey, Massachusetts, Wisconsin, Iowa, Nevada, Pennsylvania, Hawaii, and Maryland.

Many other states define waste-to-energy as a renewable energy source for inclusion in other state incentive programs. They are California, Florida, Michigan, Montana, New Hampshire, Ohio, Washington, Oregon, Oklahoma, Utah and New York.

Mr. GRAHAM. For these reasons—primarily the fact that we need to be pragmatic—we need to recognize that different States have different conditions; that the options for disposal of solid waste in many instances, as in the case of Florida, are limited; and of those options, incineration represents one that is relatively environmentally appropriate and is one of the best sources that is available to us to begin to meet this 10-percent standard of a renewable portfolio.

I urge the defeat of the Fitzgerald amendment, or the adoption of the motion that I anticipate is about to be made to table the Fitzgerald amendment.

Mr. LEVIN. Mr. President, I will vote in favor of the Fitzgerald amendment because the underlying language in the bill would allow even an incinerator that is out of compliance with federal emissions regulations to qualify as a “renewable energy source.” A facility which is not in compliance with the applicable state and federal pollution prevention control and permit requirements for any period of time should not be considered an eligible facility for purposes of the renewable portfolio standard.

It is my understanding that this distinction was utilized when it came to the tax incentives in this bill and it should be utilized in this area as well.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. FITZGERALD. I ask unanimous consent for an additional minute to reply to the distinguished Senator from Florida.

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

The Senator from Illinois.

Mr. FITZGERALD. I emphasize this amendment would in no way impair States that incinerate their waste from continuing to do so. In fact, Illinois has waste incineration. What we are saying with this amendment is we should not be promoting, with Federal incentives or subsidies, waste incineration. It is not a renewable form of energy. It is not a clean form of energy. In fact, it spews terrible, harmful pollutants such as dioxins and mercury into the air. The ash produced by waste incineration is very environmentally harmful.

This amendment simply says we will not have a Federal program to promote waste incineration, and no State would be prevented from continuing to burn garbage. We would not be promoting it with a Federal policy.

I thank my colleagues for their time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, in reference to the amendment, the underlying bill does not, as I read it, provide any subsidy or incentive for use of municipal solid waste. We do say utilities that now generate waste from that source can deduct that from the base they begin with, but we do not give them credit for that generation, and we do not give them credit for any new generation from that source in the future. So there are no incentives. There are no subsidies, as I read the bill.

For that reason, I oppose the amendment by the Senator from Illinois. I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Is there objection to having the vote at this time?

Without objection, it is so ordered.

The question is on agreeing to the motion to table amendment No. 3124. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from South Dakota (Mr. DASCHLE), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Vermont (Mr. JEFFORDS) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 50, nays 46, as follows:

[Rollcall Vote No. 84 Leg.]

#### YEAS—50

|           |             |             |
|-----------|-------------|-------------|
| Akaka     | Feinstein   | Nelson (NE) |
| Allen     | Frist       | Nickles     |
| Baucus    | Graham      | Roberts     |
| Bayh      | Grassley    | Rockefeller |
| Bingaman  | Hagel       | Santorum    |
| Breaux    | Hatch       | Sessions    |
| Brownback | Hutchinson  | Shelby      |
| Bunning   | Inhofe      | Smith (OR)  |
| Byrd      | Inouye      | Stevens     |
| Campbell  | Landrieu    | Thomas      |
| Carper    | Lieberman   | Thompson    |
| Cleland   | Lincoln     | Thurmond    |
| Clinton   | Lott        | Torricelli  |
| DeWine    | Lugar       | Voinovich   |
| Dodd      | Miller      | Warner      |
| Dorgan    | Murkowski   | Wyden       |
| Enzi      | Nelson (FL) |             |

#### NAYS—46

|          |            |            |
|----------|------------|------------|
| Allard   | Domenici   | Levin      |
| Bennett  | Durbin     | McCain     |
| Biden    | Edwards    | McConnell  |
| Bond     | Ensign     | Mikulski   |
| Boxer    | Feingold   | Murray     |
| Burns    | Fitzgerald | Reed       |
| Cantwell | Gramm      | Reid       |
| Carnahan | Gregg      | Sarbanes   |
| Chafee   | Harkin     | Schumer    |
| Cochran  | Hollings   | Smith (NH) |
| Collins  | Hutchison  | Snowe      |
| Conrad   | Kennedy    | Specter    |
| Corzine  | Kerry      | Stabenow   |
| Craig    | Kohl       | Wellstone  |
| Crapo    | Kyl        |            |
| Dayton   | Leahy      |            |

#### NOT VOTING—4

|         |          |
|---------|----------|
| Daschle | Jeffords |
| Helms   | Johnson  |

The motion was agreed to.

Mr. BINGAMAN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. BINGAMAN. Mr. President, these are a couple of cleared matters on which I would like to complete action before we do anything else.

AMENDMENTS NOS. 3050, 3093, 3097, AND 3274,  
WITHDRAWN

Mr. BINGAMAN. Mr. President, I ask unanimous consent that amendments Nos. 3050, 3093, 3097, and 3274 be withdrawn.

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

AMENDMENTS NOS. 3187, AS MODIFIED, 3243, AND 3268, EN BLOC

Mr. BINGAMAN. Mr. President, I ask unanimous consent that notwithstanding rule XXII, it be in order for the Senate to consider en bloc amendments Nos. 3187, 3243, and 3268; that amendment No. 3187 be modified with the changes at the desk; that the foregoing amendments be agreed to en bloc, and that the motions to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments (Nos. 3187, as modified, 3243, and 3268), en bloc, were agreed to, as follows:

AMENDMENT NO. 3187, AS MODIFIED

(Purpose: To provide for increased energy savings and greenhouse gas reduction benefits through the increased use of recovered material in federally funded projects involving procurement of cement or concrete)

On page 283, between lines 8 and 9, insert the following:

**SEC. 9. INCREASED USE OF RECOVERED MATERIAL IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.**

(a) DEFINITIONS.—In this section:

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

(2) AGENCY HEAD.—The term “agency head” means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(3) CEMENT OR CONCRETE PROJECT.—The term “cement or concrete project” means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(4) RECOVERED MATERIAL.—The term “recovered material” means—

(A) ground granulated blast furnace slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered material under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this Act (including guidelines under section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6963)) that provide for the use of cement and concrete incorporating recovered material in cement or concrete projects.

(2) PRIORITY.—In carrying out paragraph

(1) an agency head shall give priority to achieving greater use of recovered material in cement or concrete projects for which recovered materials historically have not been used or have been used only minimally.

(c) FULL IMPLEMENTATION STUDY.—

(1) IN GENERAL.—The Administrator and the Secretary of Transportation, in cooperation with the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and greenhouse gas emission reduction benefits attainable with substitution of recovered material in cement used in cement or concrete projects.

(2) MATTERS TO BE ADDRESSED.—The study shall—

(A) quantify the extent to which recovered materials are being substituted for Portland

cement, particularly as a result of current procurement requirements, and the energy savings and greenhouse gas emission reduction benefits associated with that substitution;

(B) identify all barriers in procurement requirements to fuller realization of energy savings and greenhouse gas emission reduction benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered material in types of cement or concrete projects for which recovered materials historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered material in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered material in those cement or concrete projects.

(3) REPORT.—Not later than 30 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations and Committee on Energy and Commerce of the House of Representatives a report on the study.

(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Within 1 year of the release of the report in accordance with subsection (c)(3), the Administrator and each agency head shall take additional actions authorized under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered material in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and greenhouse gas emission reduction benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c).

(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962) (including the guidelines and specifications for implementing those requirements).

AMENDMENT NO. 3243

(Purpose: To strike section 721)

On page 148, strike lines 4 through 22, renumber the subsequent section accordingly.

AMENDMENT NO. 3268

(Purpose: To direct the Secretary of Energy to establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol and other commercial byproducts)

On page 205, between lines 8 and 9, insert the following:

**SEC. 8. COMMERCIAL BYPRODUCTS FROM MUNICIPAL SOLID WASTE LOAN GUARANTEE PROGRAM.**

(a) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term “municipal solid waste” has the meaning given the term “solid waste” in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program to provide guarantees of loans by private institutions for the construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol and other commercial byproducts.

(c) REQUIREMENTS.—The Secretary may provide a loan guarantee under subsection (b) to an applicant if—

(1) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in subsection (b);

(2) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assurance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(3) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(d) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(1) meet all applicable Federal and State permitting requirements;

(2) are most likely to be successful; and

(3) are located in local markets that have the greatest need for the facility because of—

(A) the limited availability of land for waste disposal; or

(B) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(e) MATURITY.—A loan guaranteed under subsection (b) shall have a maturity of not more than 20 years.

(f) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under subsection (b) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(g) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under subsection (b) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(h) GUARANTEE FEE.—The recipient of a loan guarantee under subsection (b) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(i) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(j) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress an report on the activities of the Secretary under this section.

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

(l) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under subsection (b) terminates on the date that is 10 years after the date of enactment of this Act.

Mr. BINGAMAN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I ask unanimous consent that the pending



amendment be laid aside temporarily and call up amendment No. 3195.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I say to my friend from Iowa, we have several amendments tonight that we are going to try to put in the queue. But I should say to all my friends on this side of the aisle, most all of the amendments that have been offered have been Democratic amendments. I have been advised by the Republican leader and the manager of the bill for the Republicans that they are going to allow this to happen on a few more amendments, but that is about the end of it. So everyone should understand, this isn't going to go on for the next few hours.

There are actually three amendments that I have gone over with the manager of the bill for the Republicans. And they have tentatively agreed that we could set amendments aside to offer those. But I am just telling everybody that they are not going to allow this to go on until we get rid of some of these amendments, perhaps tomorrow.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, obviously, we are anxious to cooperate with the majority, but this is beginning to wind down, and we anticipate a limited amount of time tomorrow to finish. So we encourage all Senators to try to proceed with their amendments as soon as possible so at the end we do not run out of time and are unable to accommodate Members.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there objection?

The Senator from Delaware.

Mr. CARPER. Mr. President, reserving the right to object, I ask unanimous consent that my amendment No. —

The PRESIDING OFFICER. The Chair informs the Senator, there is a unanimous consent request pending at this time.

Is there objection?

Mr. CARPER. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I ask unanimous consent that my amendment No. 3198 be called up after Senator HARKIN's amendment is reported and that my amendment then be immediately laid aside.

The PRESIDING OFFICER. Is there objection to the request, as modified?

Without objection, it is so ordered. The request, as modified, is agreed to.

The Senator from Iowa.

AMENDMENT NO. 3195 TO AMENDMENT NO. 2917

Mr. HARKIN. Mr. President, has the clerk reported the amendment?

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. COCHRAN, Mr. GRASSLEY, and Mrs. LINCOLN, proposes an amendment numbered 3195.

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

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

The amendment is as follows:

(Purpose: To direct the Secretary of Energy to revise the seasonal energy efficiency ratio standard for central air conditioners and central air conditioning heat pumps within 60 days)

Beginning on page 293, strike line 5 and all that follows through page 294 and insert the following:

Section 325(d)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6295(d)) is amended by adding at the end the following:

“(C) REVISION OF STANDARDS.—Not later than 60 days after the date of enactment of this subparagraph, the Secretary shall amend the standards established under paragraph (1).”.

Mr. HARKIN. I offer this amendment on behalf of Senators COCHRAN, GRASSLEY, LINCOLN, and myself.

I yield the floor to the Senator from Mississippi for any comments he may wish to make.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Mississippi.

Mr. COCHRAN. Madam President, I am pleased to join both of my friends from Iowa, Senator HARKIN and Senator GRASSLEY, along with the distinguished Senator from Arkansas, Mrs. LINCOLN, in sponsoring this amendment to the energy bill.

This amendment would seek to change a provision that is in the bill, as reported by the committee, or as it is pending before the Senate, that relates to seasonal energy efficiency ratios of air-conditioners.

The reason we are offering this amendment is to permit the Department of Energy to proceed with the rulemaking, which they have the power to undertake and they are now considering, to make air-conditioners more energy efficient.

The difficulty with the bill, as reported by the committee, is that it preempts the rulemaking process and establishes, by law, a new seasonal energy efficiency ratio, and it establishes it at the level of 13. That is one of the standards of measuring energy efficiency. The current energy ratio that is established under the regulations is at 10. Almost everybody agrees that this standard ought to be increased and that the efficiency ought to be improved. The issue is, how much?

This amendment that we are offering suggests the appropriate level is 12 instead of the committee-mandated ratio of 13. Why is that? It is because, at this level, if it is not amended, you are going to increase the cost of air-conditioners by about \$700 each. In a State such as my State of Mississippi, that is a huge increase for consumers. We have a lot of people who do not make enough money to afford an air-conditioner if it

costs that much more than the current air-conditioners will cost. That is a big problem.

Another problem is, a lot of manufacturing plants that are manufacturing air-conditioners or components will be put out of business if the ratio is set at 13, as this committee bill does. There is one plant in my State, located in Grenada, MS, that will shut down if this amendment isn't approved, and 2,500 people who work there will be out of a job. That will not occur if this amendment is adopted.

So this is a serious proposal, and it is undertaken with the notion that we do need to improve the energy efficiency of these air-conditioning units. Our amendment will cause that to happen, and we will save money generally over the life of this new ratio because we will use less energy. Less electricity will be consumed by the Nation. And that is good. That is one of the aims of this bill.

So I am hopeful the Senate will look with favor on the amendment. I appreciate the distinguished Senator from Iowa inviting me to join him in offering this amendment. I am hopeful on tomorrow, when we get to the process of voting and approving amendments, the Senate will vote for this amendment.

The PRESIDING OFFICER. The Senator from Delaware.

AMENDMENT NO. 3198 TO AMENDMENT NO. 2917

Mr. CARPER. Under the previous order, I call up amendment No. 3198.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Delaware [Mr. CARPER], for himself, Mr. SPECTER, and Ms. LANDRIEU, proposes an amendment numbered 3198.

The amendment is as follows:

(Purpose: To decrease the United States dependence on imported oil by the year 2015)

On page 177, before line 1, insert the following:

#### SEC. 811. REQUIREMENT FOR REGULATIONS TO REDUCE OIL CONSUMPTION.

##### (a) OIL SAVINGS.—

(1) IN GENERAL.—The new regulations required by section 801 shall include regulations that apply to passenger and non-passenger automobiles manufactured after model year 2006 and are designed to result in a reduction in the amount of oil (including oil refined into gasoline) used by automobiles of at least 1,000,000 barrels per day by 2015.

(2) CALCULATION OF REDUCTION.—To determine the amount of the reduction in oil used by passenger and non-passenger automobiles, the Secretary of Transportation shall make calculations based on the number of barrels of oil projected by the Energy Information Administration of the Department of Energy in table A7 of the report entitled “Annual Energy Outlook 2002” (report no. DOE/EIA-0383(2002)) to be consumed by light-duty vehicles in 2015 without the regulations required by paragraph (1).

(3) CONSIDERATION OF ALTERNATIVE FUEL TECHNOLOGIES.—The Secretary of Transportation shall consult with the Secretary of Energy to identify alternative fuel technologies that could be utilized in the transportation sector to reduce dependence on crude-oil-derived fuels. The Secretary of

Transportation shall take those technologies into consideration in prescribing the regulations under this section.

(4) FINAL REGULATIONS.—The Secretary of Transportation shall issue the final regulations required by this subsection after carrying out the consultation described in paragraph (3), but not later than 15 months after the date of the enactment of this Act.

(b) REPORTS TO CONGRESS.—

(1) REQUIREMENT.—Beginning in 2007, the Secretary of Transportation shall, after consulting with the Administrator of the Environmental Protection Agency, submit to Congress in January of every odd-numbered year through 2015 a report on the implementation of the requirements of this section.

(2) CONTENT.—The report required by paragraph (1) shall explain and assess the progress in reducing oil consumption by automobiles as required by this section.

The PRESIDING OFFICER. Under the previous order, the amendment is set aside.

The Senator from Iowa.

AMENDMENT NO. 3195

Mr. HARKIN. Madam President, there was a little bit of confusion on the floor. What is the pending matter now?

The PRESIDING OFFICER. The Senator's amendment.

Mr. HARKIN. Madam President, I thank the Senator from Mississippi. He said very precisely what this really is all about. I am going to give a lengthier statement, but as long as he is still on the floor, I want to thank him. He hit it right on the head.

This is really about, No. 1, the loss of jobs in a number of States. We will lose many jobs in Iowa, too, I say to the Senator from Mississippi. Secondly, it is about whether or not a significant number of low-income people and the elderly will be able to afford to have air-conditioning.

In some parts of the country it gets hotter than up in my area, but still, up in my area in the summer, it gets pretty darn hot. And the elderly need that air-conditioning. It is a health matter for them. They have to have air-conditioning. It is probably for a shorter period of time in Iowa than in Mississippi or Florida or Georgia, or places like that; nonetheless, there are periods of time in the summer when it is a health matter for the elderly to make sure they have air-conditioning. And some will not be able to afford the purchase price of an air-conditioner with this 13 seasonal energy efficiency ratio, SEER, that is in the bill.

Basically, what this amendment does is strikes the language in the bill that mandates this. First of all, I don't think we ought to be mandating appliance standards. This is something that ought to be within the purview of the Department of Energy to let them review all the data and then come up with a standard.

If we don't like it, maybe we might want to override it. But for us to just come in and mandate a standard which, quite frankly, has been proven not to be workable—I will get into that in a second—is the wrong way for the Senate to proceed.

Again, for the record, when we talk about the SEER numbers, it is the measure of energy efficiency. The higher the number, the more energy efficient the product.

On first blush, people say: We want the most efficient machine possible. Well, let's take a look at that. The Department of Energy is required by law to set standards that are "economically justified and technologically feasible." The current standard is 10. The bill would raise that to 13. Our language simply requires the Department of Energy to issue a revised standard which must be higher than the current 10 standard and issue it within 60 days. And basically on the basis of not only the present administration's analysis but a lot of work done by staff in the previous administration, they would set that at 12 within 60 days.

Again, there has been some confusion about my amendment. Some have said this is a rollback. We are going to roll back the 13. That is not true. There is no 13 right now. It is at 10. So it is not a rollback.

I see my colleague from Iowa is here. He, too, is a strong supporter of this. I thank him for his strong support in trying to bring some reason to this. But in the past my colleague and I have worked together on appliance standards with the DOE back in 1995 and 1996 to establish a fair and balanced system, one that balances conservation, competition, and the needs of consumers in an interpretative rule, really what the law requires. The rule under which we are operating requires that consumers be looked at, not just as an average, uniform group, but as subgroups such as those within various income and age levels. That is what the rule requires.

Again, if you just look at it as a uniform rate, a uniform average group, perhaps you would come to some different conclusion. The rule doesn't say that. The rule says you have to look at it as subgroups of the population.

Under the rule, DOE's responsibilities must look after the consumer and make sure that these subgroups would be looked at. We need to see how a change in appliance standards will impact various kinds of people, such as the elderly, low-income people, and renters. Unfortunately, the last administration, the Clinton administration, effectively did not properly look at this important requirement. They lumped everybody together. And so the different subgroups were not properly considered under the Clinton administration.

When the professional staff recommended a 12 standard in 2000 under the Clinton administration, that recommendation by the professional staff in the Department of Energy was changed in the Office of the Secretary of Energy. The required analysis of the economic impacts on these subgroups required by the process was not properly done to reach that SEER 13 level. I also understand the Department of

Justice in the Clinton Administration had considerable concerns about the negative impacts on competition of a 13 SEER requirement. That is a very important question, particularly for those who want to keep the price to the consumer low and who want competition.

The imposition of this 13 standard would have a serious impact on both consumers and the industry. The Department of Justice is opposed to this, the Small Business Administration, the National Association of Home Builders, and the Manufactured Housing Institute. It is economically damaging, especially to senior citizens, lower and fixed-income families and, as we said earlier, employees in the industry.

As the SEER ratings rise, the cost of the machines rise. The Senator from Mississippi already pointed out that going from a 10 to a 13 will cost more than \$700 per air-conditioner. By comparison, the cost of going to a 12 is only an estimated \$407. So when you go up above that 12, it becomes really expensive. Again, if you make it that expensive, what would a consumer do if they have an old energy-inefficient air-conditioner? Would they go out and buy this new one? Will they ever be able to recoup the cost, especially if they live in Michigan or in Iowa where we need our air-conditioners for short periods of time. They would never recoup the money, if they could even afford it.

What many will do is, particularly a lot of modest homeowners, people who live in manufactured housing who have higher costs still with a SEER 13 because that machine will not fit in the space provided for in many manufactured homes? What many will do is they will say: It is cheaper for me to stay with the old one. That doesn't help the environment. It means more energy use in those homes. And so we have accomplished far less than many believe if we go to a 13?

There has to be some reason in this. We can't underestimate the impact that going to this standard would have on lower income people and senior citizens. You will hear arguments tomorrow about the average consumer out there, what this might cost the average consumer. I have often said to people, if you took me and Bill Gates and you averaged our income, I would be a billionaire on my salary here. Imagine that. You can't just look at an average like that. What you have to look at—and the rule says you have to look at—is those subgroups such as the elderly and low income, which they haven't done and which this 13 rating doesn't properly take that into account.

Senior citizens rely on air-conditioning for their health as well as for their comfort. Sometimes it is not a luxury in the summer months. The elderly need that. Again, if they only use it in the summer, 2 or 3 months in Iowa or Michigan, they would never be able to recover the higher cost of a 13.

Furthermore, renters will also be affected by this. It is expected that the increased cost of a new air-conditioner would be passed on in the form of higher rents to 34 million renter households where the median income is \$24,400. So, again, if you add that 13 and the landowners have to replace it, they will pass it on in higher rents to renters or they simply will decide not to replace it. Then what have we accomplished?

Recently, the Energy Information Administration conducted an independent review of the impact of imposing a nationwide standard of 13 for air-conditioners compared to a 12. The EIA review stated that a 12 standard would save the Nation \$2.3 billion, while a 13 standard would cost the Nation \$600 million in additional costs. So a 12 standard—this is the Energy Information Administration—would save the Nation \$2.3 billion; a 13 would cost us \$600 million. Again, it is because the impacts of a 13's higher cost.

I haven't gotten into the size. It is quite a bit larger than 12. Therefore, people who live in manufactured housing, where the space for the air conditioner is preset, would not be able to get a new air conditioner without retrofitting their home so those people lose if we go to a 13. We lose jobs—the Department of Energy said 20,000 jobs by the year 2006. I see my colleague from Iowa on the floor. I know he wants to speak on this. I know, at first blush, for people who say they are environmentalists, I think I have a pretty good environmental record; but this is not the direction in which to go. This will hurt the elderly and low-income people because many won't be able to afford an air conditioner. Plus, it will cost a heck of a lot of jobs in my State and, I know, in a number of other States.

Madam President, I have more to say on this, but I want to respect my colleague from Iowa who is here.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa, Mr. GRASSLEY, is recognized.

Mr. GRASSLEY. Madam President, I am glad to be able to work with my colleague from Iowa on this amendment. He is being transparent, and I would like to be transparent on it. There are jobs affected in our State. For the Senator from Michigan, the Presiding Officer, it is my understanding there is a company in her State called Heat Controller, Inc., that would not be able to meet these SEER 13 standards, and that there would be jobs in jeopardy at Heat Controller. You may want to check that out, but that is what my information tells me. If I am wrong, I would like to be corrected.

So I compliment the Energy Committee because, generally, in this legislation they have had suggestions that push industry to do things that are more energy efficient. In most cases, those initiatives by this legislation and by the Energy Committee are not only

good for saving energy, but they are also very good for the consumer.

Now, Senator HARKIN has touched on this, that if we go to what is called SEER 13, 75 percent of the country, according to a map I have here, will not, through the life of the use of SEER 13 appliances, be able to get a payback. In other words, there is no benefit to the consumer. So this is one of the rare instances in which the Senate Energy Committee has a suggestion in their legislation that might save energy, but is very costly to the consumer. We want to promote things that are energy efficient, but we also want to promote things that are good for the consumer.

Most of the time, you buy energy-efficient appliances. Recently—maybe 3 years ago—I had an opportunity, and a necessity, to buy a new furnace for my farmhouse in Iowa. In looking at what to buy, they could very quickly say, well, if you buy our furnace, within 5 or 7—I am not sure how long, but it was a relatively short period of time—you will save enough on LP gas to pay for it. Buy one of these thermostats that is automatically controlled to go up and down with the heat, and in a certain period of time it is paid for.

In this particular instance, the Senate Energy Committee has offered us a proposal that will save energy, yes; but for people in 75 percent of the country, geographically—I don't know how that is population-wise—there is not a payback.

So that is why I ask this body to look at the wisdom of this particular provision in this bill. Obviously, I am asking you to look at the wisdom that is behind the amendment offered by the Senator, my colleague from Iowa.

The Department of Energy has authority, through the rulemaking process, to set these standards. The Department of Energy is required by statute, under the National Appliance Energy Conservation Act, to set these standards and to do it in a way "that is economically justified and technologically feasible."

So I think the underlying legislation—which we can obviously change if we want to, and I think it is unwise to change—the underlying statute calls for it to be economically justified. This is one that is technologically feasible; it saves energy, but it doesn't appear to be economically justified by going from 12 to 13. What we are trying to do is overturn precisely what the bill does in the first place. The Department of Energy is considering a rule based on information and based on analysis from several years' worth of submission during the rulemaking process. Unfortunately, this bill seeks to take action that would raise the standard—a 30-percent increase in efficiency—and to do it clearly, without consideration of information collected by the Department of Energy.

Had the authors of this bill considered the evidence regarding the economic impact of a 30-percent increase,

they would have soon realized it is contrary to the statutory criterion imposed on the Department of Energy which requires that it be economically justified.

Economically, a 13 SEER standard just doesn't make sense. For example, 75 percent of the consumers purchasing 13 SEER units will incur a net cost. At the end of the lifetime of the product, the savings in operating costs won't be sufficient to offset the additional upfront costs of that particular product—besides the fact that some companies, as I have implied to the Senator from Michigan, are not able to make SEER 13 and maybe it would really harm those jobs as a result of that additional complication.

This is particularly true for consumers in the middle and northern tiers of the United States. Critics claim that the additional cost of the 13 SEER product is insignificant. However, the Energy Information Administration conducted an independent review of the economic impact of imposing either a 30-percent increase in SEER, which this bill proposes, and a 20-percent increase. The Energy Information Administration concluded that a 20-percent increase would result in savings of \$2.3 billion in energy costs for consumers while a 30-percent increase would actually cost consumers \$600 million.

So based on that evidence, it is contrary to the best interest of the consumer. There is not a payback. The difference between the savings of \$2.3 billion compared to a loss of \$600 million is certainly significant and clearly does not justify a 30-percent increase.

The supporters of the 13 SEER standard also disregard the concerns expressed by the Department of Justice. A number of equipment manufacturers selling air-conditioners in the United States today don't offer products at 13 SEER. Which I mentioned to the Senator from Michigan. For that reason, the Department of Justice opposes a 13 SEER standard based on anti-competitive implications for the industry.

It is also important for my colleagues to understand exactly what the amendment offered by Senator HARKIN and my colleague, Senator COCHRAN, would do. This amendment won't impose a lower standard for air-conditioners and heat pumps. It simply eliminates the 13 SEER mandate of the bill and requires the Department of Energy to determine an appropriate standard and set that standard within 60 days.

In conclusion, I urge my colleagues to oppose the 13 SEER standard in the bill that is not economically justified as the underlying, present law requires. I urge my colleagues to support this amendment, which will allow the Department of Energy to complete the rulemaking process within a standard that is not only good for saving energy and technologically feasible, but also good for the consumer.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I thank Senator GRASSLEY for his strong support not only on this amendment but in previous years, and for bringing some reason to how we address this SEER standard. He is right on target.

Again, we have to keep in mind the differences about which we are talking. If we look the first 15 years after the rule is implemented, from 2006 to 2020, the difference between the 13 and 12 is four-hundredths of a percent of the cumulative U.S. generating capacity—four-hundredths of a percent. I am all for saving energy—we all are—but what is this going to do to our elderly and low-income people in between time and the loss of jobs?

I am not saying we should never go to a 13. I am not saying that. What I am saying is that the appliance standards should be staged, looking at the economic effects and the technology over time. Again, look at the impact going from a 10 to a 13 would have on jobs, on people of low income, on our renters, and our elderly. A 13 standard would also have an impact on competition in small business. It would eliminate 84 percent of all new central air-conditioning models on the market today and 86 percent of all new heat pumps. Nearly half of the original equipment manufacturers selling air-conditioners in the United States today do not offer products at 13. A lot of those, mostly small manufacturers may be forced out of business.

There is a large company, one of the biggest. They are for the 13? They are for the 13. Interesting. I can see a scenario whereby a lot of the smaller manufacturers—they are doing a good job. I can see a scenario where they simply would be forced out of the business, and I can see this great big company coming in and buying them up. Then what happens to the competition? It is a lot less.

It is interesting to note that one, the largest company in this business, is for the 13 standard. Again, we ought to ask the question about what we are trying to do? They are trying to acquire market share from the small companies who will have difficulty retrofitting their factories to make 13 SEER machines.

To the extent we go to 13 and we force the change, I do not know what the elderly are going to do and what low-income people are going to do. They cannot recoup their investment, and it will be an additional \$700 for an air-conditioner.

On that issue, I just mentioned the competition. That may be why the Department of Justice in the last administration had serious concerns about a SEER 13 standard. And why this administration opposed this on the basis of competition. That is why the Small Business Administration opposes it. Again, they are concerned about smaller manufacturers being able to remain in this line of business.

One last thing I have not talked about—I should have my chart. I do not this evening. Maybe I will bring it in the morning. The size of the air-conditioners with a 13 standard is substantially larger than a 12. Not one-twelfth bigger, but maybe a third again as big. They are huge.

That would create enormous retrofitting problems for many manufactured homes, especially manufactured homes because these homes have a precisely set space for central air-conditioners. They could not likely be replaced without considerable retrofitting. That is why the American Housing Institute supports a 12 standard where that would fit in the same place where a 10 fits right now. They expressed their concern about what would happen to families on limited incomes.

The National Association of Homebuilders opposes the 13 standard, not because they are opposed to 13, but for each \$1,000 added to the cost of a new home takes out 400,000 buyers. We do want to build more homes. We do want more people to own their own homes, a key part of the American dream.

I am all in favor of efficient appliances. Reducing our energy consumption is important to reducing air pollution, global warming, reducing price spikes, but it has to be reasonable, and it has to be something where we do not end up worse than we are.

I suppose sometime down the pike if we go to a 13 standard—I mentioned over the first 15 years the standard will be in effect, the difference is four-hundredths of a percent in cumulative energy use in the United States—four-hundredths of a percent—but at what cost will that come to the elderly, people of low income, working families, jobs, and competition in the industry?

I will have more to say about this tomorrow. I hope people who have not thought much about this and say, gee, 13 is higher than 12, it must be better, more energy efficient, will stop to think about whether or not we are going to get the energy savings we want if we go to the 13 standard and people cannot afford it so they stick with the older ones that use more energy, that they will pollute more.

If we adopt the 12, it can be used, it is reasonable in cost, it fits into the spaces, and we can move to it in a reasonable fashion. Certainly 12 is better than 10, and 10 is what the standard is right now.

I hope when we get to this vote tomorrow people will take a look at the end result and not just be swayed by the fact that 13 looks better, looks more energy efficient than a 12. The rule says we have to look at its economic effect on subgroups. If this body is in the position of mandating—this amendment says we do not mandate it, we leave it up to the regulatory body, but the rule under which they have to operate says they have to look at the impact, not just on the general population but on certain subgroups—low income, working families, the elderly.

Our amendment will allow the Department of Energy to implement a 12 standard, which I believe is much more reasonable at this time than going to a 13 right away.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, I ask unanimous consent that the pending amendment be set aside.

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

AMENDMENT NO. 3359 TO AMENDMENT NO. 2917

Mr. REID. Madam President, I call up amendment No. 3359 offered by Senator BINGAMAN.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mr. BINGAMAN, proposes an amendment numbered 3359 to amendment No. 2917.

Mr. REID. 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:

(Purchase: To modify the credit for new energy efficient homes by treating a manufactured home which meets the energy star standard as a 30 percent home)

In Division H, on page 74, line 16, strike “Code” and insert “Code, or a qualifying new home which is a manufactured home which meets the applicable standards of the Energy Star program managed jointly by the Environmental Protection Agency and the Department of Energy”.

Mr. REID. Madam President, I ask that the pending amendment be set aside.

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

AMENDMENT NO. 3139 TO AMENDMENT NO. 2917

Mr. REID. Madam President, I call up amendment No. 3139.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mrs. BOXER, for herself and Mrs. FEINSTEIN, proposes an amendment numbered 3139 to amendment No. 2917.

Mr. REID. 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:

(Purpose: To provide for equal liability treatment of vehicle fuels and fuel additives)

Beginning on page 204, strike line 15 and all that follows through page 205, line 8, and insert the following:

“Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective of human health, welfare and the environment than any other motor vehicle fuel or fuel additive.”.

AMENDMENT NO. 3311 TO AMENDMENT NO. 3139

Mr. REID. Madam President, I call up a second-degree amendment, amendment No. 3311.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID], for Mrs. BOXER, for herself and Mrs. FEINSTEIN, proposes an amendment numbered 3311 to amendment No. 3139.

Mr. REID. 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:

(Purpose: To provide for equal liability treatment of vehicle fuels and fuel additives)

In lieu of the matter proposed to be inserted, insert the following:

“(1) IN GENERAL.—Notwithstanding any other provision of federal or state law, a renewable fuel, as defined by this Act, used or intended to be used as a motor vehicle fuel, or any motor vehicle fuel containing such renewable fuel, shall be subject to liability standards no less protective of human health, welfare and the environment than any other motor vehicle fuel or fuel additive.

“(2) EFFECTIVE DATE.—this subsection shall be effective one day after the enactment of this Act.”

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

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

#### HYBRID VEHICLE TAX CREDIT

Mr. SESSIONS. Madam President, in the Finance Committee energy tax amendment that has now been included in the energy bill, the consumer tax credit available for the purchase of a new qualified light duty hybrid motor vehicle generally ranges from \$250 to \$3,500 depending upon the weight of the vehicle and the “maximum available power” from the vehicle’s battery system. I note that in the proposed Sec. 30B(c)(2)(D)(iii)(I) the term “maximum available power” for a passenger automobile or light truck hybrid is defined as follows:

For purposes of subparagraph (A)(i), the term “maximum available power” means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

Because this language originated in his bill, S. 760, I would like to engage the senior senator from Utah in a brief colloquy to make sure we have a common understanding of this definition.

I note that the definition allows the use of either a “standard 10 second pulse power test” or an equivalent test. Is it the understanding of the Senator from Utah that this language authorizes a manufacturer to demonstrate the maximum available power of its rechargeable energy storage system by using either the standard 10 second pulse power test or some other test that will demonstrate the extent to

which the rechargeable energy storage system is contributing to the overall power of the hybrid system?

Mr. HATCH. Yes, that is my understanding. Our purpose in authorizing an “equivalent test” is not to push manufacturers to one particular hybrid design by virtue of our prescribing the standard 10 second pulse power test. Rather, we want to provide flexibility in the methodology of measuring the hybrid performance of the vehicle and providing increased incentives for those vehicles that utilize the optimum combination of power from the two power sources.

Mr. SESSIONS. Is it the understanding of the Senator from Utah that the equivalent test described in this definition could include a test procedure, at the request of the manufacturer, that measures power from the rechargeable energy storage system using real world driving conditions?

Mr. HATCH. Yes, that is correct.

Mr. SESSIONS. Is it also the understanding of the Senator from Utah that there are Federal Test Program (FTP) driving cycles already formulated by EPA that could provide comparable results to the 10 second pulse power test?

Mr. HATCH. It is my understanding that such test procedures do exist and could provide an alternative way to measure maximum available power.

Mr. SESSIONS. I thank the Senator. That conforms to my understanding as well.

#### TITLE X

Mr. HAGEL. Mr. President, as I stated in a previous colloquy with my colleagues, we have reached broad agreement on many of the provisions within Title X related to the development and coordination of a national climate change policy.

There remain considerable uncertainties about the causes of climate change, which has been noted by the National Academy of Sciences. Our focus should be on addressing these uncertainties, not taking drastic unwarranted action that could cause severe economic disruption.

The revised provisions of Title X and other provisions will help reduce these uncertainties and take practical, market oriented steps to vastly improve our energy efficient technologies.

The agreement appropriately calls for the creation of a national strategy to address the challenge of climate change. It also creates an interagency task force to better coordinate climate change policies with the Executive Branch. This is needed. Climate change policy crisscrosses the jurisdiction of multiple government agencies. Far too often questions posed to the previous administration were answered with the response, “You’ll have to ask someone else. We don’t handle that area.” There needs to be accountability for climate change within the Executive Branch.

President Bush has already taken the initiative, and put forth a forward looking strategy to take action on climate change. His proposal includes: a

reasonable goal for greenhouse gas emission reductions; a flexible way to achieve this goal, without harming economic growth; a voluntary emissions registry for industry and individuals to track their progress on greenhouse gas emissions; increased scientific research; increased investment in new energy efficient technologies; and efforts to work with other nations, particularly developing nations, on mutual efforts to address climate change.

In crafting this strategy, President Bush created an interagency task force very similar to that proposed in this legislation. The Cabinet Secretaries and others within the Executive Office of the President involved in this process spent countless hours reviewing the underlying climate issues and ranges of policy options. The chairman of the Council on Environmental Quality (CEQ), James Connaughton, played the lead role in developing the strategy. This level of engagement and policy development on climate change is unprecedented. It can, and should, serve as a model for carrying out provisions of this legislation as ultimately approved by the House and Senate.

As I stated in the colloquy included with the manager’s amendment on Title X, I have remaining concerns regarding the creation of a National Office of Climate Change Policy with the Executive Office of the President (EOP). I do not disagree with the need for dedicated management within the EOP with regard to the creation and implementation of climate change policy. I understand the concerns for congressional oversight and the desire for those focused on climate change to be in positions subject to Senate confirmation and available for congressional testimony. However, I fail to see the need to create new bureaucracy within the EOP for this purpose.

Chairman Connaughton effectively performed this role in the current administration’s policy review and development. I see no reason the chairman of the Council on Environmental Policy could not continue to perform this function. Moreover, statutory authority already exists for a Senate-confirmed deputy director for the Council on Environmental Policy. This position has never been filled, and could be designated to focus solely on the area of climate change. There are several options that could be pursued in the conference committee to address the legitimate functions called for within Title X without creating a new office within the EOP.

Title X also includes a Sense of the Congress resolution regarding participation by the United States in international efforts on climate change. This language is based on a resolution approved by the Senate Foreign Relations Committee in August of 2001, but has been substantially revised. It now reflects the uncertainties recognized by the scientific community that are inherent with any predictions of future

climate change. It acknowledges the commitment by the international community that actions taken should be appropriate to the economic development of each nation. The resolution also reflects the principals unanimously approved by the U.S. Senate through S. Res. 98 in July 1997—that U.S. participation in any international climate change treaty should be predicated on participation of all nations, including developing countries, and that such action must not harm the U.S. economy.

The resolution appropriately calls on the United States to continue to demonstrate international leadership on climate change within our commitment to the United Nations Framework Convention on Climate Change. It does not call on the U.S. to re-engage in efforts to ratify the flawed Kyoto Protocol. This resolution is forward looking. At the appropriate time the United States should provide the international community with a proposal that would address the global challenge and global commitment of climate change. It is only responsible that we balance the economic interests of America with our environmental and energy interests. This resolution insists upon this balance.

I appreciate the work of my colleagues on both sides of the aisle in reaching the bipartisan agreement made in Title X. It is a significant accomplishment. I look forward to working with them to address the remaining issues in conference.

Mr. HARKIN. Mr. President, I strongly support the Renewable Fuels Standards (RFS) contained in the Senate energy bill, S. 517. This historic agreement will be a milestone in the efforts to develop renewable fuels.

This agreement will dramatically increase the Nation's production of domestic, renewable fuels, including ethanol and biodiesel, from U.S. agricultural commodities and residues over the next decade. The renewable fuels standard will create a steady market for American agriculture, and provide significant economic benefits throughout rural America. Importantly, it will also increase U.S. fuel supplies, reduce our dependence on foreign oil, and protect the environment.

Some have questioned whether the renewable fuels standard as contained in the bill is too aggressive, and whether there is enough ethanol to meet the requirement. I am here to tell you there is more than enough ethanol production capacity today to meet the needs of the program when it goes into effect in 2004!

In fact, the U.S. ethanol industry has undergone significant growth in recent years in anticipation of the phase out of MTBE, particularly in California. In the past 2 years alone, since California Governor Davis' original Executive Order phasing out MTBE use in the State by December 31, 2002, 16 new plants have opened and several expansions to existing plans have been com-

pleted. As a result, the ethanol industry has the capacity to produce 2.3 billion gallons of ethanol per year right now, the amount needed to satisfy the renewable fuels standard in 2004. The 13 plants under construction will bring total capacity to 2.7 billion gallons by the end of this year, more than the volume of ethanol required under the agreement in 2005.

A survey by the California Energy Commission projects U.S. ethanol production capacity to double to more than 4 billion gallons by the end of 2003. Clearly, with the RFS beginning in 2004 at 2.3 billion gallons per year, there will be more than adequate supplies of ethanol to meet the requirement while providing additional volume to fuel supplies.

Importantly, the driving force behind the growth in ethanol production over the past 5 years has been farmers seeking to capitalize on the value-added benefits of ethanol production directly through ownership in ethanol plants. Today, farmer-owned ethanol plants make up more than a third of all U.S. ethanol production, with the capacity to produce a billion gallons of ethanol. Fourteen of the 16 ethanol plants opened in the past two years are owned by farmers, and 10 of the 13 under construction today are farmer-owned.

In Iowa today, we have nine operating ethanol plants. In addition, five new plants are under construction, all of which are farmer-owned. By the end of this year, half of all U.S. ethanol production facilities will be farmer-owned.

Ethanol production facilities across America serve as local economic engines, providing high-paying jobs, capital investment opportunities, increased local tax revenue and value-added markets for area farmers. With commodity prices very low, investment in value-added ethanol processing by America's farmers provides a critical opportunity for increased farm income and rural economic development. In these communities, largely untouched by the economic expansion of the last decade, the increased prices for corn in the radius around a plant stimulates very real economic development, and the value-added benefits of ethanol mean a \$2 bushel of corn is converted into \$5 of fuel and feed co-products.

Ethanol is the third largest use of corn. Last year, 700 million bushels of corn were used to produce ethanol and feed co-products, boosting corn prices and rural income. According to a study by AUS Consultants, the RFS will increase demand for grain by an average of 1.4 million bushels annually, increasing net farm income by nearly \$6 billion per year. It will also create \$5.3 billion in new investment, much of it in rural America.

The Renewable Fuels Standard will create demand for 5 billion gallons of ethanol and biodiesel by 2012. Importantly, these fuels can be produced throughout the United States, from grain and agricultural biomass resi-

dues. Iowa alone produces nearly 500 million gallons of ethanol a year. The Nation will produce nearly 2.2 billion gallons of ethanol in 2002.

Even as Iowa and other Midwest States stand ready to supply ethanol to California, the State can also produce much of the ethanol it will consume. For example, the California Energy Commission recently concluded the State of California has the potential to produce 100 million gallons of ethanol per year from cellulose such as rice straw and forestry wastes by 2005 and 400 million gallons per year by 2010. This later number represents well over half of the estimated supply that would be needed to satisfy the state's oxygenate requirement. Opportunities also exist for grain-based ethanol production in California.

A California based ethanol industry would provide significant economic and environmental benefits to the State. Ethanol production would provide rice growers with an alternative to burning or other costly forms of rice straw disposal. It could also help reduce the frequency and intensity of forest fires with the removal of forest debris for ethanol production. It is estimated in-state ethanol production could provide the State with more than \$1 billion in economic benefits. These same benefits can be achieved in the southeast, northeast and northwest, establishing new biofuels industries across the Nation.

As we look to a future of increased production and use of domestic, renewable biofuels, we should also consider their role in future transportation applications such as fuel cells.

Extracting hydrogen from renewable sources such as ethanol will benefit the environment, rural America and energy security. Demonstrations with ethanol have shown that reforming ethanol into hydrogen provides higher efficiencies, fewer emissions, and better performance than other fuel sources, including gasoline. And ethanol used to power a fuel cell vehicle would count toward the Renewable Fuels Standard.

Clearly, the Renewable Fuels Standard represents a momentous opportunity to benefit rural America, improve the environment and enhance our Nation's energy security. The 5 billion gallons of renewable fuels that would be required in 2012 would replace gasoline we currently get from foreign oil. American farmers can be producers as well as consumers of energy. They are willing and able to supply fuel as well as our food and fiber. Farmers are on the front lines in the battle for energy independence, and their efforts will make a bold statement about our Nation's commitment to reduce oil imports and build domestic energy supplies that may one day make us truly energy independent.

Farmers are ready, willing and able to lead the way toward energy independence. The time is right for a Renewable Fuels Standard that takes advantage of farmer's ability to produce



renewable, domestic fuels to increase fuel supplies, reduce our dependence on foreign oil, and increase the U.S.' ability to control its own energy security and economic future.

#### MORNING BUSINESS

Mr. REID. I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak not in excess of 5 minutes.

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

#### SECURE OUR COASTLINE

Mr. CLELAND. Madam President, I am proud to be a part of this body which wisely acted to improve border security last night. As we approach the end of April, I am here today to urge my House colleagues to act on the issue of port security, which the Senate passed unanimously last year. Our Nation's coastline is over 95,000 miles—by far our most prolific border. Yet, despite the tremendous national mobilization to increase security since September 11, protecting our seaports has been a somewhat elusive goal. Although the Senate acted last December to tighten security at our Nation's ports, the legislation is still stalled in the House of Representatives.

In my home state of Georgia, ports play an important role in international commerce and military support. The Port of Brunswick, GA, with three marine terminals, is growing rapidly. Brunswick is the home of a world-class auto and machinery import-export processing facility as well as an expanding forest products and agri-bulk operation. With the completion of the new Sidney Lanier Bridge this year and the on-going deepening of the Brunswick Harbor channel, the future of this operation is even brighter.

At the Port of Savannah, which brings in the eighth largest cargo volume in the Nation, ships carry iron, steel, lumber, machinery, and paper products.

It was the fastest growing container shipping operation in the Nation during calendar year 2001, and the only port to experience double-digit growth for the year. The total volume of business at the port has grown steadily over the last decade, reflecting its important contribution as a powerful economic benefit for importers, exporters and consumers located throughout the entire southeast region of the United States. The Port of Savannah is also an important strategic ally to our Nation's military, serving as a first responder for deployment of military equipment, supplies and personnel to hot spots around the world.

To utilize this important port, ships must traverse the Savannah River and pass between historic River Street, with its shops and restaurants, and the new Convention Center and hotel on Hutchinson Island, which can accom-

modate over 10,000 guests and employees. On any given day, there are thousands of people walking the streets of this beautiful, old town. If someone with sinister motives were able to gain access to this channel, they could easily wreak havoc on a large number of people in a short period of time. Imagine this situation repeated at ports throughout the country, many of which are located around large population centers. A New York Times article from November 2001 sums up the problem with a description of a port in Portland, Maine:

The unscrutinized containers, the bridge, the oil tanks, the dormant but still radioactive nuclear power plant 20 miles north of the harbor—all form a volatile mix in a time of terrorism.

One must not forget that 68 nuclear power plants are located along navigable waters, and in my State, we also face maritime security risks as a result of the opening of a liquefied natural gas terminal LNG. One LNG carrier can carry enough gas to heat the homes of over 30,000 families.

Our ports and waterways are vulnerable. The Interagency Commission on Crime and Security in U.S. Seaports reports:

The state of security in U.S. seaports generally ranges from poor to fair, and in a few cases, good.

This same report surveyed 12 large ports and found that only 3 controlled port access from the land, and that 9 of these ports did not control access via the water. To realize the ramifications, we only need to remember the U.S.S. *Cole*.

While Congress did appropriate over \$93 million in funds for port security upgrades last year, we can and must do more. We have an opportunity, and a duty, to act to help prevent a terrorist attack on our ports before it happens. In December, the Senate unanimously passed S. 1214, the Port and Maritime Security Act of 2001. I am a cosponsor of this important legislation because I understand the crippling affect a terrorist attack at our ports would have on the Nation's commerce as well as our people.

Ninety-five percent of foreign trade travels on water. After September 11, the Nation's air travel system was halted for days, crippling commercial airlines, the postal service, and the transportation of goods and people worldwide.

Millions of dollars were lost in unrealized revenue as a result of only 4 days. The airports however, had a security system in place. They only needed adjusting in order to reopen our skies.

However, what security system is in place at our ports? If something happened at my home State's port of Savannah or Brunswick, how would this Nation respond? I believe Americans would rightly expect seaborne shipments to stop. This means that the employment of over 1 million people would be in jeopardy; over \$74 billion in annual gross domestic product would

halt; personal income contributions of over \$52 billion would disappear, and local and Federal revenue exceeding \$20 billion would dry up. The ripple effects throughout our Nation's economy and the world's—because sea shipment is the ultimate example of globalization—would be devastating. Unlike the airports, restoring normal sea shipments would take longer than 4 days because there is no system in place to upgrade but rather a patchwork of security initiatives that may not allow for any quick or uniform upgrades. In view of all of these disturbing facts, I urge my House colleagues to take up and pass S. 1214, which contains important provisions to make our seaports more secure.

At a minimum, S. 1214 requires security assessments and authorizes funding for these assessments at our ports, which some port authorities have done already. The Georgia Ports Authority—GPA—for example, has already conducted this assessment with its own funds.

This report recommends a major increase in the number of surveillance cameras, lighting, fencing and other perimeter security measures at Savannah and Brunswick. It also recommends the addition of some 40 new law enforcement and other security personnel to enhance the 60 person police force now deployed at the Port of Savannah and to also provide additional coverage in Brunswick. In addition, there is a recommendation for a major expansion of the credentialing system for personnel and vehicles that have access to the port facilities.

We do not yet have the price tag for all of these improvements, but we know that it will be costly. I am certain that GPA will be applying for Federal funding to assist in these costs, and I will strongly support their application as we work through the budget process. The \$93 million grant program Congress established was only a first step toward strengthening our seaports, and S. 1214 would help us get closer to that goal.

This legislation also requires background checks for personnel employed in security Sensitive positions.

Additionally, S. 1214 authorizes funding for screening and detection equipment, and it requires crew and cargo manifests to be reported to the U.S. Customs Service before the ship arrives at a domestic port, not after.

In order to help coordinate the many agencies and law enforcement personnel at our Nation's ports, the bill encourages, where possible, locating these personnel at the same facility.

Additionally, after working with the bill's authors, I drafted a provision included in the Senate passed bill which establishes a pilot program operated by the U.S. Customs Service to ensure the integrity and security of cargo entering the United States. Specifically, this provision calls for Customs to explore the types of technology available that can be used to ensure a ship's

goods have not been tampered with. Such technology could enable "preapproved" cargo to enter the United States on an expedited basis.

This program would also require communication and coordination with foreign ports and foreign Customs officials and shippers, at the point the goods are loaded onto ships bound for our land, and would likely result in prescreening of American bound goods at these foreign ports.

This "extension" of our borders to enable screening of containers at foreign ports translates into a greater chance of eliminating threats at home and ensuring that properly handled and safe cargoes can be moved through the system so that we can focus on potentially more dangerous cargoes.

Commander Stephen Flynn of the U.S. Coast Guard and a Senior Fellow at the Council on Foreign Relations believes that homeland security can be supported through "establishing private-sector cooperation, focusing on point-of-origin security measures, and embracing the use of new technologies."

I wholeheartedly agree with Commander Flynn, and I believe my amendment accomplishes these goals.

I am pleased with the Commissioner of the U.S. Customs Service, Robert Bonner. He is in support of my amendment. In a speech given on January 17, 2002, Commissioner Bonner announced the Service's Container Security Initiative.

With over half of our Nation's containers originating at only 10 international ports, targeting these ports for an "international security standard [for] sea containers," as Commissioner Bonner put it, would result in prescreening of most of the goods entering the country. The Commissioner continued by stating that pre-screening of containers and the use of technology are vital parts of this program:

A first step in the [container security initiative] begins by examining and comparing our targeting methods with those of our international partners. And we should consider dispatching teams of targeting experts to each other's major seaports to benchmark targeting and to make sure that all high risk containers are inspected by the same technology that can detect anomalies requiring physical examination inside the container. . . . Having your containers checked and pre-approved for security against the terrorist threat at a mega-port participating in this program should and likely will carry tangible benefits.

I look forward to working with Commissioner Bonner and the Customs Service on this initiative, as well as implementation of the pilot program called for in my amendment, and I have written to the Commissioner conveying my strong interest in the CSI program and pledging my full cooperation in implementing it. Additionally, I was pleased to read in the April 16 Washington Post that several U.S. businesses have signed on to participate in such a program to better ensure the integrity and safety of goods entering the United States.

I look forward to reviewing the successes and recommendations resulting

from this important port security initiative.

One of the Customs Service's vital partners in the current port security regime is the U.S. Coast Guard. They were among some of the first respondents to the homeland security call on and after September 11.

I applaud the President for including the Coast Guard funding level increases in his budget, which will better enable the Coast Guard to carry out its multifaceted security initiatives—from monitoring our ports to search and rescue to drug interdiction programs.

In a Washington Post column from Sunday, March 3, about the potential development of weapons of mass destruction by Al Qaeda, the author writes:

In "tabletop exercises" conducted as high as Cabinet level, President Bush's national security team has highlighted difficult choices the chief executive would face if the new sensors picked up a radiation signature on a boat steaming up the Potomac River . . .

Congress must send the President a strong port security bill before it is too late. I urge the House to promptly pass S. 1214.

#### TRIBUTE TO BOB KILLEEN

Mr. DAYTON. Madam President, I rise today to pay tribute to Bob Killeen, the former Subregional Director for Minnesota of United Auto Workers of Region 10. Bob has been a good friend of mine for the last 25 years. And even though his doctors say that he is in a tough battle, knowing Bob, and knowing his courage and his heart, I would not be surprised to see him bouncing back tomorrow.

I do want to take this opportunity on the Senate floor to pay tribute to him for the leadership he has given to the United Auto Workers in Minnesota over the past decades, to thank him for his enlightened leadership on behalf of working men and women in Minnesota, and to recognize him as a leader and a teacher for those who have followed in his footsteps, such as myself. Senator WELLSTONE, I know, joins with me in these remarks.

Bob is courageous in his convictions. He is always true to those convictions. But he has proceeded as a gentleman in the best sense of that word. He is respected by his friends and his supporters, and even by those who may have sat on the other side of the bargaining table. Bob has treated everybody with the same kind of respect and regard. That is why so many people love him, as I do, and care for him as a human being, and respect his convictions and his principles.

I say to Bob and to the members of the Killeen family how indebted all of us in Minnesota are to all of you for lending your spouse, and your father, to us during these years. I know it took many hours and nights away from his family for Bob to do the work that he was committed to doing. I know he would not have wanted it any other way, and I know his family would not have wanted it any other way as well.

To Bob, I wish you Godspeed. I thank you from the bottom of my heart for the gifts of your wisdom and your principles that you have bequeathed to me. I say to you: You have done a remarkably wonderful job for Minnesota, Bob. Thank you very much.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Madam President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred March 25, 1993 in New Haven, CT. Two Yale students were harassed and assaulted because they are gay. The assailant, Mark Torwich, 27, of Shelton, was charged with a hate crime in connection with the incident.

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 of 2001 is now 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.

#### ADDITIONAL STATEMENTS

##### WOMEN'S AUTOIMMUNE DISEASES RESEARCH AND PREVENTION ACT

• Mrs. BOXER. Madam President, yesterday I introduced the Women's Autoimmune Diseases Research and Prevention Act. This legislation would expand, intensify and better coordinate activities between the Office on Women's Health, the National Institutes of Health and other national research institutes with respect to autoimmune diseases in women.

The term "autoimmune disease" refers to a varied group of more than 80 serious, chronic illnesses that involve the human organ system; the nervous, gastrointestinal and endocrine systems; the skin and other connective tissues; the eyes; and blood and blood vessels. These are illnesses where the body's protective mechanisms go haywire, and where the body's immune system attacks the very organs it was designed to protect.

Overall, some 50 million Americans are afflicted with some form of autoimmune disease. But for reasons we do not understand, the vast majority of those affected, approximately 75 percent, are women, and most are stricken during the working and childbearing years. Taken together, autoimmune diseases represent the fourth largest cause of disability among women in the United States.

These diseases, which include lupus, rheumatoid arthritis, scleroderma, multiple sclerosis, Guillain-Barré syndrome, fibromyalgia, Hashimoto's thyroiditis, Graves' disease, Epstein-Barr virus and chronic active hepatitis, are heartbreaking and debilitating. In virtually all of these diseases the female-to-male ratios are dramatically skewed toward women, in some cases by ratios as high as 50 to 1.

Autoimmune diseases remain among the most poorly understood and poorly recognized of any category of illnesses, and although science suggests they may have a genetic component, they can cluster in families as different illnesses. For example, a mother may have lupus; her daughter, diabetes; and her grandmother, rheumatoid arthritis.

To help women live longer, healthier lives, more research is needed to shed light on genetic as well as hormonal and environmental risk factors that contribute to the causes of autoimmune diseases, as well as providing early diagnosis and treatment.

The legislation I have introduced addresses all of these issues. It directs the Office on Women's Health to conduct or support research to expand the understanding of the causes of, and develop methods for preventing, autoimmune diseases in women, including African American women and other women who are members of racial or ethnic minority groups. It calls for more epidemiological studies to address the frequency and natural history of these diseases and the differences among women and men.

The bill also promotes the development of safe, efficient and cost-effective diagnostic approaches to evaluating women with suspected autoimmune diseases, as well as clinical research on new treatments and rehabilitation for women. Finally, it provides for expanded information and education programs for patients and health care providers on genetic, hormonal, and environmental risk factors associated with autoimmune diseases in women, as well as the prevention and control of such risk factors.

Autoimmune diseases run the gamut from mild to disabling to life threatening. Nearly all affect women at far greater rates than men. The question before the scientific community is "why?" We have come a long way in the diagnosis and treatment of autoimmune disease. But more work is desperately needed, more information must be made available, and more resources must be devoted to this effort.

The Women's Autoimmune Diseases Research and Prevention Act can contribute to the growing body of knowledge about these awful illnesses. But it is not enough to simply understand these diseases well. We must ensure that the millions of American women stricken with autoimmune disease also live long, and well.●

#### CONGRATULATIONS TO ROXANNE GRIDER

● Mr. BUNNING. Madam President, today I rise to honor Roxanne Grider of Bullitt Central High School in Shepherdsville, KY.

I am extremely proud to announce that Ms. Grider is one of only 10 special education teachers in the Nation to receive the 2002 Shaklee Award for outstanding teachers of students with disabilities. She also is the first Kentuckian to receive this distinction since the award's inception 5 years ago. This award is given by the Glenda B. and Forrest C. Shaklee Institute for Improving Special Education and includes a \$1000 prize and a trip to Wichita, KS for a conference featuring previous award winners and representatives of the Shaklee Institute.

After receiving a bachelor's degree in history and secondary education from Centre College in Danville, KY, Roxanne looked for a job as a high school history teacher. Fortunately for the special education community, she had no luck finding a teaching job in the field of history. Due to the rising demand for special education teachers, Roxanne was immediately offered a position in the Hopkins County School system. After going through an emergency certification process, Roxanne headed back to the classroom to focus her studies on helping those less fortunate individuals. She eventually received her master's degree, special education certificate, and Rank 1, which means she took 30 hours beyond her master's degree, from the University of Louisville. Ten years has now passed since she took that first job, and I believe Roxanne has taken full advantage of what appeared to be a professional mishap.

In her teaching career, Roxanne has set herself apart due to her innovative mind and enduring spirit. In the classroom, she empowers her students with real-life responsibilities such as planning and cooking meals, cleaning, and shopping. In the fall, her class has its own business, the B.C. Cookie and Candle Co., which sells glass jars filled with layers of cookie ingredients and topped with fabric covered lid. She wants all of her students to believe in themselves and what they can accomplish in life. It would be very easy and probably convenient for her to treat these children as if they were helpless, but she refuses to look at them in such a manner. For Roxanne, these children have the opportunity to live a proactive life full of adventure and action. Ultimately, she wants all of her students to have a job when they finish. Although it may not have been the field she wanted to enter, special education turned out to be the field Roxanne was destined to enter. She has touched many lives and truly made a difference.

I once again congratulate Roxanne for being honored with such a prestigious award. I am proud to have such an amazing and talented woman looking after Kentucky's special children.●

#### HONORING THOMAS V. DOOLEY OF THE NEW JERSEY STATE AFL-CIO

● Mr. TORRICELLI. Madam President, I rise today to recognize Thomas V. Dooley for his years of devotion and commitment to the Middlesex County, NJ AFL-CIO Labor Council. Mr. Dooley is retiring from his position as president after many years of outstanding service.

A devoted father and husband, Mr. Dooley has played an important and prominent role in Middlesex County labor. Labor has a long history in this country for speaking up for the concerns of workers who would otherwise not be heard. But through the leadership and guidance of people such as Thomas Dooley their voices are being heard and action is being taken. As the International Representative for the Paper, Allied Industrial, Chemical and Energy Worker International Union of New Jersey, Thomas has been an effective and powerful voice for his members on a variety of critical issues.

Thomas Dooley has also been very involved in the community. He is currently vice president of the David B. Crabel Scholarship Foundation, the Assistant Treasurer for the Middlesex County Board of Social Services and is a member of the Board of Directors for New Brunswick Tomorrow. He has excelled in his career, in his community and has dedicated his entire life towards helping others.

So I join with Thomas Dooley's brothers and sisters in the labor movement in recognizing his service to the community, his countless acts of compassion, and his commitment to working men and women. May his spirit of service and community be a model for all of us to admire and emulate.●

#### IDAHO TEACHER OF THE YEAR

● Mr. CRAIG. Madam President, today President Bush is recognizing the national Teacher of the Year, and I want to join him in recognizing teachers across America for the vital work they do. I come from a family of educators, so I have seen firsthand the impact teachers have on children. They do this because they care about each and every child they teach. These public servants deserve our gratitude and thanks.

While I believe this can be said of all teachers, I would like to recognize one particular teacher today who embodies this sentiment. She is Jennifer Williams, of Nampa, ID, and she was chosen by my State as Teacher of the Year.

One look at her career shows why she was chosen as the Teacher of the Year. She has dedicated 29 years of her life to teaching, and those 29 years have been full of innovation and a real love for education. Not only has she been busy in the classroom, she has also found time for activities which enrich the community and help kids outside of school. For example, she has co-chaired Boise's Art for Kids project and created

a youth art program through which she and her students go to rural communities to help children with art lessons.

While these activities are important, her classroom work is what truly sets her apart. She has received many awards for this work in the past, including being named Mountain Home School District's teacher of the year in 1991, as well as receiving the 1992 USWest Outstanding Teacher Award, the 2000 Governor's Award in the Arts, the 2001 Idaho Art Teacher of the Year, and the 2001 Unsung Heroes Award.

Her students adore her and her peers respect her. This what every teacher strives for, and Nancy has earned this regard. As Marilyn Howard, the Idaho State Superintendent of Education, said, "Mrs. Williams stands out as one of those individuals who is a teacher in everything she does, not just in the classroom working with students, but also in her workplace and in her community. Her passion and dedication show in her accomplishments."

As you can see, Jennifer Williams is truly a treasure for her school, for Idaho, and indeed for the Nation in general. Teachers like Jennifer make education a rewarding experience for students and parents alike. I am proud that the State of Idaho chose her as its Teacher of the Year. She is a great example for the rest of the State and the Nation, and I hope this award gives her a platform so she can help other teachers to excel as she has.●

#### UNITED WAY OF CHITTENDEN COUNTY CELEBRATES ITS SIXTIETH ANNIVERSARY

● Mr. LEAHY. Madam President, I rise today to recognize a group of Vermonters who have long served our state. It is with much pride and admiration that I congratulate the United Way of Chittenden County for 60 years of service in the greater Burlington area.

For the past 60 years, the United Way of Chittenden County has been providing relief and assistance to its community. In October of 1942, founders Henry Way, C.P. Hasbrook, and I. Munn Boardman started the Burlington Community Chest. The chest's first campaign raised over \$100,000 to help organizations like the Burlington Boys Club, the YMCA and the Salvation Army. Over the years, the chest evolved into the United Way of Chittenden County, one of Chittenden County's foremost benefactors, a community-based, problem-solving organization. This past year, the United Way of Chittenden County raised a record \$3.75 million to help its neighbors, both local and afar. This is a remarkable sum, and one that reflects the strong commitment of the United Way to support the welfare and growth of Vermont and her people.

The United Way of Chittenden County has become much more than a fund-raising organization. They now train volunteers and coordinate a vast num-

ber of mentoring opportunities in Chittenden County, working with both national programs, like America Reads and the Retired and Senior Volunteer Program, and local groups, including Vermont's many museums, schools, and conservation societies. The United Way works to make Chittenden County a stronger community, tending to those in need. The many people who work and volunteer for the United Way become community supporters and community leaders. After graduating from law school, I was recruited to do my part and volunteer for the United Way of Chittenden County. It was a meaningful experience and one that has remained in the front of my memory during my 27 years in the U.S. Senate. Just as impressive as the volunteers of the United Way are those who benefit from the United Way's programs. They too become active and contributing members and leaders of their communities.

The organization's actions following the unspeakable events of September 11, 2001, demonstrated the strength and commitment of the United Way of Chittenden County. The United Ways of Vermont contributed \$400,000 to the September 11th Fund, including over \$200,000 from the United Way of Chittenden County. At the same time, the United Way of Chittenden County still managed to raise more funds for Vermont's programs than any previous year. This accomplishment is due in no small part to Campaign Chair Lisa Ventriss, whose devotion ensured that the United Way will continue helping Vermonters, even while it contributes to a national cause of such gravity and importance. This feat is a testament to the generosity and dedication of the United Way of Chittenden County, and of all Vermonters.

I would like to thank Gretchen Morse, the executive director of the United Way of Chittenden County, for her commitment to this organization's success and Vermont's well-being. Her leadership has helped keep the United Way of Chittenden County one of the most cost-effective charities of its kind. Indeed, 85 cents of every dollar collected by the United Way of Chittenden County goes directly back to the community, a number well above the national average. Given this organization's unyielding support, it is no surprise that the United Way State of Caring Index now ranks Vermont as the fifth most caring State in the Union.

Sixty years after its founding, the United Way of Chittenden County remains a model for charitable organizations across the State and across the country. I join the people of Chittenden County, VT, and the entire Nation in thanking the United Way for six decades of community service.●

IN HONOR OF SUSAN S. BENJAMIN UPON BEING SELECTED AS THE 2002 NEW MEXICO TEACHER OF THE YEAR

● Mr. DOMENICI. Madam President, I rise today to honor Susan S. Benjamin of Los Alamos, NM, who is in the Nation's Capitol today to be recognized as the 2002 New Mexico Teacher of the Year. She was one of 57 teachers from across the country who were honored by President Bush in a White House ceremony today for excellence in their profession. I am honored to have the opportunity to make a few remarks.

For the past 32 years, Susan has been making a difference in children's lives. As an elementary school teacher, she has touched the hearts and minds of her students, while generating interest and enthusiasm in learning. Parents, colleagues, and students all reap praises upon her for the excitement she brings to the classroom.

Previously, Susan has been selected as the Los Alamos Public Schools Teacher of the Year. She also received the New Mexico State Award for Excellence in Math Teaching on two separate occasions.

Through her dedicated service, Susan has earned a national reputation as an outstanding teacher. She has participated in nationwide Activities Integrating Math and Science, AIMS, workshops, working with other teachers to demonstrate techniques for math and science education.

Her efforts to increase student awareness of the importance of science and math education complements many of the ideas expressed in the newly authorized No Child Left Behind Act. Our children need the tools necessary to compete in a marketplace dominated by computers and information technologies that demands a high level of proficiency in math and science. Dedicated teachers like Susan will now have more freedom to develop programs related to technology which will ultimately benefit her students.

Susan has helped set the bar for excellence in teacher quality. I am encouraged to know that a teacher of her caliber will now have greater flexibility in providing her students the skills necessary to succeed in tomorrow's marketplace.

I am proud to honor Susan Benjamin, our 2002 New Mexico Teacher of the Year. On behalf of the Senate and New Mexico, I thank this fellow New Mexican for making a difference in our children's lives.●

#### 90TH ANNIVERSARY OF THE GIRL SCOUTS

● Mr. DURBIN. Madam President, for nearly a century, the Girl Scouts have provided girls with enriching, educational, and above-all fun activities that have helped to mold more than 50 million women. This tradition continues today.

This year the Girl Scouts are celebrating their 90th birthday. I commend

their work in shaping society. The Girl Scouts serves to teach our future leaders and creates a refuge where young women can find themselves.

Their mission is to help all girls to grow strong. They stress the development of a woman's whole being, while fostering physical, mental, and spiritual growth. Girl Scouts enables women to reach their full potential. Not only do the Girl Scouts empower women to strive for their goals, but it teaches them responsibility, values, and decision making skills that are the basic foundations for success.

Since its founding, Girl Scouts across the Nation have been serving our communities. During World War I Girl Scouts learned about food preservation, sold war bonds, and collected peach pits to use in gas mask filters. In the 1950s Girl Scouts were working to break racial discrimination. And today Girl Scouts are on the cusp of technological insight, working hard to end hunger, save the planet, and help support those less fortunate than themselves.

The simplest things that Girl Scouts do impacts everyday people. In the wake of September 11, Girl Scouts across the Nation sent thank-you cards to the rescuers, and contributed \$1 a piece to send to the orphans of Afghanistan. Throughout its long history, Girl Scouts has led efforts to tackle important societal issues and has remained proactive in its commitment to inclusiveness. Today we look to the future and our young people for reassurance. We look to the youth and see promise. We know that girls growing up today will need to take on challenges involving health, economics, politics, and social change. Our future leaders will have to be value conscious, globally aware, technologically skilled, and able to act with self-confidence. These are the very skills the Girl Scouts work to encourage in every girl.

Being a Girl Scout is important to the girls. Only a Girl Scout can explain what it truly means to be part of the organization. A Girl Scout from Illinois put it best:

Being a Girl Scout is really fun. You can learn about growing up in a fun, roundabout kinda way. You can go on a six-day canoe trip or go on a two-hour hike. You can help with the Special Olympics or help someone with their homework. You can make a quilt or make a get-well card. Being a Girl Scout is being what you want to be.

Girl Scouts is about being well-rounded and being yourself.●

#### 2002 PENNSYLVANIA BOYS BASKETBALL CHAMPIONS

● Mr. SPECTER. Madam President, I seek recognition today to acknowledge the Golden Lancers, the boys basketball team at Bishop Hannan High School in Scranton, PA.

On March 23, 2002, the Lancers won the PIAA Class AA State Boys Basketball Championship, when, in a very close game, the team defeated Sto-Rox,

70-68, becoming the first Lackawanna County team to win a State title since 1993 and the first team from Scranton to take home the title since Bishop Klonowski in 1976.

Each and every member of the team and its coaching staff should be proud of their accomplishment. Their hard work and commitment have produced many awards throughout this past season and will no doubt mean even more in the years to come.

I want to express my congratulations not only to the team and coaches, but to the entire Bishop Hannan community for representing Pennsylvania in such an outstanding manner.●

#### CONGRATULATIONS TO BEN LEBER OF VERMILLION, SOUTH DAKOTA

● Mr. JOHNSON. Madam President, I rise today to congratulate Ben Leber of the Kansas State University Wildcats. Ben, a Vermillion, South Dakota native, was chosen in the third round of the National Football League's 2002 Draft by the San Diego Chargers, and was the 71st overall draft pick.

At Vermillion High School, Ben excelled both in the classroom and on the football field. Ben played offense, as a running back, and defense, as a linebacker. He was a two-time All-State and All-Conference selection and played in the North-South Dakota All-Star game. He was also named to the Academic All-State team and was an honor roll student every year in high school. In 1997, his senior year, he was a Parade All-American, the only player from South Dakota to receive the honor that year, and received an honorable mention to the All-USA team by USA Today. At VHS, Ben also participated in Track and Basketball.

At KSU, where Ben is a Business-General Management major, he started 35 of his last 37 games as an outside linebacker, continuing the school's excellent linebacker tradition. His junior year, Ben was an All-Big Twelve Conference second-team pick. His senior year, he was an All-American third-team selection by the Associated Press and a Consensus All-Big Twelve Conference first-team choice. Ben was also named to the Butkus and Lombardi Award watch lists and was invited to participate in the prestigious Senior Bowl. Ben was a team representative and defensive captain both his junior and senior years. Over the course of his career at KSU, Ben had 216 tackles, 13.5 sacks, 11 passes broken, three forced fumbles and one fumble recovery.

I also want to take this opportunity to congratulate the Leber family, who have played no small role in Ben's success: his parents Al and Han, his brothers Jason and Aaron, and his sister Gina. I also want to congratulate VHS head football coach Gary Culver, who guided Ben and the Tanagers to the South Dakota 11A State Championship in 1995.

Ben reflects the best of South Dakota, and I know I speak for the entire

state when I congratulate him on being drafted. We are all very proud of him.●

#### TRIBUTE TO RABBI SOLOMON GOLDBERG

● Mr. JEFFORDS. Madam President, I would like to recognize the outstanding contribution that has been made by Rabbi Solomon Goldberg to the Rutland, VT, Jewish Community and to his community at large.

Rabbi Goldberg, retiring after 42 years of service, has been a leader, mentor, and teacher at the Rutland Jewish Center, the regional anchor for Jewish life in central Vermont. His wisdom, compassion, and spiritual leadership have guided hundreds of families in Jewish tradition. He has taken his congregation through the arc of life experiences; from birth to bar and bat mitzvah to marriage and through memorial, his kindness and strength have been a constant source of support for all.

Rabbi Goldberg has also been a fine educator. He has dedicated himself to the work of interfaith teaching, learning and communication, which are so important to the overall understanding and peace between people of different faiths. I know that he intends, even in retirement, to continue this fine work and I commend and encourage him in those endeavors. He is a fine American, and I wish he, his wife Marilyn and their family, all the best as they enjoy this transition in their lives.●

#### ARMENIAN GENOCIDE

● Mr. LEVIN. Madam President, on this the 87th anniversary of the Armenian Genocide, I would like to take a few moments to pay tribute to the men, women and children who lost their lives in the 20th centuries' first systematic attempt to extinguish an entire people.

The past century was marred by many acts of unthinkable brutality and genocide. Among these events was the Armenian Genocide. April 24 marked the inception of a brutal campaign to eliminate Armenians from the Turkish Ottoman Empire. It was on this day in 1915 that 300 of the leaders in Istanbul's Armenian community were rounded up, deported and murdered along with 5,000 of the poorest Armenians who were executed in the streets and in their homes. During the period from 1915-1923, approximately 1.5 million Armenians perished under the rule of the Turkish Ottoman Empire. Countless other Armenians fell victim to deportation, expropriation, torture, starvation and massacre. It is out of necessity that all freedom loving people must remain vigilant in their efforts to rebut and refute those who would deny the events of the Armenian genocide ever occurred.

The Armenian genocide was the result of a consciously orchestrated government plan. Henry Morgenthau Sr., the American Ambassador to the Ottoman Empire, sent a cable to the U.S.

State Department in 1915 saying that the, "deportation of and excesses against peaceful Armenians is increasing and from harrowing reports of eye witnesses it appears that a campaign of race extermination is in progress under a pretext of reprisal against rebellion."

During my tenure in the Senate, I have spoken out about the Armenian Genocide because we must acknowledge the horrors perpetrated against the Armenian people and reaffirm our commitment to ensure that the world cannot and will not forget these crimes against humanity. We must speak out against such a tragedy and dedicate ourselves to ensuring that evils such as the Armenian Genocide are not revisited on our planet. This is the highest tribute we can pay to the victims of any genocide. It is important that we take time to remember and honor the victims, and pay respect to the survivors that are still with us.

In the Rotunda of the Russell Senate Office Building there is an important exhibit displayed by the Genocide Project. The Genocide Project is an organization that seeks to preserve the memory of the Armenian Genocide by creating powerful displays that combine photos and the narrative from survivors of the Genocide. I would urge all my colleagues to view this powerful and moving account of the tragic events which we remember today.

The Armenian people have preserved their culture, faith and identity for over 1,000 years. In the last century alone, the Armenian people withstood the horrors of two World Wars and several decades of Soviet dominance in order to establish modern Armenia. I hope all my Senate colleagues will join me in honoring and remembering the victims of the Armenian Genocide.●

● Mrs. FEINSTEIN. Madam President, I rise today to acknowledge and commemorate the 87th anniversary of the beginning of the Armenian Genocide. I do so every year because the lessons of the past must not be forgotten and the crimes of the past must not be repeated.

On April 24, 1915, the Ottoman Empire launched a brutal and unconscionable policy of mass murder. Over an 8-year period, 1.5 million Armenians were killed, and another 500,000 were driven from their homes, their property and land confiscated.

As Americans, as sons and daughters of liberty, justice and freedom, we must raise our voices and acknowledge this terrible crime to ensure that it does not happen again.

Those who would single out men, women, and children to be killed solely on the basis of their race, ethnicity, and religion must know that the United States and the international community will not allow their crimes to go unpunished.

We have seen the crimes of the Armenian Genocide repeated far too often in this century: in Germany, in Cambodia, in Rwanda, and in Bosnia. We have stood by and remained silent. Let

us commemorate this occasion and state loud and clear: Never again.

Even as we remember the tragedy and honor the dead, we also honor the living. Half a million Armenian Americans reside in my home State of California and I am proud to be their representative in the U.S. Senate. They have overcome the horrors of the past to build a better future for themselves and their families in the United States. They are a testament to hard work, dedication, and perseverance and they have greatly enriched the culture and civic life of our State.

Let us remember the Armenian Genocide. Let us ensure that those who suffered did not die in vain. Let us rededicate ourselves to cause of human rights for all. Let us work together with Armenia and the Armenian American community to create a future filled with hope and possibility.●

● Mr. FEINGOLD. Madam President, today marks the 87th anniversary of when the Ottoman Empire began a policy to isolate, exile and even eliminate the Armenian population. Today, we pause to remember and honor the victims of the Armenian genocide. Between 1915 and 1923 one-and-a-half-million Armenians were systematically murdered at the hands of the Ottoman Empire and hundreds of thousands more were forced to leave their homes.

It has been nearly a century since this period of violence and annihilation began, and this anniversary serves as a reminder that this tragedy will not be forgotten. It must not be forgotten. Each year I commemorate this date on the Senate floor both to honor those who lost their lives and to remind the American people that the capacity for violence and hate is still prevalent in our world today. Recent history in Bosnia, Kosovo, and Rwanda tells us that systematic brutality and the attempts to extinguish a population because of their ethnicity are still all too real. And recent news reports detailing the re-emergence of anti-Semitism worldwide are an admonishment to us all that even lessons as searing and tragic as those taught by the Holocaust can be forgotten if we do not remain vigilant in our efforts to remember them.

As the chairman of the Subcommittee on Africa, I had the unique opportunity to visit the International Criminal Tribunal for Rwanda, ICTR, in Arusha, Tanzania, earlier this year. There I saw firsthand the tremendous progress being made and groundbreaking legal precedents being set with regards to genocide being seen by the international community as a crime against humanity. The court for Rwanda and the court for the former Yugoslavia send a clear message to the world that such horrific acts cannot and will not go unpunished. Since I became a member of the U.S. Senate, I have strived to make the protection of basic human rights and accountability for such atrocities worldwide a cornerstone in American foreign policy.

Today, we remember the Armenian men, women and children who lost

their lives during that tragic time period in world history, as well as the other countless number of past and present victims of violence.●

● Mr. REED. Madam President, I rise to join my colleagues, my fellow Rhode Islanders and our Armenian American community in observing the 87th Anniversary of the Armenian Genocide.

Although some in the world still want to convince themselves, as well as others, that the deaths of so many Armenians was simply a product of a civil war, the facts are undeniable: from 1915 to 1923 1,500,000 Armenians died, and 500,000 refugees were forced to flee. These facts must continue to be affirmed. To ignore the Armenian Genocide would be to ignore history and therefore allow the preconditions to exist for another radical leader to rise and legitimize the future genocide of another of the world's people. Let anyone ask: "who remembers the Armenians?" and the answer would be: Millions in the United States and around the world. Today, Rhode Island is among 31 States which have, by either resolution or proclamation, recognized the Armenian Genocide.

At the time of the Armenian Genocide, Europe and the United States were too embroiled in the First World War to understand the magnitude and consequences of the atrocities being committed and therefore did little more than protest by correspondence. Understanding and remembrance today ensures that the world will respond appropriately to avert these tragedies tomorrow. As proof, we need only look to NATO's quick and decisive action to quell the Kosovo crisis.

We must also recognize that, in addition to the tragedies of the past, Armenians continue to suffer from the economic effects of natural disaster and the dispute over Nagorno Karabagh. Yet amidst this suffering the Armenian people continue to strive to build an independent democratic nation of peace in the Caucasus region. So, despite crisis elsewhere in the world, we must remain attentive to Armenia and the people of Nagorno Karabagh and recognize that significant economic assistance now will prove to be an investment with long term reward in a region of strategic significance to the United States.

Today while we solemnly commemorate the tragedy of the past, let us rededicate ourselves to building a strong and vibrant Armenia for the future.●

#### UNPUNISHED RELIGIOUS PERSECUTION IN THE REPUBLIC OF GEORGIA

● Mr. SMITH of Oregon. Mr. President, as a member of the Commission on Security and Cooperation in Europe, I have followed closely human rights developments in the participating States, especially as they have an impact on freedom of thought, conscience, religion or belief. In many former communist countries, local religious establishments have reacted with concern



and annoyance about perceived encroachment of religions considered "non-traditional." But in the Republic of Georgia organized mob violence against those of nontraditional faiths has escalated, largely directed against Jehovah's Witnesses. For over 2 years, a wave of mob attacks has been unleashed on members of this and other minority religious communities, and it is very disturbing that the police have consistently either refused to restrain the attackers or actually participated in the violence.

Since October 1999, nearly 80 attacks against Jehovah's Witnesses have taken place, most led by a defrocked Georgian Orthodox priest, Vasili Mkalavishvili. These violent acts have gone unpunished, despite the filing of over 600 criminal complaints. Reports cite people being dragged by their hair and then summarily punched, kicked and clubbed, as well as buses being stopped and attacked. The priest leading these barbaric actions has been quoted as saying Jehovah's Witnesses "should be shot, we must annihilate them." Considering the well-documented frenzy of these depredations, it is only a matter of time before the assaults end in someone's death.

Other minority religious communities have not escaped unscathed, but have also been targeted. Mkalavishvili coordinated an attack against a Pentecostal church last year during choir practice. His truncheon-wielding mob seriously injured 12 church members. Two days before Christmas 2001, over 100 of his militants raided an Evangelical church service, clubbing members and stealing property. In February of this year, Mkalavishvili brought three buses of people, approximately 150 followers, to burn Bibles and religious materials owned by the Baptist Union.

Mkalavishvili brazenly holds impromptu press conferences with media outlets, often as the violence transpires in the background. With his hooligans perpetrating violent acts under the guise of religious piety, camera crews set up and document everything for the local news. The absence of a conviction and subsequent imprisonment of Mkalavishvili is not for lack of evidence.

After considerable delay, the Georgian Government did commence on January 25 legal proceedings for two mob attacks. However, considering the minor charges being brought and the poor handling of the case, I fear Mkalavishvili and other extremists will only be encouraged to continue their attacks, confident of impunity from prosecution.

Since the initial hearing in January of this year, postponement of the case has occurred four times due to Mkalavishvili's mob, sometimes numbering in the hundreds, overrunning the Didube-Chugureti District Court. Mkalavishvili's marauding followers brought wooden and iron crosses, as well as banners with offensive slogans.

Mkalavishvili himself even threatened the lawyers and victims while they were in the courtroom. With police refusing to provide adequate security, lawyers filed a motion asking for court assistance, but the judge ruled the maximum security allowed would be 10 policemen, while no limit was placed on the number of Mkalavishvili's followers permitted in the courtroom. In contrast, the Ministry of Interior has reportedly provided more than 200 police and a SWAT team to protect officials of its office when Mkalavishvili was brought to trial under different charges.

Certainly, the Georgian Government could provide adequate security so that its judicial system is not overruled by vigilante justice. Unfortunately for all Georgians, the anemic government response is indicative of its inability or worse yet, its unwillingness to enforce the law to protect minority religious groups.

As is clearly evident, Georgian authorities are not taking effective steps to deter individuals and groups from employing violence against Jehovah's Witnesses and other minority faiths. With the ineptitude of the justice system now well known, Mkalavishvili has brazenly and publicly warned that the attacks will not cease.

Religious intolerance is one of the most pernicious human rights problems in Georgia today. Therefore, I call upon President Eduard Shevardnadze to take action to end the violence against religious believers, and prevent attacks on minority religious communities. Despite the meetings he held with the various faith communities intended to demonstrate tolerance, Georgian Government inaction is sending a very different message. Tbilisi's pledge to uphold the rights of all believers and prosecute those who persecute the faithful must be followed by action.

As a member of the Commission on Security and Cooperation in Europe, I urge President Shevardnadze to do whatever is necessary to stop these attacks, and to honor Georgia's OSCE commitments to promote and ensure religious freedom without distinction. The Georgian Government should take concrete steps to punish the perpetrators through vigorous prosecution.●

#### TRIBUTE TO JACK CHURCH

● Mr. JOHNSON. Madam President, for 15 years, Jack Church has worked tirelessly on behalf of the citizens of Butte County as Emergency Management and Veterans' Service Officer. Over the years, Jack has completed and filed applications for disability, education, pension, and other benefits for the nearly 900 veterans living in Butte County. He has also provided assistance to the families of veterans and worked to obtain needed military and medical records, as well as medals and other decorations for veterans.

I have appreciated Jack's work on behalf of veterans over the years. He has

been a great advocate for veterans in South Dakota, not only on issues that impact the individual veteran and his or her family, but also on issues that impact all veterans, such as maintaining access to health care services in the Department of Veterans Affairs. He has always recognized the particular issues affecting veterans who live in rural areas, whose access to VA health care and other services can be limited by distance or income. He has been active on issues such as prescription drug costs for veterans and senior citizens, has advocated concurrent receipt of disability and retiree compensation for military retirees, and worked hard to speed up the processing of claims filed by veterans. He has truly been a friend to the veterans of South Dakota over the years.

In 2000, Butte County veterans received \$1.8 million in Federal benefits, compared to \$900,000 in 1990. This represents Jack's work to ensure the veterans in Butte County get the benefits they deserve. When claims or requests for records or medals were delayed, Jack was not afraid to "rattle the cages" to get the necessary action on behalf of the veteran. At last resort, he would contact my office for assistance in some of these cases. Thanks to his efforts, countless veterans in Butte County and the surrounding region have benefitted from services provided by the Department of Veterans Affairs. His comments and insight on veterans issues have helped me over the years in my fight to bring more attention and action on health care, education, and other issues affecting veterans. I commend Jack for his dedication and commitment to forging relationships that have the best interests of the individual veteran in mind.

In addition to his great work with South Dakota veterans, I have appreciated Jack's involvement in other areas in his community. As emergency management officer for Butte County, Jack has helped develop and administer disaster plans for the citizens of Butte County. In times of crisis, Jack was always in the middle of the action, helping to coordinate relief efforts and provide assistance to individuals in time of need. Whether it was finding shelter during an evening storm, or providing food stuffs or even portapotties, Jack has always been dedicated to getting assistance and emergency help to victims. But Jack has also been very proactive, helping to educate the public on the importance of awareness in times of emergencies. Together with other emergency management officials in South Dakota, I was pleased with Jack's efforts to help me promote the need for, and importance of, weather radios to the citizens of South Dakota.

Jack Church richly deserves the thanks of his community. It is an honor for me to share his accomplishments with my colleagues and to publicly commend him for serving South Dakota and our country.●

## HONORING STEPHEN H.T. LIN

• Mr. BUNNING. Madam President, I rise today to honor and congratulate Mr. Stephen H.T. Lin, a choral music teacher at Atherton High School in Louisville, KY, for being named the 2002 Teacher of the Year for the Commonwealth of Kentucky.

Stephen Lin conducted his first rehearsal and performance at the age of 10. From that moment on, he knew the joyous sounds of music would determine the direction his life would take. During his junior and senior years of high school, Stephen was named the director of the school choir and discovered that he had a special gift when it came to teaching music to others. Not only did he find that his fellow students responded to his methods, but he also realized how good it felt to share in the learning process with others. Although his father, a music professor at the Southern Baptist Theological Seminary-School of Church Music, tried to discourage him from pursuing a career teaching music because of the lack of financial reward, Stephen could not rightly deny his calling in life. For 26 years now, Stephen Lin has helped students of all ages appreciate the joys of music. He has excelled in his innate ability to make the learning process an enjoyable and exciting experience for all involved. His choirs, through active involvement with parents, students, fundraising and grants, have traveled and performed in Belgium, Brazil, Canada, the Czech Republic, France, Greece, Germany, Great Britain, Holland, Iceland, Japan, New Zealand, Russia and Switzerland. They have sung pieces in several African dialects, Chinese, Czech, French, Icelandic, German, Hebrew, Latin, Japanese, Krao, Maori, Portuguese, Romanian, Russian, Somoan, Spanish and Swedish. Under Lin's direction, Atherton's music department was designated a Grammy Signature School, one of only a hundred high school choral programs in the Nation chosen for this distinction. Throughout his teaching career, Lin has introduced his students not only to music but also to the world and all that it has to offer.

Winning this year's Teacher of the Year Award for the Commonwealth of Kentucky was not the first time Stephen Lin has been recognized for his diligent work in and outside of the classroom. He has been included in "Who's Who Among American Teachers" three times and has been listed in "Who's Who in the South and Southwest." He has also been designated "Music Teacher of the Year" by Kentucky District 12 and an "Outstanding Young Man of America." Lin is a recipient of the Ashland Inc. Golden Apple Achiever Award; the Governor's Scholars Program's Outstanding Educator Award; Atherton High School's Excellence in Teaching Award; the Jefferson County Sisterhood/Brotherhood Martin Luther King Award; and the WHAS-TV Golden Apple Award. To say the least, Stephen Lin has taken full

advantage of his opportunities in teaching. He has been a teacher, mentor, and friend to all of his students throughout his career.

I would like to once more congratulate Stephen Lin on winning such a prestigious and important award. His work shapes the future leaders of Kentucky. I applaud his commitment to the educational community and thank him for not listening to his father so many years ago.●

IN RECOGNITION OF SISTER  
ADRIAN BARRETT

• Mr. SPECTER. Madam President, I seek recognition today to acknowledge the service of my constituent Sister Adrian Barrett, who will be the recipient of this year's Americanism Award at the Amos Lodge of B'nai B'rith's 50th annual awards dinner on May 5, 2002.

Sister Adrian is a native of Dunmore, PA, and after she graduated from Marywood Seminary, she entered the religious community of the Servants of the Immaculate Heart of Mary in Scranton, PA. She later earned a bachelor of arts degree from Marywood College and a master's degree in Afro-Asian history from St. John's University. In 1986, she was conferred an honorary Doctor of Social Science degree by the University of Scranton.

Through her work, Sister Adrian demonstrated her dedication to the service of the less fortunate. She is a co-founder of Project Hope at Camp St. Andrew. In 1985, she established Sisters of the IHM-Friends of the Poor to bring together, as she says, "those who can give with those who have a need to receive." Sister Adrian facilitates one of the largest Thanksgiving dinners in the country, aimed not just at the impoverished and the homeless, but also senior citizens and residents of nursing and personal care homes. She also makes sure that during the December holiday season, children's gifts, Christmas trees and food baskets are available to parents who are unable to afford them.

Sister Adrian's extraordinary work was the subject of an award-winning PBS documentary depicting her various activities with youth, the elderly, and the underprivileged in Scranton. She was also honored with the Christopher Spirit Award, the Martha Brinton Wollerton Award, and the United Neighborhood Centers of America Award. Scholarships at Keystone College and the University of Scranton are named in her honor.

For her leadership and service on behalf of the less fortunate, I would like to extend the gratitude and recognition of the U.S. Senate to Sister Adrian Barrett.●

## MESSAGE FROM THE HOUSE

## ENROLLED BILL SIGNED

At 10:26 a.m., a message from the House of Representatives, delivered by

Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 861. An act to make technical amendments to section 10 of title 9, United States Code.

At 12:50 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 bill, in which it requests the concurrence of the Senate:

H.R. 3839. An act to reauthorize the Child Abuse Prevention and Treatment Act, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 378. Concurrent resolution commending the District of Columbia National Guard, the National Guard Bureau, and the entire Department of Defense for the assistance provided to the United States Capitol Police and the entire Congressional community in response to the terrorist and anthrax attacks of September and October 2001.

## MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 3829. An act to reauthorize the Child Abuse Prevention and Treatment Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 3839. Concurrent resolution commending the District of Columbia National Guard, the National Guard Bureau, and the entire Department of Defense for the assistance provided to the United States Capitol Police and the entire Congressional community in response to the terrorist and anthrax attacks of September and October 2001; to the Committee on Armed Services.

EXECUTIVE REPORTS OF  
COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY for the Committee on Health, Education, Labor, and Pensions.

\*James R. Stoner, Jr., of Louisiana, to be a Member of the National Council on the Humanities for a term expiring January 26, 2006.

\*Evelyn Dee Potter Rose, of Texas, to be a Member of the National Council on the Arts for a term expiring September 3, 2006.

\*Kathleen M. Harrington, of the District of Columbia, to be an Assistant Secretary of Labor.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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. BREAUX:

S. 2235. A bill to provide clarity and consistency in certain country-of-origin markings; to the Committee on Finance.

By Mr. WELLSTONE:

S. 2236. A bill to amend title III of the Public Health Service Act to provide coverage for domestic violence screening and treatment, to authorize the Secretary of Health and Human Services to make grants to improve the response of health care systems to domestic violence, and train health care providers and federally qualified health centers regarding screening, identification, and treatment for families experiencing domestic violence; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ROCKEFELLER:

S. 2237. A bill to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. LEVIN (for himself, Mr. THOMPSON, Mr. LIEBERMAN, and Mr. MCCONNELL):

S. 2238. A bill to permit reviews of criminal records of applicants for private security officer employment; to the Committee on the Judiciary.

By Mr. SARBANES (for himself, Mr. ENSIGN, Mr. SCHUMER, Mr. CORZINE, Mr. ALLARD, Mr. CARPER, Mr. BUNNING, Mrs. CLINTON, Mr. TORRICELLI, and Mr. SANTORUM):

S. 2239. A bill to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. TORRICELLI, Mr. KENNEDY, Mr. HARKIN, Mr. BINGAMAN, Mr. FEINGOLD, and Mr. JOHNSON):

S. 2240. A bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 2241. A bill to amend the Harmonized Tariff Schedule of the United States to provide duty-free treatment for certain log forwarders used as motor vehicles for the transport of goods, and for other purposes; to the Committee on Finance.

By Mr. SMITH of New Hampshire:

S. 2242. A bill to amend title 23, United States Code, to prohibit the collection of tolls from vehicles or military equipment under the actual physical control of a uniformed member of the Armed Forces, and for other purposes; to the Committee on Environment and Public Works.

By Mr. HUTCHINSON:

S. 2243. A bill to specify the amount of Federal funds that may be expended for intake facilities for the benefit of Lonoke and White Counties, Arkansas, as part of the project for flood control, Greers Ferry Lake, Arkansas; to the Committee on Environment and Public Works.

By Mr. DORGAN (for himself, Mr. JEFFORDS, Ms. COLLINS, Ms. STABENOW, Ms. SNOWE, Mr. WELLSTONE, Mr. LEVIN, and Mr. DAYTON):

S. 2244. A bill to permit commercial importation of prescription drugs from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BURNS (for himself, Mr. CRAIG, and Mr. BAUCUS):

S. 2245. A bill to amend title 49, United States Code, to enhance competition be-

tween and among rail carriers, to provide for expedited alternative dispute resolution of disputes involving rail rates, rail service, or other matters of rail operations through arbitration, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DODD (for himself, Mr. COCHRAN, Mr. HARKIN, and Mr. BUNNING):

S. 2246. A bill to improve access to printed instructional materials used by blind or other persons with print disabilities in elementary and secondary schools, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DURBIN:

S. 2247. A bill to provide for the regulation of public accounting firms for purposes of the Federal securities laws, to promote quality and transparency in financial reporting, to improve the quality of independent audits and accounting services through an Independent Public Accounting Oversight Board, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SARBANES:

S. 2248. A bill to extend the authority of the Export-Import Bank until May 31, 2002; considered and passed.

By Mrs. CLINTON (for herself and Mr. BINGAMAN):

S. 2249. A bill to amend the Public Health Service Act to establish a grant program regarding eating disorders, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

#### ADDITIONAL COSPONSORS

S. 540

At the request of Mr. DEWINE, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 540, a bill to amend the Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 732

At the request of Mr. THOMPSON, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 732, a bill to amend the Internal Revenue Code of 1986 to reduce the depreciation recovery period for certain restaurant buildings, and for other purposes.

S. 1140

At the request of Mr. HATCH, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1140, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1355

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. TORRICELLI) was added as a cosponsor of S. 1355, a bill to prevent children from having access to firearms.

S. 1408

At the request of Mr. ROCKEFELLER, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1408, a bill to amend title 38, United States Code, to standardize the income threshold for copayment for outpatient medications with the income threshold for inability to defray necessary expense of care, and for other purposes.

S. 1572

At the request of Mr. BENNETT, his name was added as a cosponsor of S. 1572, a bill to endorse the vision of further enlargement of the NATO Alliance articulated by President George W. Bush on June 15, 2001, and by former President William J. Clinton on October 22, 1996, and for other purposes.

At the request of Mr. BOND, his name was added as a cosponsor of S. 1572, supra.

At the request of Mr. GRAMM, his name was added as a cosponsor of S. 1572, supra.

S. 1836

At the request of Mr. COCHRAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1836, a bill to amend the Public Health Service Act to establish scholarship and loan repayment programs regarding the provision of veterinary services in veterinarian shortage areas.

S. 1940

At the request of Mr. LEVIN, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1940, a bill to amend the Internal Revenue Code of 1986 to provide that corporate tax benefits from stock option compensation expenses are allowed only to the extent such expenses are included in a corporation's financial statements.

S. 2010

At the request of Mr. LEAHY, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2010, a bill to provide for criminal prosecution of persons who alter or destroy evidence in certain Federal investigations or defraud investors of publicly traded securities, to disallow debts incurred in violation of securities fraud laws from being discharged in bankruptcy, to protect whistleblowers against retaliation by their employers, and for other purposes.

S. 2026

At the request of Mr. LUGAR, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2026, a bill to authorize the use of Cooperative Threat Reduction funds for projects and activities to address proliferation threats outside the states of the former Soviet Union, and for other purposes.

S. 2189

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2189, a bill to amend the Trade

Act of 1974 to remedy certain effects of injurious steel imports by protecting benefits of steel industry retirees and encouraging the strengthening of the American steel industry.

S. 2200

At the request of Mr. BAUCUS, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2200, a bill to amend the Internal Revenue Code of 1986 to clarify that the parsonage allowance exclusion is limited to the fair rental value of the property.

S. 2215

At the request of Mrs. BOXER, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

S. 2225

At the request of Mr. WARNER, his name was added as a cosponsor of S. 2225, a bill to authorize appropriations for fiscal year 2003 for military activities of Department of Defense, to prescribe military personnel strengths for fiscal year 2003, and for other purposes.

S. RES. 247

At the request of Mr. LIEBERMAN, the names of the Senator from Virginia (Mr. ALLEN), the Senator from New York (Mrs. CLINTON), the Senator from Idaho (Mr. CRAPO), and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Res. 247, a resolution expressing solidarity with Israel in its fight against terrorism.

S. RES. 249

At the request of Mr. HATCH, the names of the Senator from Arkansas (Mr. HUTCHINSON) and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of S. Res. 249, a resolution designating April 30, 2002, as "Dia de los Ninos: Celebrating Young Americans," and for other purposes.

AMENDMENT NO. 3197

At the request of Mr. CARPER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of amendment No. 3197 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3198

At the request of Mr. CARPER, the names of the Senator from Maine (Ms. COLLINS), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Illinois (Mr. DURBIN), and the Senator from New Mexico (Mr. BINGAMAN) were added as cosponsors of amendment No. 3198 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3256

At the request of Mr. ALLEN, his name was added as a cosponsor of amendment No. 3256 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3269

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of amendment No. 3269 intended to be proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3284

At the request of Mrs. LINCOLN, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Georgia (Mr. MILLER), and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 3284 intended to be proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 2236. A bill to amend title III of the Public Health Service Act to provide coverage for domestic violence screening and treatment, to authorize the Secretary of Health and Human Services to make grants to improve the response of health care systems to domestic violence, and train health care providers and federally qualified health centers regarding screening, identification, and treatment for families experiencing domestic violence; to the Committee on Health, Education, Labor, and Pensions.

Mr. WELLSTONE. Madam President, I rise today to introduce the Domestic Violence Screening and Services Act of 2002, an act to improve the response of health care systems to domestic violence, and to train health care providers and federally qualified health centers regarding screening, identification, and treatment for families experiencing domestic violence.

Nearly one third of American women, 31 percent, report being physically or sexually abused by a husband or boyfriend at some point in their lives, and about 1200 women are murdered every year by their intimate partner, nearly 3 each day. 37 percent of all women who sought care in hospital emergency rooms for violence related injuries were injured by a current or former spouse, boyfriend, or girlfriend. In addition to injuries sustained during violent episodes, physical and psychological abuse are linked to numerous adverse health effects including arthri-

tis, chronic neck or back pain, migraine and other frequent headaches, problems with vision, and sexually transmitted infections, including HIV/AIDS.

Each year, at least 6 percent of all pregnant women, about 240,000 pregnant women in this country, are battered by the men in their lives. This battering leads to complications in pregnancy, including low weight gain, anemia, infections, and first and second trimester bleeding. Pregnant women are more likely to die of homicide than to die of any other cause.

Currently, about 10 percent of primary care physicians routinely screen for intimate partner abuse during new patient visits and 9 percent routinely screen during periodic checkups. Recent clinical studies have shown the effectiveness of a 2-minute screening for early detection of abuse of pregnant women. Additional longitudinal studies have tested a 10-minute intervention that was highly effective in increasing the safety of pregnant abused women. 70 to 81 percent of patients studied reported that they would like their health care providers to ask them privately about intimate partner violence.

Medical services for abused women cost an estimated \$857,300,000 every year. It is time for us to also authorize resources to promote the effort to make screening for domestic violence routine in health care settings. This bill would establish domestic violence prevention grants in the amount of \$5 million dollars per year to improve screening and treatment for domestic violence in federally qualified health centers. Grants could be used for the implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and staff to respond to domestic violence. Grants could also be used to provide training and follow-up technical assistance to health professionals and staff to screen for domestic violence, and then to appropriately assess, treat, and refer patients who are victims of domestic violence to domestic violence service providers. In addition, grants could be used for the development of onsite access to services to address, the safety, medical, and mental health needs of patients either by increasing the capacity of existing health professionals and staff to address these issues or by contracting with or hiring domestic violence advocates to provide the services.

This bill would also authorize the Secretary of Health and Human Services to award grants in the amount of \$5 million per year to strengthen the response of State and local health care systems to domestic violence by building the capacity of health personnel to identify, address, and prevent domestic violence. Up to 10 grants would be utilized to design and implement comprehensive statewide strategies in clinical and public healthcare settings and to promote education and awareness about domestic violence at a statewide

level. Up to 10 additional grants would be used to design and implement comprehensive local strategies to improve the response of the health care system in hospitals, clinics, managed care settings, emergency medical services, and other health care settings.

Finally, this bill would also ensure that health care professionals working in the National Health Service Corps receiving training on how to screen, assess, treat and refer patients who are victims of domestic violence. Our health care system represents a potentially life saving point of intervention for those experiencing domestic violence. We need to support these efforts to improve the ability of our health care system to be a safe place for women to turn to when most in need.

Madam President, I ask unanimous consent that a summary of the bill be printed in the RECORD.

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

SUMMARY—THE DOMESTIC VIOLENCE  
SCREENING AND SERVICES ACT OF 2002

OVERVIEW

The Domestic Violence Screening and Services Act of 2002 would create domestic violence prevention grants to improve screening and treatment for patients at Federally Qualified Health Centers. The bill would also provide grants to strengthen the response of State and local health care systems to domestic violence and would ensure that health care professionals working in the National Health Service Corps receive training on how to screen, assess, treat, and render patients who are victims of domestic violence.

FEDERALLY QUALIFIED HEALTH CENTERS

In an effort to increase screening and access to services for these patients who are or may be experiencing domestic violence the bill amends Part P of title III of the Public Health Service Act by adding a new Sec. 3990 creating Domestic Violence Prevention Grants in the amount of 5 million dollars per year for four years.

Funds would be used to design and implement comprehensive local strategies to improve the health care response to domestic violence in federally qualified health centers. These strategies would include: the development, implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and staff responding to domestic violence; the provision of training and follow-up technical assistance to health care professionals and staff to screen for domestic violence, and then to appropriately assess, record in medical records, treat, and refer patients who are victims of domestic violence to domestic violence services; the development of on-site access to services to address the safety, medical, mental health, and economic needs of patients either by increasing the capacity of existing health care professionals and staff to address these issues or by contracting with or hiring domestic violence advocates to provide the services.

GRANTS FOR DOMESTIC VIOLENCE SCREENING  
AND TREATMENT IN STATE AND LOCAL  
HEALTHCARE SYSTEMS

The Secretary of Health and Human Services acting through the Assistant Secretary for the Administration for Children and Families shall award grants to fund 10 demonstration projects at the state level and 10 demonstration grants on the local level to

develop comprehensive strategies to improve the response of the healthcare system to domestic violence. Recommended authorization is \$5 million/year for four years.

Eligible entities—would be: A. a State or local health department, nonprofit State domestic violence coalition or local service-based program, State professional medical society, State health professional association, or other nonprofit or State entity with a history of effective work in the field of domestic violence; that can B. demonstrate that it is representing a team of organizations and agencies working collaboratively to strengthen the health care system's response to domestic violence and that such team includes domestic violence and health care organizations.

Use of funds—Funds would be used to design and implement comprehensive statewide and local strategies to improve the health care response to domestic violence in hospitals, clinics, managed care settings, emergency medical services, and other health care settings. These strategies would include: the development, implementation, dissemination, and evaluation of policies and procedures to guide health care professionals and staff responding to domestic violence; the provision of training and follow-up technical assistance to health care professionals and staff to screen for domestic violence, and then to appropriately assess, record in medical records, treat, and refer patients who are victims of domestic violence the domestic violence services; the implementation of practice guidelines for routine screening and recording mechanisms to identify and document domestic violence; the development of on-site access to services to address the safety, medical, mental health, and economic needs of patients either by increasing the capacity of existing health care professionals and staff to address these issues or by contracting with or hiring domestic violence advocates to provide the services or other model appropriate to the geographic and cultural needs of a site.

In addition required that health care professionals trained through the National Health Service Corps receiving in domestic violence screening and treatment.

By Mr. ROCKEFELLER:

S. 2237. A bill to amend title 38, United States Code, to enhance compensation for veterans with hearing loss, and for other purposes; to the Committee on Veterans' Affairs.

Mr. ROCKEFELLER. Madam President, today I introduce legislation on behalf of American veterans whose hearing loss may have resulted from their military service. The Veterans Hearing Loss Compensation Act of 2002 would accomplish two goals: first, it would correct a long-standing inequity in compensating veterans for service-related hearing loss. Second, it would direct VA, with input from outside experts, to determine whether service in certain military occupations can be presumed to be associated with hearing loss.

Currently, section 1160 of title 38, United States Code, directs VA to extend special consideration when evaluating veterans' service-connected disabilities in "paired organs or extremities," such as eyes, kidneys, or hands. If there is damage to both organs, even if only one resulted from military service, the disability of the non-service-connected organ may be considered.

For all listed disabilities except hearing loss, the law requires only "loss" or "loss of use," whereas "total deafness" is required in rating hearing loss. If hearing loss in either ear is anything less than total, VA cannot even consider the loss in the non-service-connected ear. Section 2 of this bill would remove this requirement for total hearing loss in either ear, allowing VA to consider the effect of any non-service-connected disability when rating hearing loss.

Section 3 of this bill would require VA to contract with an independent scientific organization, such as the National Academy of Sciences, to review scientific evidence on occupational hearing loss, particularly acoustic trauma experienced during military service. This legislation would also require VA to review its own claims and record of medical treatment for hearing loss or tinnitus in veterans. Through these two avenues, VA should be better able to determine objectively whether service in certain military specialties might be associated with an increased risk of hearing loss later in life.

Once the outside scientific authority reports to VA, the Secretary would be required to determine whether the evidence warrants presuming an association between certain military occupations and hearing loss or tinnitus. If VA finds sufficient evidence linking noise exposure in these occupations to veterans' later hearing loss, the Secretary would be required to develop regulations for providing disability benefits to these veterans; if VA determines that no presumptive service-connection is appropriate, the Secretary would be required to publish this determination and report to Congress on the basis of that decision.

With the aging of the veterans population, the number of claims for hearing loss or tinnitus continues to climb. VA faces difficulties in determining whether certain veterans can attribute their hearing loss to damage suffered decades ago during military service, especially as many veterans received no appropriate hearing evaluation at discharge.

I realize that the proposed process is not an immediate fix, but it should provide VA, Congress, and veterans with a solid basis for tackling this difficult problem. I urge my colleagues to join me in supporting this important piece of legislation.

I request 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. 2237

*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 "Veterans Hearing Loss Compensation Act of 2002".

**SEC. 2. COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.**

(a) HEARING LOSS REQUIRED FOR COMPENSATION.—Section 1160(a)(3) of title 38, United

States Code, is amended by striking "total" both places it appears.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply with respect to months that begin on or after that date.

**SEC. 3. AUTHORITY FOR PRESUMPTION OF SERVICE-CONNECTION FOR HEARING LOSS ASSOCIATED WITH PARTICULAR MILITARY OCCUPATIONAL SPECIALTIES.**

(a) **IN GENERAL.**—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by adding at the end the following new section:

**"§ 1119. Presumption of service connection for hearing loss associated with particular military occupational specialties**

"(a) For purposes of section 1110 of this title, and subject to section 1113 of this title, hearing loss, tinnitus, or both of a veteran who while on active military, naval, or air service was assigned to a military occupational specialty or equivalent described in subsection (b) shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such hearing loss or tinnitus, as the case may be, during the period of such service.

"(b) A military occupational specialty or equivalent referred to in subsection (a) is a military occupational specialty or equivalent, if any, that the Secretary determines in regulations prescribed under this section in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both.

"(c) In making determinations for purposes of subsection (b), the Secretary shall take into account the report submitted to the Secretary by the National Academy of Sciences under section 3(c) of the Veterans Hearing Loss Compensation Act of 2002.

"(d)(1) Not later than 60 days after the date on which the Secretary receives the report referred to in subsection (c), the Secretary shall determine whether or not a presumption of service connection for hearing loss, tinnitus, or both is warranted for the hearing loss, tinnitus, or both, as the case may be, of individuals assigned to each military occupational specialty or equivalent identified by the National Academy of Sciences in such report as a military occupational specialty or equivalent in which individuals are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary.

"(2) If the Secretary determines under paragraph (1) that a presumption of service connection is warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination, issue proposed regulations setting forth the Secretary's determination.

"(3) If the Secretary determines under paragraph (1) that a presumption of service connection is not warranted with respect to any military occupational specialty or equivalent described in that paragraph and hearing loss, tinnitus, or both, the Secretary shall, not later than 60 days after the date of the determination—

"(A) publish the determination in the Federal Register; and

"(B) submit to the Committees on Veterans' Affairs of the Senate and the House of

Representatives a report on the determination, including a justification for the determination.

"(e) Any regulations issued under subsection (d)(2) shall take effect on the date provided for in such regulations. No benefit may be paid under this section for any month that begins before that date."

(2) The table of sections at the beginning of chapter 11 of that title is amended by inserting after the item relating to section 1118 the following new item:

"1119. Presumption of service connection for hearing loss associated with particular military occupational specialties."

(b) **PRESUMPTION REBUTTABLE.**—Section 1113 of title 38, United States Code, is amended by striking "or 1118" each place it appears and inserting "1118, or 1119".

(c) **ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH VARIOUS MILITARY OCCUPATIONAL SPECIALTIES.**—(1) The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences, or another appropriate scientific organization, for the Academy to perform the activities specified in this subsection. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(2) Under the agreement under paragraph (1), the National Academy of Sciences shall—

(A) review and assess available data on occupational hearing loss;

(B) from such data, identify the forms of acoustic trauma that, if experienced by individuals in the active military, naval, or air service, could cause or contribute to hearing loss, hearing threshold shift, or tinnitus in such individuals;

(C) in the case of each form of acoustic trauma identified under subparagraph (B)—

(i) determine how much exposure to such form or acoustic trauma is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level; and

(ii) determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(I) immediate or delayed onset;

(II) cumulative;

(III) progressive; or

(IV) any combination of subclauses (I) through (III);

(D) review and assess the completeness and accuracy of data of the Department of Veterans Affairs and the Department of Defense on hearing threshold shift in individuals who were discharged or released from service in the Armed Forces during the period beginning on December 7, 1941, and ending on the date of the enactment of this Act upon their discharge or release from such service; and

(E) identify each military occupational specialty or equivalent, if any, in which individuals assigned to such military occupational specialty or equivalent in the active military, naval, or air service are or were likely to be exposed to a sufficiently high level of acoustic trauma as to result in permanent hearing loss, tinnitus, or both to a degree which would be compensable as a service-connected disability under the laws administered by the Secretary of Veterans Affairs.

(3) Not later than 180 days after the date of the entry into the agreement referred to in paragraph (1), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subparagraphs (A) through (F) of paragraph (2).

(d) **REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.**—(1) Not

later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of claims submitted to the Secretary in each of 1999, 2000, and 2001 for disability compensation for hearing loss, tinnitus, or both.

(B) Of the claims referred to in subparagraph (A)—

(i) the number of claims for which disability compensation was awarded, set forth by year;

(ii) the number of claims assigned each disability rating; and

(iii) the total amount of disability compensation paid on such claims during such years.

(C) The total cost to the Department of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department of Veterans Affairs health facilities care in each of 1999, 2000, and 2001 for hearing-related disorders, set forth by—

(i) the number of veterans per year; and

(ii) the military occupational specialties or equivalents of such veterans during their active military, naval, or air service.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

By Mr. LEVIN (for himself, Mr. THOMPSON, Mr. LIEBERMAN, and Mr. MCCONNELL):

S. 2238. A bill to permit reviews of criminal records of applicants for private security officer employment; to the Committee on the Judiciary.

Mr. LEVIN. Madam President, I am introducing along with Senators THOMPSON, LIEBERMAN and MCCONNELL the Private Security Officer Employment Standards Act of 2002, a bill that would provide private security firms an opportunity to gain access to national criminal history information to determine whether or not employees or applicants for employment pose a threat to the facilities and persons they are supposed to protect.

Large numbers of critical non-governmental facilities, from power plants to schools to hospitals, are protected by private security firms and their civilian security officers. Keeping these facilities secure from terrorism or other forms of violent attack is critical to our national security. Yet currently most private security employers cannot obtain timely national criminal background check information on the very people they need to hire to protect these key facilities. This legislation seeks to correct that. This bill would authorize private security firms to request Federal background check information on current and prospective employees through the appropriate State agencies, thereby permitting firms to obtain relevant criminal history information they might not otherwise receive.



The Criminal Justice Information Services Division of the FBI maintains complete criminal history records for both Federal crimes and State crimes on individuals with criminal records in the United States. Searches are most efficiently conducted by using fingerprints to ensure efficiency and accuracy. We have already passed legislation specifically permitting other industries, the banking, nursing home, and child care industries, to name a few, to test their prospective employees against the FBI's comprehensive records. Many of the reasons that justified passage of those laws, especially the desire to ensure that those who provide certain important services have a background commensurate with their responsibilities, argues for passage of this bill as well.

This legislation will enhance our Nation's security. As an adjunct to our Nation's law enforcement officers, private security guards are responsible for the protection of numerous critical components of our Nation's infrastructure, including power generation facilities, hazardous materials manufacturing facilities, water supply and delivery facilities, oil and gas refineries, and food processing plants. The approximately 13,000 private security companies in the United States employ about 1.5 million persons nationwide. Given the critical nature of the facilities private security officers are hired to protect, it is imperative that we provide access to information that might disclose who is unsuitable for protecting these resources.

We understand that in about 40 States, private security companies are required to receive a State license in order to conduct business. Relying upon a Federal bill passed in the early 1970's, 37 States and the District of Columbia have passed legislation authorizing State agencies to request both State and Federal record searches. Despite this authorization, security firms report that searches of both State and Federal databases is the exception rather than the rule. That is because only one State, California, makes such reviews mandatory. In the other jurisdictions with authorizing statutes, reviews of the Federal database are conducted at the discretion of the States. I am told that in approximately half of the 36 States with authorizing statutes, typically only State databases are searched. An additional 13 States have not even authorized any form of Federal criminal background check. What that means is that in approximately 31 States, a private security employer typically has no access to any Federal criminal database information. In these 31 States, an employment applicant in 1 State could have a serious criminal conviction in another State and still be permitted to perform sensitive security work. The State conducting the search would have no idea such a conviction in another State existed without access to the Federal database.

Further, even in those few States that actually conduct Federal records searches, I am told that searches of the backgrounds of new employees in the Federal database often take 90 to 120 days. While checks are pending, security guards are often provided a temporary license. This 90 to 120 day period is more than enough time for a guard with a temporary license to perpetrate dangerous acts. In light of our urgent need to strengthen our homeland security, this lack of access to criminal checks and the time it takes to complete such checks is unacceptable. We need to act in order to make it easier for States and employers to gain timely access to this information.

The bill strikes the appropriate balance between the interests of all parties involved.

First, the bill permits private security employers to request that the FBI criminal history database be searched for prospective or existing employees. Requests must be made by the employers through their States' identification bureau or similar State agency designated by the Attorney General. Employers will not be granted direct access to the FBI records. Instead, States will serve as intermediaries between employers and the FBI to: one, ensure that employment suitability determinations are made pursuant to applicable State law; two, prevent disclosure of the raw FBI criminal history information to the employers and the public; and three, minimize the FBI's administrative burden of having to respond to background check requests from countless different sources. The program will not cost the Federal Government anything. The legislation allows the FBI, and States if they so choose, to charge reasonable fees to security firms to recover their costs of carrying out this act.

Second, the bill protects employee and prospective employee's privacy. Before an FBI background check can be conducted, the employee or applicant for employment must grant an employer written consent to request the FBI database search. In addition, the criminal history reports received by the States will not be disseminated to employers. Instead, in States that have laws regulating private security guard employment, designated State agencies will simply be required to use the information provided by the FBI in applying their State standards. For those States that have no standards, the States will be instructed to inform requesting employers whether or not employees or applicants have been convicted of either: one, a felony; two, a violent misdemeanor within the past 10 years; or, three, crime of dishonesty within the past 10 years. Thus, only the fact that a conviction exists or not will be provided by States to employers, and the privacy of the records themselves will be maintained. All information provided to employers pursuant to this act must be provided to the employees or prospective employees. Fur-

thermore, the bill establishes strong criminal penalties for those who might falsely certify they are authorized security firms or otherwise use information obtained pursuant to this act beyond the act's intended purposes.

Third, the bill protects States' rights. The bill does not impose an unfunded mandate on the States. It reserves the right of States to charge reasonable fees to employers for their costs in administering this act. Moreover, if a State wishes to opt out of this statutory regime, it may do so at any time.

I believe that the time is right for us to enact this legislation. It strikes the right balance between the need for employers to gain access to this critical information and the privacy rights of current and prospective security guards. We have worked with the FBI to ease the administrative process, and it will cost the Federal Government nothing. There is no undue burden being placed on our States.

Passage of this act will plug a hole in our homeland security. I urge my colleagues to support the passage of this legislation.

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

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

S. 2238

*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 "Private Security Officer Employment Standards Act of 2002".

#### SEC. 2. FINDINGS.

Congress finds that—

- (1) employment of private security officers in the United States is growing rapidly;
- (2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;
- (3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;
- (4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;
- (5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional security officers for the protection of people, facilities, and institutions;
- (6) the trend in the Nation toward growth in such security services has accelerated rapidly;
- (7) such growth makes available more public sector law enforcement officers to combat serious and violent crimes;
- (8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers;

(9) private security officers and applicants for private security officer positions should be thoroughly screened and trained; and

(10) standards are essential for the selection, training, and supervision of qualified security personnel providing security services.

#### SEC. 3. DEFINITIONS.

In this Act:

(1) **EMPLOYEE.**—The term “employee” includes both a current employee and an applicant for employment.

(2) **AUTHORIZED EMPLOYER.**—The term “authorized employer” means any person that—

(A) provides, as an independent contractor, for consideration, the services of private security officers; and

(B) is authorized by the Attorney General to obtain information provided by the State or other authorized entity pursuant to this section.

(3) **PRIVATE SECURITY OFFICER.**—The term “private security officer”—

(A) means an individual who performs security services, full- or part-time, for consideration as an independent contractor or an employee, whether armed or unarmed and in uniform or plain clothes, whose primary duty is to perform security services; but

(B) does not include—

(i) sworn police officers who have law enforcement powers in the State;

(ii) employees whose duties are primarily internal audit or credit functions;

(iii) an individual on active duty in the military service;

(iv) employees of electronic security system companies acting as technicians or monitors; or

(v) employees whose duties primarily involve the secure movement of prisoners.

(4) **SECURITY SERVICES.**—The term “security services” means the performance of security services as such services are defined by regulations promulgated by the Attorney General.

#### SEC. 4. BACKGROUND CHECKS.

(a) **IN GENERAL.**—

(1) **SUBMISSION OF FINGERPRINTS.**—An authorized employer may submit fingerprints or other means of positive identification of an employee of such employer for purposes of a background check pursuant to this Act.

(2) **EMPLOYEE RIGHTS.**—

(A) **PERMISSION.**—An authorized employer shall obtain written consent from an employee to submit the request for a background check of the employee under this Act.

(B) **ACCESS.**—An employee shall be provided confidential access to information relating to the employee provided pursuant to this Act to the authorized employer.

(3) **PROVIDING RECORDS.**—Upon receipt of a background check request from an authorized employer, submitted through the State identification bureau or other entity authorized by the Attorney General, the Attorney General shall—

(A) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(B) promptly provide any identification and criminal history records resulting from the background checks to the submitting State identification bureau or other entity authorized by the Attorney General.

(4) **FREQUENCY OF REQUESTS.**—An employer may request a background check for an employee only once every 12 months of continuous employment by that employee unless the employer has good cause to submit additional requests.

(b) **REGULATIONS.**—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or in-

terim final regulations as may be necessary to carry out this Act, including—

(1) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, and destruction of information and audits, and recordkeeping;

(2) standards for qualification as an authorized employer; and

(3) the imposition of reasonable fees necessary for conducting the background checks.

(c) **CRIMINAL PENALTY.**—Whoever falsely certifies that he meets the applicable standards for an authorized employer or who knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined not more than \$50,000 or imprisoned for not more than 2 years, or both.

(d) **USER FEES.**—

(1) **IN GENERAL.**—The Director of the Federal Bureau of Investigation may—

(A) collect fees pursuant to regulations promulgated under subsection (b) to process background checks provided for by this Act;

(B) notwithstanding the provisions of section 3302 of title 31, United States Code, retain and use such fees for salaries and other expenses incurred in providing such processing; and

(C) establish such fees at a level to include an additional amount to remain available until expended to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(2) **STATE COSTS.**—Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(e) **STATE OPT OUT.**—A State may decline to participate in the background check system authorized by this Act by enacting a law providing that the State is declining to participate pursuant to this subsection.

(f) **STATE STANDARDS AND INFORMATION PROVIDED TO EMPLOYER.**—

(1) **ABSENCE OF STATE STANDARD.**—If a State participates in the background check system authorized by this Act and has no State standard for qualification to be a private security officer, the State shall notify an authorized employer whether or not an employee has been convicted of a felony, an offense involving dishonesty or false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years.

(2) **STATE STANDARD.**—If a State participates in the background check system authorized by this Act and has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standard and shall notify the employer of the results.

By Mr. SARBANES (for himself, Mr. ENSIGN, Mr. SCHUMER, Mr. CORZINE, Mr. ALLARD, Mr. CARPER, Mr. BUNNING, Mrs. CLINTON, Mr. TORRICELLI, and Mr. SANTORUM):

S. 2239. A bill to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SARBANES. Madam President, today I am introducing the “FHA

Downpayment Simplification Act of 2002” with a number of my colleagues. As the list of original cosponsors indicates, this piece of legislation has broad, bipartisan support. This is because the Federal Housing Administration, FHA, has long been a tool to increase homeownership in America.

Since its inception in 1934, the FHA has helped millions of American families achieve the dream of homeownership. Currently, FHA accounts for about 20 percent of the mortgage market. However, FHA is even more important to first time homebuyers, buyers with lower incomes, and minority homebuyers, many of whom have not been well served by the traditional marketplace. For these borrowers, FHA is the ticket to the American dream.

Indeed, the very strong economy helped raise overall homeownership rates through the 1990s to historically high levels, both for the population as a whole and among underserved buyers. By 1999, homeownership increased to 66.8 percent. But it was the FHA that helped ensure those benefits were widely available.

For example, according to data provided by the Department of Housing and Urban Development, HUD, first time homebuyers accounted for 82 percent of all FHA loans in the year 2000; almost half of FHA-insured loans went to low-income borrowers in metropolitan areas; and over one-third of FHA loans went to African-American and Hispanic borrowers. In each case, FHA played a more significant role than the conventional market.

The role played by FHA in spreading the benefits of homeownership to a broader range of Americans is the central reason my colleagues and I believe it is important to renew and make permanent the law authorizing the streamlined downpayment calculation for all FHA single family insured loans. The streamlined downpayment, which is current law, was initially tried as a pilot in Hawaii and Alaska in 1996 before being extended nationwide in 1998. It was subsequently reauthorized again until the end of this year. Without Congressional action, the law will expire, resulting in higher costs for millions of Americans seeking the benefits of homeownership.

The streamlined downpayment process, as its name implies, is relatively simple and straightforward. The buyer puts down at least 3 percent of the acquisition cost of the home. The acquisition cost includes both the sales price and the closing costs. The old system required different downpayment rates for each portion of a mortgage. This approach is complex, multi-step calculation that often confused consumers, realtors, and lenders alike, and resulted in higher overall closing costs for the consumer.

For example, for a property with a sales price of \$150,000 and \$3,000 in closing costs, the streamlined approach that would be continued by this legislation would save the borrower almost

\$2,200 in closing costs. For a more modest home costing \$100,000 with \$2,000 in closing costs, the savings would be about \$350 over the old system.

The streamlined FHA downpayment process has been working extremely well. That is why both the National Association of Realtors and the Mortgage Bankers Association of America support this legislation. Promoting homeownership is an important value that all of us have supported through the years. Passing this legislation is one way to help more and more Americans achieve this important goal.

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. 2239

*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 "FHA Downpayment Simplification Act of 2002".

#### SEC. 2. DOWNPAYMENT SIMPLIFICATION.

Section 203 of the National Housing Act (12 U.S.C. 1709) is amended—

(1) in subsection (b)—

(A) by striking "shall—" and inserting "shall comply with the following:";

(B) in paragraph (2)—

(i) in subparagraph (A), in the matter that precedes clause (ii), by moving the margin 2 ems to the right;

(ii) in the undesignated matter immediately following subparagraph (B)(iii)—

(I) by striking the second and third sentences of such matter; and

(II) by striking the sixth sentence (relating to the increases for costs of solar energy systems) and all that follows through the end of the last undesignated paragraph (relating to disclosure notice); and

(iii) by striking subparagraph (B) and inserting the following:

"(B) not to exceed an amount equal to the sum of—

"(i) the amount of the mortgage insurance premium paid at the time the mortgage is insured; and

"(ii) in the case of—

"(I) a mortgage for a property with an appraised value equal to or less than \$50,000, 98.75 percent of the appraised value of the property;

"(II) a mortgage for a property with an appraised value in excess of \$50,000 but not in excess of \$125,000, 97.65 percent of the appraised value of the property;

"(III) a mortgage for a property with an appraised value in excess of \$125,000, 97.15 percent of the appraised value of the property; or

"(IV) notwithstanding subclauses (II) and (III), a mortgage for a property with an appraised value in excess of \$50,000 that is located in an area of the State for which the average closing cost exceeds 2.10 percent of the average, for the State, of the sale price of properties located in the State for which mortgages have been executed, 97.75 percent of the appraised value of the property.";

(C) by transferring and inserting the text of paragraph (10)(B) after the period at the end of the first sentence of the undesignated paragraph that immediately follows paragraph (2)(B) (relating to the definition of "area"); and

(D) by striking paragraph (10); and

(2) by inserting after subsection (e), the following:

"(f) DISCLOSURE OF OTHER MORTGAGE PRODUCTS.—

"(1) IN GENERAL.—In conjunction with any loan insured under this section, an original lender shall provide to each prospective borrower a disclosure notice that provides a 1-page analysis of mortgage products offered by that lender and for which the borrower would qualify.

"(2) NOTICE.—The notice required under paragraph (1) shall include—

"(A) a generic analysis comparing the note rate (and associated interest payments), insurance premiums, and other costs and fees that would be due over the life of the loan for a loan insured by the Secretary under subsection (b) with the note rates, insurance premiums (if applicable), and other costs and fees that would be expected to be due if the mortgage obtained instead other mortgage products offered by the lender and for which the borrower would qualify with a similar loan-to-value ratio in connection with a conventional mortgage (as that term is used in section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) or section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)), as applicable), assuming prevailing interest rates; and

"(B) a statement regarding when the requirement of the mortgage to pay the mortgage insurance premiums for a mortgage insured under this section would terminate, or a statement that the requirement shall terminate only if the mortgage is refinanced, paid off, or otherwise terminated.".

#### SEC. 3. CONFORMING AMENDMENTS.

Section 245 of the National Housing Act (12 U.S.C. 1715z–10) is amended—

(1) in subsection (a), by striking "or if the mortgage" and all that follows through "case of veterans"; and

(2) in subsection (b)(3), by striking "or, if the" and all that follows through "for veterans";.

Mr. ENSIGN. Madam President, I rise today, along with the senior Senator from Maryland, Mr. SARBANES, to introduce a bill that will help thousands of Americans achieve the dream of homeownership.

Homeownership is the primary source of a household's net worth and the fundamental first step toward accumulating personal wealth. It is also one of the greatest driving forces to a healthy economy for our Nation. Congress must work hard to produce public policies that promote homeownership to further America's growth and prosperity. This legislation does just that.

The legislation we are introducing today will make permanent an existing down payment simplification program that created a simplified formula to determine the proper down payment for FHA loans. This program has become an invaluable tool for helping thousands of families achieve the American dream of buying their first home. This bill will permanently eliminate the burdensome and unnecessary formulas previously used to determine the proper down payment for FHA loans, and will also lower the size of necessary down payments.

The simplified calculation was begun as a pilot program in 1996 in Hawaii and Alaska. It proved so easy and successful that it was temporarily extended nationwide in 1998. In 2000, the calculation was re-extended 27 months,

to December 31, 2002. Unless Congress extends the program, home buyers will be required to use the old, complicated and confusing method of calculating the appropriate down payment amounts for all loans after December 31.

To help my colleagues understand the importance of making this program permanent, I should explain the basic difference between the two formulas.

Under the down payment simplification program, FHA borrowers must make cash contributions of at least 3 percent of the acquisition cost, including closing costs of the loan. It is that simple.

Under the old formula, different down payment rates were required for each portion of a mortgage. For example, if the acquisition cost of the home is \$150,000, the borrower would have to pay 3 percent on the first \$25,000, 5 percent on the next \$100,000 and 10 percent on the final \$25,000. And that's not all. There is also another set of calculations done based on the appraised value of the home to determine the maximum allowable mortgage in any transaction.

Clearly, the streamlined formula is a far more simple process. In the end, the down payment simplification process results in lowering the amount of the down payment necessary to purchase a FHA single-family home and simplifies the formula for the homebuyer in the process.

It is estimated that one-third of all FHA borrowers will have to make higher down payments if the simplification process is not made permanent. This could mean that without passage of this legislation, thousands of families that otherwise could afford to buy their homes will be denied the chance to do so because an unnecessarily complicated formula will create large, unaffordable down payments.

The effects would be particularly acute in states where over 40 percent of the buyers would be affected, such as California, Colorado, Maryland, New Jersey, New York, Virginia, Washington, Utah, Massachusetts, Minnesota, Nevada, Oregon, Connecticut, Alaska, Hawaii and New Hampshire.

In 2001, in my home State of Nevada alone, over 16,600 families purchased a home with a FHA insured loan. Of those, all benefitted by having a more simple process to follow, while 6,761 homebuyers benefitted from the streamlined formula process with a lower down payment. That is an amazing amount of homes that may not have been purchased had this program not been in place.

I ask my colleagues for their support of this important legislation. If passed, this legislation will help thousands of Americans throughout our country realize their dream of homeownership.

In closing, I would like to thank the Senator from Maryland, Mr. SARBANES, for all his hard work on this very important legislation. I appreciate his determination to make home ownership a reality for so many Americans.

By Mr. LEAHY (for himself, Mr. DASCHLE, Mr. TORRICELLI, Mr. KENNEDY, Mr. HARKIN, Mr. BINGAMAN, Mr. FEINGOLD, and Mr. JOHNSON):

S. 2240. A bill to combat nursing home fraud and abuse, increase protections for victims of telemarketing fraud, enhance safeguards for pension plans and health care benefit programs, and enhance penalties for crimes against seniors, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Madam President, today I am introducing the Seniors Safety Act of 2002, a bill to protect older Americans from crime. I am pleased to have Senators DASCHLE, KENNEDY, TORRICELLI, HARKIN, BINGAMAN, FEINGOLD, and JOHNSON as cosponsors for this anti-crime bill.

The Seniors Safety Act contains a comprehensive package of proposals to address the most prevalent crimes perpetrated against seniors, including proposals to reduce health care fraud and abuse, combat nursing home fraud and abuse, prevent telemarketing fraud, and safeguard pension and employee benefit plans from fraud, bribery, and graft. In addition, this legislation would help seniors obtain restitution if their pension plans are defrauded.

Older Americans are the most rapidly growing population group in our society, making them an even more attractive target for criminals. The Department of Health and Human Services has predicted that the number of older Americans will grow from 13 percent of the U.S. population in 2000 to 20 percent by 2030. In Vermont, seniors comprise about 12 percent of the population, and it is expected that that number will increase to 20 percent by 2025.

As the Nation's crime rates dropped dramatically during the 1990s, crime against seniors remained stubbornly resistant. This may be because elders are susceptible to more fraud crimes and fewer violent crimes than younger Americans. According to a 2000 Justice Department study, more than 9 out of 10 crimes committed against older Americans were property crimes, most especially theft. As our Nation addressed our violent crime problem, we did not take a comprehensive approach to deterring the crimes that so affect the elderly, like telemarketing fraud, health care fraud, and pension fraud. The Seniors Safety Act provides such a comprehensive approach, and I urge the Senate to do its part to make it law.

The Seniors Safety Act instructs the U.S. Sentencing Commission to review current sentencing guidelines and, if appropriate, amend the guidelines to include the age of a crime victim as a criterion for determining whether a sentencing enhancement is proper. The bill also requires the Commission to review sentencing guidelines for health care benefit fraud, increases statutory penalties both for fraud resulting in serious injury or death and for bribery

and graft in connection with employee benefit plans, and increases criminal and civil penalties for defrauding pension plans.

One particular form of criminal activity, telemarketing fraud, disproportionately impacts Americans over the age of 50, who account for over a third of the estimated \$40 billion lost to telemarketing fraud each year. The Seniors Safety Act continues the progress we made in the 105th Congress with passage of the Telemarketing Fraud Prevention Act and in the 106th Congress with the Protecting Seniors from Fraud Act, which included provisions from the Seniors Safety Act that I introduced in the last Congress. The legislation I introduce today addresses the problem of telemarketing fraud schemes that too often succeed in swindling seniors of their life savings. Some of these schemes are directed from outside the United States, making criminal prosecution more difficult.

The act would provide the Attorney General with a new, significant crime-fighting tool to prevent telemarketing fraud. Specifically, the act would authorize the Attorney General to block or terminate telephone service to telephone facilities that are being used to conduct such fraudulent activities. The Justice Department could use this authority to disrupt telemarketing fraud schemes directed from foreign sources by cutting off the swindlers' telephone service. Even if the criminals manage to acquire a new telephone number, temporary interruptions will prevent some seniors from being victimized.

The bill also establishes a "Better Business Bureau"-style clearinghouse at the Federal Trade Commission to provide seniors, their families, and others who may be concerned about a telemarketer with information about prior fraud convictions and/or complaints against the particular company. In addition, the FTC would refer seniors and other consumers who believe they have been swindled to the appropriate law enforcement authorities.

Criminal activity that undermines the safety and integrity of pension plans and health benefit programs threatens all Americans, but most especially those seniors who have relied on promised benefits in planning their retirements. Seniors who have worked faithfully and honestly for years should not reach their retirement years only to find that the funds they relied upon were stolen. This is a significant problem. According to the Attorney General's 1997 Annual Report, an interagency working group on pension abuse brought 70 criminal cases representing more than \$90 million in losses to pension plans in 29 districts around the country in 1997 alone.

The Seniors Safety Act would add to the arsenal that Federal prosecutors have to prevent and punish fraud against retirement plans. Specifically, the Act would create new criminal and civil penalties for defrauding pension plans or obtaining money or property

from such plans by means of false or fraudulent pretenses. In addition, the act would enhance penalties for bribery and graft in connection with employee benefit plans. The only people enjoying the benefits of pension plans should be the people who have worked hard to fund those plans, not crooks who get the money by fraud.

Health care spending consists of about 15 percent of the gross national product, or more than \$1 trillion each year. Estimated losses due to fraud and abuse are astronomical. A December 1998 report by the National Institute of Justice, NIJ, states that these losses "may exceed 10 percent of annual health care spending, or \$100 billion per year."

As more health care claims are processed electronically, without human involvement, more sophisticated computer-generated fraud schemes are surfacing. Some of these schemes generate thousands of false claims designed to pass through automated claims processing to payment, and result in the theft of millions of dollars from Federal and private health care programs. Defrauding Medicare, Medicaid and private health plans increases the financial burden on taxpayers and beneficiaries alike. In addition, some forms of fraud may result in inadequate medical care, harming patients' health as well. Unfortunately, the NIJ reports that many health care fraud schemes "deliberately target vulnerable populations, such as the elderly or Alzheimer's patients, who are less willing or able to complain or alert law enforcement."

We saw a dramatic increase in criminal convictions for health care fraud cases during the 1990s. These cases included convictions for submitting false claims to Medicare, Medicaid, and private insurance plans; fake billings by foreign doctors; and needless prescriptions for durable medical equipment by doctors in exchange for kickbacks from manufacturers. In 1997 alone, \$1.2 billion was awarded or negotiated as a result of criminal fines, civil settlements and judgments in health care fraud matters.

We can and must do more. The Seniors Safety Act would allow the Attorney General to bring injunctive actions to stop false claims and illegal kickback schemes involving Federal health care programs. The bill would also provide law enforcement authorities with additional investigatory tools to uncover, investigate, and prosecute health care offenses in both criminal and civil proceedings.

In addition, whistle-blowers who tip off law enforcement about health care fraud would be authorized under the Seniors Safety Act to seek court permission to review information obtained by the Government to enhance their assistance in False Claims Act lawsuits. Such qui tam, or whistle-blower, suits have dramatically enhanced the Government's ability to uncover health

care fraud. The act would allow whistle-blowers and their qui tam suits to become even more effective.

Finally, the act would extend anti-fraud and anti-kickback safeguards to the Federal Employees Health Benefits program. These are all important steps that will help cut down on the enormous health care fraud losses.

As life expectancies continue to increase, long-term care planning specialists estimate that over 40 percent of those turning 65 eventually will need nursing home care, and that 20 percent of those seniors will spend 5 years or more in homes. Indeed, many of us already have experienced having our parents, family members or other loved ones spend time in a nursing home. We owe it to them and to ourselves to give the residents of nursing homes the best care they can get.

The Justice Department has cited egregious examples of nursing homes that pocketed Medicare funds instead of providing residents with adequate care. In one case, five patients died as result of the inadequate provision of nutrition, wound care and diabetes management by three Pennsylvania nursing homes. Yet another death occurred when a patient, who was unable to speak, was placed in a scalding tub of 138-degree water.

This act provides additional peace of mind to residents of nursing homes and those of us who may have loved ones there by giving Federal law enforcement the authority to investigate and prosecute operators of nursing homes for willfully engaging in patterns of health and safety violations in the care of nursing home residents. The act also protects whistle-blowers from retaliation for reporting such violations.

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. 2240

*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 “Seniors Safety Act of 2002”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

## **TITLE I—COMBATING CRIMES AGAINST SENIORS**

Sec. 101. Enhanced sentencing penalties based on age of victim.

Sec. 102. Study and report on health care fraud sentences.

Sec. 103. Increased penalties for fraud resulting in serious injury or death.

Sec. 104. Safeguarding pension plans from fraud and theft.

Sec. 105. Additional civil penalties for defrauding pension plans.

Sec. 106. Punishing bribery and graft in connection with employee benefit plans.

## **TITLE II—PREVENTING TELEMARKETING FRAUD**

Sec. 201. Centralized complaint and consumer education service for victims of telemarketing fraud.

Sec. 202. Blocking of telemarketing scams.

## **TITLE III—PREVENTING HEALTH CARE FRAUD**

Sec. 301. Injunctive authority relating to false claims and illegal kickback schemes involving Federal health care programs.

Sec. 302. Authorized investigative demand procedures.

Sec. 303. Extending antifraud safeguards to the Federal employee health benefits program.

Sec. 304. Grand jury disclosure.

Sec. 305. Increasing the effectiveness of civil investigative demands in false claims investigations.

## **TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES**

Sec. 401. Short title.

Sec. 402. Nursing home resident protection.

## **TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS**

Sec. 501. Use of forfeited funds to pay restitution to crime victims and regulatory agencies.

Sec. 502. Victim restitution.

Sec. 503. Bankruptcy proceedings not used to shield illegal gains from false claims.

Sec. 504. Forfeiture for retirement offenses.

## **SEC. 2. FINDINGS AND PURPOSES.**

(a) **FINDINGS.**—Congress makes the following findings:

(1) The number of older Americans is rapidly growing in the United States. According to the 2000 census, 21 percent of the United States population is 55 years of age or older.

(2) In 1997, 7 percent of victims of serious violent crime were 50 years of age or older.

(3) In 1997, 17.7 percent of murder victims were 55 years of age or older.

(4) According to the Department of Justice, persons 65 years of age and older experienced approximately 2,700,000 crimes a year between 1992 and 1997.

(5) Older victims of violent crime are almost twice as likely as younger victims to be raped, robbed, or assaulted at or in their own homes.

(6) Approximately half of all Americans who are 50 years of age or older are afraid to walk alone at night in their own neighborhoods.

(7) Seniors over 50 years of age reportedly account for 37 percent of the estimated \$40,000,000,000 in losses each year due to telemarketing fraud.

(8) A 1996 American Association of Retired Persons survey of people 50 years of age and older showed that 57 percent were likely to receive calls from telemarketers at least once a week.

(9) In 1998, Congress enacted legislation to provide for increased penalties for telemarketing fraud that targets seniors.

(10) It has been estimated that—

(A) approximately 43 percent of persons turning 65 years of age can expect to spend some time in a long-term care facility; and

(B) approximately 20 percent can expect to spend 5 years or more in a such a facility.

(11) In 1997, approximately \$82,800,000,000 was spent on nursing home care in the United States and over half of this amount was spent by the Medicaid and Medicare programs.

(12) Losses to fraud and abuse in health care reportedly cost the United States an estimated \$100,000,000,000 in 1996.

(13) The Inspector General for the Department of Health and Human Services has esti-

mated that about \$12,600,000,000 in improper Medicare benefit payments, due to inadvertent mistake, fraud, and abuse were made during fiscal year 1998.

(14) Incidents of health care fraud and abuse remain common despite awareness of the problem.

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

(1) combat nursing home fraud and abuse;

(2) enhance safeguards for pension plans and health care programs;

(3) develop strategies for preventing and punishing crimes that target or otherwise disproportionately affect seniors by collecting appropriate data—

(A) to measure the extent of crimes committed against seniors; and

(B) to determine the extent of domestic and elder abuse of seniors; and

(4) prevent and deter criminal activity, such as telemarketing fraud, that results in economic and physical harm against seniors, and ensure appropriate restitution.

## **SEC. 3. DEFINITIONS.**

In this Act:

(1) **CRIME.**—The term “crime” means any criminal offense under Federal or State law.

(2) **NURSING HOME.**—The term “nursing home” means any institution or residential care facility defined as such for licensing purposes under State law, or if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary of Health and Human Services, pursuant to section 1908(e) of the Social Security Act (42 U.S.C. 1396g(e)).

(3) **SENIOR.**—The term “senior” means an individual who is more than 55 years of age.

## **TITLE I—COMBATING CRIMES AGAINST SENIORS**

### **SEC. 101. ENHANCED SENTENCING PENALTIES BASED ON AGE OF VICTIM.**

(a) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the “Commission”) shall review and, if appropriate, amend section 3A1.1(a) of the Federal sentencing guidelines to include the age of a crime victim as one of the criteria for determining whether the application of a sentencing enhancement is appropriate.

(b) **REQUIREMENTS.**—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious economic and physical harms associated with criminal activity targeted at seniors due to their particular vulnerability;

(2) consider providing increased penalties for persons convicted of offenses in which the victim was a senior in appropriate circumstances;

(3) consult with individuals or groups representing seniors, law enforcement agencies, victims organizations, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that may justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

(c) REPORT.—Not later than December 31, 2002, the Commission shall submit to Congress a report on issues relating to the age of crime victims, which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for offenses involving seniors.

#### SEC. 102. STUDY AND REPORT ON HEALTH CARE FRAUD SENTENCES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission (referred to in this section as the “Commission”) shall review and, if appropriate, amend the Federal sentencing guidelines and the policy statements of the Commission with respect to persons convicted of offenses involving fraud in connection with a health care benefit program (as defined in section 24(b) of title 18, United States Code).

(b) REQUIREMENTS.—In carrying out this section, the Commission shall—

(1) ensure that the Federal sentencing guidelines and the policy statements of the Commission reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud;

(2) consider providing increased penalties for persons convicted of health care fraud in appropriate circumstances;

(3) consult with individuals or groups representing victims of health care fraud, law enforcement agencies, the health care industry, and the Federal judiciary as part of the review described in subsection (a);

(4) ensure reasonable consistency with other Federal sentencing guidelines and directives;

(5) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal sentencing guidelines provide sentencing enhancements;

(6) make any necessary conforming changes to the Federal sentencing guidelines; and

(7) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) REPORT.—Not later than December 31, 2002, the Commission shall submit to Congress a report on issues relating to offenses described in subsection (a), which shall include—

(1) an explanation of any changes to sentencing policy made by the Commission under this section; and

(2) any recommendations of the Commission for retention or modification of penalty levels, including statutory penalty levels, for those offenses.

#### SEC. 103. INCREASED PENALTIES FOR FRAUD RESULTING IN SERIOUS INJURY OR DEATH.

Sections 1341 and 1343 of title 18, United States Code, are each amended by inserting before the last sentence the following: “If the violation results in serious bodily injury (as defined in section 1365), such person shall be fined under this title, imprisoned not more than 20 years, or both, and if the violation results in death, such person shall be fined under this title, imprisoned for any term of years or life, or both.”

#### SEC. 104. SAFEGUARDING PENSION PLANS FROM FRAUD AND THEFT.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

#### “§ 1348. Fraud in relation to retirement arrangements

“(a) DEFINITION.—

“(1) RETIREMENT ARRANGEMENT.—In this section, the term ‘retirement arrangement’ means—

“(A) any employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

“(B) any qualified retirement plan within the meaning of section 4974(c) of the Internal Revenue Code of 1986;

“(C) any medical savings account described in section 220 of the Internal Revenue Code of 1986; or

“(D) a fund established within the Thrift Savings Fund by the Federal Retirement Thrift Investment Board pursuant to subchapter III of chapter 84 of title 5.

“(2) CERTAIN ARRANGEMENTS INCLUDED.—The term ‘retirement arrangement’ shall include any arrangement that has been represented to be an arrangement described in any subparagraph of paragraph (1) (whether or not so described).

“(3) EXCEPTION FOR GOVERNMENTAL PLAN.—Except as provided in paragraph (1)(D), the term ‘retirement arrangement’ shall not include any governmental plan (as defined in section 3(32) of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32))).

“(b) PROHIBITION AND PENALTIES.—Whoever executes, or attempts to execute, a scheme or artifice—

“(1) to defraud any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement; or

“(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any retirement arrangement or other person in connection with the establishment or maintenance of a retirement arrangement; shall be fined under this title, imprisoned not more than 10 years, or both.

“(c) ENFORCEMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), the Attorney General may investigate any violation of, and otherwise enforce, this section.

“(2) EFFECT ON OTHER AUTHORITY.—Nothing in this subsection may be construed to preclude the Secretary of Labor or the head of any other appropriate Federal agency from investigating a violation of this section in relation to a retirement arrangement subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or any other provision of Federal law.”

(b) TECHNICAL AMENDMENT.—Section 24(a)(1) of title 18, United States Code, is amended by inserting “1348,” after “1347.”

(c) CONFORMING AMENDMENT.—The analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“1348. Fraud in relation to retirement arrangements.”

#### SEC. 105. ADDITIONAL CIVIL PENALTIES FOR DEFRAUDING PENSION PLANS.

(a) IN GENERAL.—

(1) ACTION BY ATTORNEY GENERAL.—Except as provided in subsection (b)—

(A) the Attorney General may bring a civil action in the appropriate district court of the United States against any person who engages in conduct constituting an offense under section 1348 of title 18, United States Code, or conspiracy to violate such section 1348; and

(B) upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty in an amount equal to the greatest of—

(i) the amount of pecuniary gain to that person;

(ii) the amount of pecuniary loss sustained by the victim; or

(iii) not more than—

(I) \$50,000 for each such violation in the case of an individual; or

(II) \$100,000 for each such violation in the case of a person other than an individual.

(2) NO EFFECT ON OTHER REMEDIES.—The imposition of a civil penalty under this subsection does not preclude any other statutory, common law, or administrative remedy available by law to the United States or any other person.

(b) EXCEPTION.—No civil penalty may be imposed pursuant to subsection (a) with respect to conduct involving a retirement arrangement that—

(1) is an employee pension benefit plan subject to title I of the Employee Retirement Income Security Act of 1974; and

(2) for which the civil penalties may be imposed under section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132).

(c) DETERMINATION OF PENALTY AMOUNT.—In determining the amount of the penalty under subsection (a), the district court may consider the effect of the penalty on the violator or other person's ability to—

(1) restore all losses to the victims; or

(2) provide other relief ordered in another civil or criminal prosecution related to such conduct, including any penalty or tax imposed on the violator or other person pursuant to the Internal Revenue Code of 1986.

#### SEC. 106. PUNISHING BRIBERY AND GRAFT IN CONNECTION WITH EMPLOYEE BENEFIT PLANS.

(a) IN GENERAL.—Section 1954 of title 18, United States Code, is amended to read as follows:

#### “§ 1954. Bribery and graft in connection with employee benefit plans

“(a) DEFINITIONS.—In this section—

“(1) the term ‘employee benefit plan’ means any employee welfare benefit plan or employee pension benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974;

“(2) the terms ‘employee organization’, ‘administrator’, and ‘employee benefit plan sponsor’ mean any employee organization, administrator, or plan sponsor, as defined in title I of the Employment Retirement Income Security Act of 1974; and

“(3) the term ‘applicable person’ means—

“(A) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan;

“(B) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan;

“(C) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan;

“(D) a person who, or an officer, counsel, agent, or employee of an organization that, provides benefit plan services to such plan; or

“(E) a person with actual or apparent influence or decisionmaking authority in regard to such plan.

“(b) BRIBERY AND GRAFT.—Whoever—

“(1) being an applicable person, receives or agrees to receive or solicits, any fee, kickback, commission, gift, loan, money, or thing of value, personally or for any other person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan;

“(2) directly or indirectly, gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or



thing of value, to any applicable person, because of or with the intent to be corruptly influenced with respect to any action, decision, or duty of that applicable person relating to any question or matter concerning an employee benefit plan; or

“(3) attempts to give, accept, or receive any thing of value with the intent to be corruptly influenced in violation of this section; shall be fined under this title, imprisoned not more than 5 years, or both.

“(c) EXCEPTIONS.—Nothing in this section may be construed to apply to any—

“(1) payment to, or acceptance by, any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as an applicable person; or

“(2) payment to, or acceptance in good faith by, any employee benefit plan sponsor, or person acting on behalf of the sponsor, of anything of value relating to the decision or action of the sponsor to establish, terminate, or modify the governing instruments of an employee benefit plan in a manner that does not violate—

“(A) title I of the Employee Retirement Income Security Act of 1974;

“(B) any regulation or order promulgated under title I of the Employee Retirement Income Security Act of 1974; or

“(C) any other provision of law governing the plan.”

(b) CONFORMING AMENDMENT.—The analysis for chapter 95 of title 18, United States Code, is amended by striking the item relating to section 1954 and inserting the following:

“1954. Bribery and graft in connection with employee benefit plans.”

## TITLE II—PREVENTING TELEMARKETING FRAUD

### SEC. 201. CENTRALIZED COMPLAINT AND CONSUMER EDUCATION SERVICE FOR VICTIMS OF TELEMARKETING FRAUD.

(a) CENTRALIZED SERVICE.—

(1) REQUIREMENT.—The Federal Trade Commission shall, after consultation with the Attorney General, establish procedures to—

(A) log and acknowledge the receipt of complaints by individuals who certify that they have a reasonable belief that they have been the victim of fraud in connection with the conduct of telemarketing (as that term is defined in section 2325 of title 18, United States Code, as amended by section 202(a) of this Act);

(B) provide to individuals described in subparagraph (A), and to any other persons, information on telemarketing fraud, including—

(i) general information on telemarketing fraud, including descriptions of the most common telemarketing fraud schemes;

(ii) information on means of referring complaints on telemarketing fraud to appropriate law enforcement agencies, including the Director of the Federal Bureau of Investigation, the attorneys general of the States, and the national toll-free telephone number on telemarketing fraud established by the Attorney General; and

(iii) information, if available, on the number of complaints of telemarketing fraud against particular companies and any record of convictions for telemarketing fraud by particular companies for which a specific request has been made; and

(C) refer complaints described in subparagraph (A) to appropriate entities, including State consumer protection agencies or entities and appropriate law enforcement agencies, for potential law enforcement action.

(2) CENTRAL LOCATION.—The service under the procedures under paragraph (1) shall be provided at and through a single site selected by the Commission for that purpose.

(3) COMMENCEMENT.—The Federal Trade Commission shall commence carrying out the service not later than 1 year after the date of enactment of this Act.

(b) CREATION OF FRAUD CONVICTION DATABASE.—

(1) ESTABLISHMENT.—The Attorney General shall establish and maintain a computer database containing information on the corporations and companies convicted of offenses for telemarketing fraud under Federal and State law.

(2) DATABASE.—The database established under paragraph (1) shall include a description of the type and method of the fraud scheme for which each corporation or company covered by the database was convicted.

(3) USE OF DATABASE.—The Attorney General shall make information in the database available to the Federal Trade Commission for purposes of providing information as part of the service under subsection (a).

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

### SEC. 202. BLOCKING OF TELEMARKETING SCAMS.

(a) EXPANSION OF SCOPE OF TELEMARKETING FRAUD SUBJECT TO ENHANCED CRIMINAL PENALTIES.—Section 2325(1) of title 18, United States Code, is amended by striking “telephone calls” and inserting “wire communications utilizing a telephone service”.

(b) BLOCKING OR TERMINATION OF TELEPHONE SERVICE ASSOCIATED WITH TELEMARKETING FRAUD.—

(1) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following:

“§ 2328. Blocking or termination of telephone service

“(a) DEFINITIONS.—In this section:

“(1) REASONABLE NOTICE TO THE SUBSCRIBER.—

“(A) IN GENERAL.—The term ‘reasonable notice to the subscriber’, in the case of a subscriber of a common carrier, means any information necessary to provide notice to the subscriber that—

“(i) the wire communications facilities furnished by the common carrier may not be used for the purpose of transmitting, receiving, forwarding, or delivering a wire communication in interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud in connection with the conduct of telemarketing; and

“(ii) such use constitutes sufficient grounds for the immediate discontinuance or refusal of the leasing, furnishing, or maintaining of the facilities to or for the subscriber.

“(B) INCLUDED MATTER.—The term includes any tariff filed by the common carrier with the Federal Communications Commission that contains the information specified in subparagraph (A).

“(2) WIRE COMMUNICATION.—The term ‘wire communication’ has the same meaning given that term in section 2510(1).

“(3) WIRE COMMUNICATIONS FACILITY.—The term ‘wire communications facility’ means any facility (including instrumentalities, personnel, and services) used by a common carrier for purposes of the transmission, receipt, forwarding, or delivery of wire communications.

“(b) BLOCKING OR TERMINATING TELEPHONE SERVICE.—If a common carrier subject to the jurisdiction of the Federal Communications Commission is notified in writing by the Attorney General, acting within the jurisdiction of the Attorney General, that any wire communications facility furnished by that common carrier is being used or will be used by a subscriber for the purpose of transmitting or receiving a wire communication in

interstate or foreign commerce for the purpose of executing any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, in connection with the conduct of telemarketing, the common carrier shall discontinue or refuse the leasing, furnishing, or maintaining of the facility to or for the subscriber after reasonable notice to the subscriber.

“(c) PROHIBITION ON DAMAGES.—No damages, penalty, or forfeiture, whether civil or criminal, shall be found or imposed against any common carrier for any act done by the common carrier in compliance with a notice received from the Attorney General under this section.

“(d) RELIEF.—

“(1) IN GENERAL.—Nothing in this section may be construed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court, that—

“(A) the leasing, furnishing, or maintaining of a facility should not be discontinued or refused under this section; or

“(B) the leasing, furnishing, or maintaining of a facility that has been so discontinued or refused should be restored.

“(2) SUPPORTING INFORMATION.—In any action brought under this subsection, the court may direct that the Attorney General present evidence in support of the notice made under subsection (b) to which such action relates.”

(2) CONFORMING AMENDMENT.—The analysis for chapter 113A of title 18, United States Code, is amended by adding at the end the following:

“2328. Blocking or termination of telephone service.”

## TITLE III—PREVENTING HEALTH CARE FRAUD

### SEC. 301. INJUNCTIVE AUTHORITY RELATING TO FALSE CLAIMS AND ILLEGAL KICKBACK SCHEMES INVOLVING FEDERAL HEALTH CARE PROGRAMS.

(a) IN GENERAL.—Section 1345(a) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking “, or” and inserting a semicolon;

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

(C) by adding at the end the following:

“(D) committing or about to commit an offense under section 1128B of the Social Security Act (42 U.S.C. 1320a-7b);”;

(2) in paragraph (2), by inserting “a violation of paragraph (1)(D), or” before “a banking”.

(b) CIVIL ACTIONS.—

(1) IN GENERAL.—Section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended by adding at the end the following:

“(g) CIVIL ACTIONS.—

“(1) IN GENERAL.—The Attorney General may bring an action in the appropriate district court of the United States to impose upon any person who carries out any activity in violation of this section with respect to a Federal health care program a civil penalty of not more than \$50,000 for each such violation, or damages of 3 times the total remuneration offered, paid, solicited, or received, whichever is greater.

“(2) EXISTENCE OF VIOLATION.—A violation exists under paragraph (1) if 1 or more purposes of the remuneration is unlawful, and the damages shall be the full amount of such remuneration.

“(3) PROCEDURES.—An action under paragraph (1) shall be governed by—

“(A) the procedures with regard to subpoenas, statutes of limitations, standards of proof, and collateral estoppel set forth in section 3731 of title 31, United States Code; and

“(B) the Federal Rules of Civil Procedure.  
 “(4) NO EFFECT ON OTHER REMEDIES.—Nothing in this section may be construed to affect the availability of any other criminal or civil remedy.

“(h) INJUNCTIVE RELIEF.—The Attorney General may commence a civil action in an appropriate district court of the United States to enjoin a violation of this section, as provided in section 1345 of title 18, United States Code.”

(2) CONFORMING AMENDMENT.—The heading of section 1128B of the Social Security Act (42 U.S.C. 1320a-7b) is amended by inserting “AND CIVIL” after “CRIMINAL”.

#### SEC. 302. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

Section 3486 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “, or any allegation of fraud or false claims (whether criminal or civil) in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f))),” after “Federal health care offense” each place it appears; and

(2) by adding at the end the following:

“(f) PRIVACY PROTECTION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any record (including any book, paper, document, electronic medium, or other object or tangible thing) produced pursuant to a subpoena issued under this section that contains personally identifiable health information may not be disclosed to any person, except pursuant to a court order under subsection (e)(1).

“(2) EXCEPTIONS.—A record described in paragraph (1) may be disclosed—

“(A) to an attorney for the Government for use in the performance of the official duty of the attorney (including presentation to a Federal grand jury);

“(B) to government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the Government to assist an attorney for the Government in the performance of the official duty of that attorney to enforce Federal criminal law;

“(C) as directed by a court preliminarily to, or in connection with, a judicial proceeding;

“(D) as permitted by a court at the request of a defendant in an administrative, civil, or criminal action brought by the United States, upon a showing that grounds may exist for a motion to exclude evidence obtained under this section; or

“(E) at the request of an attorney for the Government, upon a showing that such matters may disclose a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such law.

“(3) MANNER OF COURT ORDERED DISCLOSURES.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), if a court orders the disclosure of any record described in paragraph (1), the disclosure—

“(i) shall be made in such manner, at such time, and under such conditions as the court may direct; and

“(ii) shall be undertaken in a manner that preserves the confidentiality and privacy of individuals who are the subject of the record.

“(B) EXCEPTION.—If disclosure is required by the nature of the proceedings, the attorney for the Government shall request that the presiding judicial or administrative officer enter an order limiting the disclosure of the record to the maximum extent practicable, including redacting the personally identifiable health information from publicly disclosed or filed pleadings or records.

“(4) DESTRUCTION OF RECORDS.—Any record described in paragraph (1), and all copies of

that record, in whatever form (including electronic), shall be destroyed not later than 90 days after the date on which the record is produced, unless otherwise ordered by a court of competent jurisdiction, upon a showing of good cause.

“(5) EFFECT OF VIOLATION.—Any person who knowingly fails to comply with this subsection may be punished as in contempt of court.

“(g) PERSONALLY IDENTIFIABLE HEALTH INFORMATION DEFINED.—In this section, the term ‘personally identifiable health information’ means any information, including genetic information, demographic information, and tissue samples collected from an individual, whether oral or recorded in any form or medium, that—

“(1) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; and

“(2) either—

“(A) identifies an individual; or

“(B) with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.”

#### SEC. 303. EXTENDING ANTIFRAUD SAFEGUARDS TO THE FEDERAL EMPLOYEE HEALTH BENEFITS PROGRAM.

Section 1128B(f)(1) of the Social Security Act (42 U.S.C. 1320a-7b(f)(1)) is amended by striking “(other than the health insurance program under chapter 89 of title 5, United States Code)”.

#### SEC. 304. GRAND JURY DISCLOSURE.

Section 3322 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

“(c) GRAND JURY DISCLOSURE.—Subject to section 3486(f), upon ex parte motion of an attorney for the Government showing that a disclosure in accordance with that subsection would be of assistance to enforce any provision of Federal law, a court may direct the disclosure of any matter occurring before a grand jury during an investigation of a Federal health care offense (as defined in section 24(a) of this title) to an attorney for the Government to use in any investigation or civil proceeding relating to fraud or false claims in connection with a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f))).”

#### SEC. 305. INCREASING THE EFFECTIVENESS OF CIVIL INVESTIGATIVE DEMANDS IN FALSE CLAIMS INVESTIGATIONS.

Section 3733 of title 31, United States Code, is amended—

(1) in subsection (a)(1), in the second sentence, by inserting “, except to the Deputy Attorney General or to an Assistant Attorney General” before the period at the end; and

(2) in subsection (i)(2)(C), by adding at the end the following: “Disclosure of information to a person who brings a civil action under section 3730, or the counsel of that person, shall be allowed only upon application to a United States district court showing that such disclosure would assist the Department of Justice in carrying out its statutory responsibilities.”

#### TITLE IV—PROTECTING RESIDENTS OF NURSING HOMES

##### SEC. 401. SHORT TITLE.

This title may be cited as the “Nursing Home Resident Protection Act of 2002”.

##### SEC. 402. NURSING HOME RESIDENT PROTECTION.

(a) PROTECTION OF RESIDENTS IN NURSING HOMES AND OTHER RESIDENTIAL HEALTH CARE

FACILITIES.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

#### “§ 1349. Pattern of violations resulting in harm to residents of nursing homes and related facilities

“(a) DEFINITIONS.—In this section:

“(1) ENTITY.—The term ‘entity’ means—

“(A) any residential health care facility (including facilities that do not exclusively provide residential health care services);

“(B) any entity that manages a residential health care facility; or

“(C) any entity that owns, directly or indirectly, a controlling interest or a 50 percent or greater interest in 1 or more residential health care facilities including States, localities, and political subdivisions thereof.

“(2) FEDERAL HEALTH CARE PROGRAM.—The term ‘Federal health care program’ has the same meaning given that term in section 1128B(f) of the Social Security Act.

“(3) PATTERN OF VIOLATIONS.—The term ‘pattern of violations’ means multiple violations of a single Federal or State law, regulation, or rule or single violations of multiple Federal or State laws, regulations, or rules, that are widespread, systemic, repeated, similar in nature, or result from a policy or practice.

“(4) RESIDENTIAL HEALTH CARE FACILITY.—The term ‘residential health care facility’ means any facility (including any facility that does not exclusively provide residential health care services), including skilled and unskilled nursing facilities and mental health and mental retardation facilities, that—

“(A) receives Federal funds, directly from the Federal Government or indirectly from a third party on contract with or receiving a grant or other monies from the Federal Government, to provide health care; or

“(B) provides health care services in a residential setting and, in any calendar year in which a violation occurs, is the recipient of benefits or payments in excess of \$10,000 from a Federal health care program.

“(5) STATE.—The term ‘State’ means each of the several States of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

“(b) PROHIBITION AND PENALTIES.—Whoever knowingly and willfully engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility or facilities, and that results in significant physical or mental harm to 1 or more of such residents, shall be punished as provided in section 1347, except that any organization shall be fined not more than \$2,000,000 per residential health care facility.

“(c) CIVIL PROVISIONS.—

“(1) IN GENERAL.—The Attorney General may bring an action in a district court of the United States to impose on any individual or entity that engages in a pattern of violations that affects the health, safety, or care of individuals residing in a residential health care facility, and that results in physical or mental harm to 1 or more such residents—

“(A) a civil penalty; or

“(B) in the case of—

“(i) an individual (other than an owner, operator, officer, or manager of such a residential health care facility), not more than \$10,000;

“(ii) an individual who is an owner, operator, officer, or manager of such a residential health care facility, not more than \$100,000 for each separate facility involved in the pattern of violations under this section;

“(iii) a residential health care facility, not more than \$1,000,000 for each pattern of violations; or

“(iv) an entity, not more than \$1,000,000 for each separate residential health care facility involved in the pattern of violations owned or managed by that entity.

“(2) OTHER APPROPRIATE RELIEF.—If the Attorney General has reason to believe that an individual or entity is engaging in or is about to engage in a pattern of violations that would affect the health, safety, or care of individuals residing in a residential health care facility, and that results in or has the potential to result in physical or mental harm to 1 or more such residents, the Attorney General may petition an appropriate district court of the United States for appropriate equitable and declaratory relief to eliminate the pattern of violations.

“(3) PROCEDURES.—In any action under this subsection—

“(A) a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States;

“(B) the action may not be brought more than 6 years after the date on which the violation occurred;

“(C) the United States shall be required to prove each charge by a preponderance of the evidence;

“(D) the civil investigative demand procedures set forth in the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.) and regulations promulgated pursuant to that Act shall apply to any investigation; and

“(E) the filing or resolution of a matter shall not preclude any other remedy that is available to the United States or any other person.

“(d) PROHIBITION AGAINST RETALIATION.—Any person who is the subject of retaliation, either directly or indirectly, for reporting a condition that may constitute grounds for relief under this section may bring an action in an appropriate district court of the United States for damages, attorneys’ fees, and other relief.”

(b) AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.—Section 3486(a)(1) of title 18, United States Code, as amended by section 402 of this Act, is amended by inserting “, act or activity involving section 1349 of this title” after “Federal health care offense”.

(c) CONFORMING AMENDMENT.—The analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“1349. Pattern of violations resulting in harm to residents of nursing homes and related facilities.”.

#### **TITLE V—PROTECTING THE RIGHTS OF ELDERLY CRIME VICTIMS**

##### **SEC. 501. USE OF FORFEITED FUNDS TO PAY RESTITUTION TO CRIME VICTIMS AND REGULATORY AGENCIES.**

Section 981(e) of title 18, United States Code, is amended—

(1) in each of paragraphs (3), (4), and (5), by striking “in the case of property referred to in subsection (a)(1)(C)” and inserting “in the case of property forfeited in connection with an offense resulting in a pecuniary loss to a financial institution or regulatory agency.”; and

(2) in paragraph (7), by striking “In the case of property referred to in subsection (a)(1)(D)” and inserting “in the case of property forfeited in connection with an offense relating to the sale of assets acquired or held by any Federal financial institution or regulatory agency, or person appointed by such agency, as receiver, conservator, or liquidating agent for a financial institution”.

##### **SEC. 502. VICTIM RESTITUTION.**

Section 413 of the Controlled Substances Act (21 U.S.C. 853) is amended by adding at the end the following:

“(r) VICTIM RESTITUTION.—

“(1) SATISFACTION OF ORDER OF RESTITUTION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a defendant may not use property subject to forfeiture under this section to satisfy an order of restitution.

“(B) EXCEPTION.—If there are 1 or more identifiable victims entitled to restitution from a defendant, and the defendant has no assets other than the property subject to forfeiture with which to pay restitution to the victim or victims, the attorney for the Government may move to dismiss a forfeiture allegation against the defendant before entry of a judgment of forfeiture in order to allow the property to be used by the defendant to pay restitution in whatever manner the court determines to be appropriate if the court grants the motion. In granting a motion under this subparagraph, the court shall include a provision ensuring that costs associated with the identification, seizure, management, and disposition of the property are recovered by the United States.

“(2) RESTORATION OF FORFEITED PROPERTY.—

“(A) IN GENERAL.—If an order of forfeiture is entered pursuant to this section and the defendant has no assets other than the forfeited property to pay restitution to 1 or more identifiable victims who are entitled to restitution, the Government shall restore the forfeited property to the victims pursuant to subsection (i)(1) once the ancillary proceeding under subsection (n) has been completed and the costs of the forfeiture action have been deducted.

“(B) DISTRIBUTION OF PROPERTY.—On a motion of the attorney for the Government, the court may enter any order necessary to facilitate the distribution of any property restored under this paragraph.

“(3) VICTIM DEFINED.—In this subsection, the term ‘victim’—

“(A) means a person other than a person with a legal right, title, or interest in the forfeited property sufficient to satisfy the standing requirements of subsection (n)(2) who may be entitled to restitution from the forfeited funds pursuant to section 9.8 of part 9 of title 28, Code of Federal Regulations (or any successor to that regulation); and

“(B) includes any person who is the victim of the offense giving rise to the forfeiture, or of any offense that was part of the same scheme, conspiracy, or pattern of criminal activity, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity.”.

##### **SEC. 503. BANKRUPTCY PROCEEDINGS NOT USED TO SHIELD ILLEGAL GAINS FROM FALSE CLAIMS.**

(a) CERTAIN ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the commencement or continuation of an action under section 3729 of title 31, United States Code, does not operate as a stay under section 105(a) or 362(a)(1) of title 11, United States Code.

(2) CONFORMING AMENDMENT.—Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (17), by striking “or” at the end;

(B) in paragraph (18), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(19) the commencement or continuation of an action under section 3729 of title 31.”.

(b) CERTAIN DEBTS NOT DISCHARGEABLE IN BANKRUPTCY.—Section 523 of title 11, United States Code, is amended by adding at the end the following:

“(f) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) does not discharge a debtor from a debt owed for violating section 3729 of title 31.”.

(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

##### **“§ 111. False claims**

“No transfer on account of a debt owed to the United States for violating section 3729 of title 31, or under a compromise order or other agreement resolving such a debt may be avoided under section 544, 545, 547, 548, 549, 553(b), or 742(a).”.

(2) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

“111. False claims.”.

##### **SEC. 504. FORFEITURE FOR RETIREMENT OFFENSES.**

(a) CRIMINAL FORFEITURE.—Section 982(a) of title 18, United States Code, is amended by adding at the end the following:

“(9) CRIMINAL FORFEITURE.—

“(A) IN GENERAL.—The court, in imposing a sentence on a person convicted of a retirement offense, shall order the person to forfeit property, real or personal, that constitutes or that is derived, directly or indirectly, from proceeds traceable to the commission of the offense.

“(B) RETIREMENT OFFENSE DEFINED.—In this paragraph, if a violation, conspiracy, or solicitation relates to a retirement arrangement (as defined in section 1348 of title 18, United States Code), the term ‘retirement offense’ means a violation of—

“(i) section 664, 1001, 1027, 1341, 1343, 1348, 1951, 1952, or 1954 of title 18, United States Code; or

“(ii) section 411, 501, or 511 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111, 1131, 1141).”.

(b) CIVIL FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by adding at the end the following:

“(H) Any property, real or personal, that constitutes or is derived, directly or indirectly, from proceeds traceable to the commission of, criminal conspiracy to violate, or solicitation to commit a crime of violence involving, a retirement offense (as defined in section 982(a)(9)(B)).”.

Mr. TORRICELLI. Madam President, I am pleased to join Senators LEAHY and DASCHLE today as an original cosponsor of the Seniors Safety Act, legislation that has been referred to as “a new safety net for seniors.” It is that, but it is also much more. Indeed, this bill is a potent weapon designed to track down and punish those criminals who would prey on the trust and good will of America’s seniors. This bill puts crooks on notice that crimes against seniors, from violent assaults in the streets, to abuses in nursing homes, to frauds perpetrated over the telephone lines, will not be tolerated.

Seniors represent the most rapidly growing sector of our population. In the next 50 years, the number of Americans over the age of 65 will more than double. Unless we take action now, the frequency and sophistication of crimes against seniors will likewise skyrocket. The Seniors Safety Act was developed to address, head-on, the crimes which most directly affect the senior community, including telemarketing fraud, and abuse and fraud in the health care and nursing home industries. It increases penalties and provides enhancements to the sentencing guidelines for criminals who target seniors. It protects seniors against the

illegal depletion of precious pension and employee benefit plan funds through fraud, graft, and bribery, and helps victimized seniors obtain restitution. And finally, this bill authorizes the Attorney General to study the problem of crime against seniors, and design new techniques to fight it.

Criminal enterprises that engage in telemarketing fraud are some of the most insidious predators out there. Americans are fleeced out of over \$40 billion dollars every year, and the effect on seniors is grossly disproportionate. According to the American Association of Retired Persons, "The repeated victimization of the elderly is the cornerstone of illegal telemarketing." A study has found that 56 percent of the names on the target lists of fraudulent telemarketers are those of Americans aged 50 or older. Of added concern is the fact that many of the perpetrators have migrated out of the United States for fear of prosecution, and continue to conduct their illegal activities from abroad.

In one heartbreaking story, a recently-widowed New Jersey woman was bilked out of \$200,000 by a deceitful telemarketing firm from Canada, who claimed that the woman had won a \$150,000 sweepstakes, the prize could be hers, for a fee. A series of these calls followed, convincing this poor woman, already in a fragile mind-state after her husband's death, to send more and more money for what they claimed was an increasingly large prize, which, of course, never materialized.

Our bill authorizes the Attorney General to effectively put these vultures, even the international criminals, out of business by blocking or terminating their U.S. telephone service. In addition, it authorizes the FTC to create a consumer clearinghouse which would provide seniors, and others who might have questions about the legitimacy of a telephone sales pitch, with information regarding prior complaints about a particular telemarketing company or prior fraud convictions. Furthermore, this clearinghouse would give seniors who may have been cheated an open channel to the appropriate law enforcement authorities.

In 1997, older Americans were victimized by violent crime over 680,000 times. The crimes against them range from simple assault, to armed robbery, to rape. While national crime rates in general are falling, seniors have not shared in the benefits of that drop.

This Act singles out criminals who prey on the senior population and penalizes them for the physical and economic harm they cause. In addition, we intend to place this growing problem in the spotlight, and urge Congress and Federal and State law enforcement agencies to continue to develop solutions. To this end, we have authorized a comprehensive examination of crimes against seniors, and the inclusion of data on seniors in the National Crime Victims Survey.

Seniors across the country have worked their entire lives, secure in the

belief that their pensions and health benefits would be there to provide for them in their retirement years. Unfortunately, far too often, seniors wake up one morning to find that their hard-earned benefits have been stolen. In 1997 alone, \$90 million in losses to pension funds were uncovered. Older Americans who depend on that money to live are left out in the cold, while criminals enjoy the fruits of a lifetime of our seniors' labor. The Seniors Safety Act gives Federal prosecutors another powerful weapon to punish pension fund thieves. The Act creates new civil and criminal penalties for defrauding pension of benefit plans, or obtaining money from them under false or fraudulent pretenses.

The defrauding of Medicare, Medicaid, and private health insurers has become big business for criminals who prey on the elderly. According to a National Institutes of Health study, losses from fraud and abuse may exceed \$100 billion per year. Overbilling and false claims filing have become rampant as automated claims processing is more prevalent. Similarly, the Department of Justice has noted numerous cases where unscrupulous nursing home operators have simply pocketed Medicare funds, rather than providing adequate care for their residents. In one horrendous case, five diabetic patients died from malnutrition and lack of medical care. In another, a patient was burned to death when a mute patient was placed by untrained staff in a tub of scalding water. These terrible abuses would never have occurred had the facilities spent the Federal funds they received to implement proper health and safety procedures. This bill goes after fraud and abuse by providing resources and tools for authorities to investigate and prosecute offenses in civil and criminal courts, and enhances the ability of the Justice Department to use evidence brought in by qui tam, whistleblower, plaintiffs.

Together these provisions bring much-needed protections to our seniors. It sends a message to the cowardly perpetrators of fraud and other crimes against older Americans, that their actions will be fiercely prosecuted, whether they be here or abroad. And it clearly states that we refuse to allow seniors to be victimized by this most heinous form of predation.

By Mr. DORGAN (for himself, Mr. JEFFORDS, Ms. COLLINS, Ms. STABENOW, Ms. SNOWE, Mr. WELLSTONE, Mr. LEVIN, and Mr. DAYTON):

S. 2244. A bill to permit commercial importation of prescription drugs from Canada, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DORGAN. Madam President, today I am introducing the Prescription Drug Price Parity for Americans Act, along with my colleagues Senators JEFFORDS, COLLINS, STABENOW, SNOWE, WELLSTONE, LEVIN, and DAY-

TON. I intend to come to the floor later in the week to speak about this legislation at greater length, but I wanted to go ahead and introduce the bill today.

This bill addresses a growing problem with prescription drug spending in our country. Spending on prescription drugs rose 17 percent in 2001, following on the heels of a nearly 19 percent increase in 2000 and a 16 percent increase in 1999. Unfortunately, many Americans, especially senior citizens and the uninsured, cannot afford the substantially higher prices that they are being charged for their medicines. A prescription drug that costs \$1 in the United States costs only 62 cents in Canada, and that is just not fair.

The bill I am introducing today would address this unfair pricing by injecting some price competition into the prescription drug marketplace. This legislation builds on the Medicine Equity and Drug Safety, MEDS, Act, which the Senate passed overwhelmingly in 2000 and was enacted into law. Like the MEDS Act, this bill would allow U.S.-licensed pharmacists and drug wholesalers to import FDA-approved medicines, but unlike the 2000 law, this year's bill will be limited to approved drugs coming only from Canada. Canada has a drug approval and distribution system similarly strong to the U.S. system. I am very confident that this bill can be implemented immediately while ensuring the safety of our Nation's drug supply and significant cost savings for American consumers.

Again, I look forward to coming back to the floor to describe this legislation at length at some later opportunity.

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

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

S. 2244

*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 "Prescription Drug Price Parity for Americans Act".

#### SEC. 2. IMPORTATION OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by striking section 804 and inserting the following:

#### "SEC. 804. IMPORTATION OF PRESCRIPTION DRUGS.

"(a) DEFINITIONS.—In this section:

"(1) IMPORTER.—The term 'importer' means a pharmacist or wholesaler.

"(2) PHARMACIST.—The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

"(3) PRESCRIPTION DRUG.—The term 'prescription drug' means a drug subject to section 503(b), other than—

"(A) a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(B) a biological product (as defined in section 351 of the Public Health Service Act (42 U.S.C. 262));

"(C) an infused drug (including a peritoneal dialysis solution);

“(D) an intravenously injected drug; or

“(E) a drug that is inhaled during surgery.

“(4) QUALIFYING LABORATORY.—The term ‘qualifying laboratory’ means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

“(5) WHOLESALER.—

“(A) IN GENERAL.—The term ‘wholesaler’ means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(e)(2)(A).

“(B) EXCLUSION.—The term ‘wholesaler’ does not include a person authorized to import drugs under section 801(d)(1).

“(b) REGULATIONS.—The Secretary, after consultation with the United States Trade Representative and the Commissioner of Customs, shall promulgate regulations permitting pharmacists and wholesalers to import prescription drugs from Canada into the United States.

“(c) LIMITATION.—The regulations under subsection (b) shall—

“(1) require that safeguards be in place to ensure that each prescription drug imported under the regulations complies with section 505 (including with respect to being safe and effective for the intended use of the prescription drug), with sections 501 and 502, and with other applicable requirements of this Act;

“(2) require that an importer of a prescription drug under the regulations comply with subsections (d)(1) and (e); and

“(3) contain any additional provisions determined by the Secretary to be appropriate as a safeguard to protect the public health or as a means to facilitate the importation of prescription drugs.

“(d) INFORMATION AND RECORDS.—

“(1) IN GENERAL.—The regulations under subsection (b) shall require an importer of a prescription drug under subsection (b) to submit to the Secretary the following information and documentation:

“(A) The name and quantity of the active ingredient of the prescription drug.

“(B) A description of the dosage form of the prescription drug.

“(C) The date on which the prescription drug is shipped.

“(D) The quantity of the prescription drug that is shipped.

“(E) The point of origin and destination of the prescription drug.

“(F) The price paid by the importer for the prescription drug.

“(G) Documentation from the foreign seller specifying—

“(i) the original source of the prescription drug; and

“(ii) the quantity of each lot of the prescription drug originally received by the seller from that source.

“(H) The lot or control number assigned to the prescription drug by the manufacturer of the prescription drug.

“(I) The name, address, telephone number, and professional license number (if any) of the importer.

“(J)(i) In the case of a prescription drug that is shipped directly from the first foreign recipient of the prescription drug from the manufacturer:

“(I) Documentation demonstrating that the prescription drug was received by the recipient from the manufacturer and subsequently shipped by the first foreign recipient to the importer.

“(II) Documentation of the quantity of each lot of the prescription drug received by the first foreign recipient demonstrating that the quantity being imported into the United States is not more than the quantity that was received by the first foreign recipient.

“(III)(aa) In the case of an initial imported shipment, documentation demonstrating that each batch of the prescription drug in the shipment was statistically sampled and tested for authenticity and degradation.

“(bb) In the case of any subsequent shipment, documentation demonstrating that a statistically valid sample of the shipment was tested for authenticity and degradation.

“(ii) In the case of a prescription drug that is not shipped directly from the first foreign recipient of the prescription drug from the manufacturer, documentation demonstrating that each batch in each shipment offered for importation into the United States was statistically sampled and tested for authenticity and degradation.

“(K) Certification from the importer or manufacturer of the prescription drug that the prescription drug—

“(i) is approved for marketing in the United States; and

“(ii) meets all labeling requirements under this Act.

“(L) Laboratory records, including complete data derived from all tests necessary to ensure that the prescription drug is in compliance with established specifications and standards.

“(M) Documentation demonstrating that the testing required by subparagraphs (J) and (L) was conducted at a qualifying laboratory.

“(N) Any other information that the Secretary determines is necessary to ensure the protection of the public health.

“(2) MAINTENANCE BY THE SECRETARY.—The Secretary shall maintain information and documentation submitted under paragraph (1) for such period of time as the Secretary determines to be necessary.

“(e) TESTING.—The regulations under subsection (b) shall require—

“(1) that testing described in subparagraphs (J) and (L) of subsection (d)(1) be conducted by the importer or by the manufacturer of the prescription drug at a qualified laboratory;

“(2) if the tests are conducted by the importer—

“(A) that information needed to—

“(i) authenticate the prescription drug being tested; and

“(ii) confirm that the labeling of the prescription drug complies with labeling requirements under this Act;

be supplied by the manufacturer of the prescription drug to the pharmacist or wholesaler; and

“(B) that the information supplied under subparagraph (A) be kept in strict confidence and used only for purposes of testing or otherwise complying with this Act; and

“(3) may include such additional provisions as the Secretary determines to be appropriate to provide for the protection of trade secrets and commercial or financial information that is privileged or confidential.

“(f) REGISTRATION OF FOREIGN SELLERS.—Any establishment within Canada engaged in the distribution of a prescription drug that is imported or offered for importation into the United States shall register with the Secretary the name and place of business of the establishment.

“(g) SUSPENSION OF IMPORTATION.—The Secretary shall require that importations of a specific prescription drug or importations by a specific importer under subsection (b) be immediately suspended on discovery of a pattern of importation of the prescription drugs or by the importer that is counterfeit or in violation of any requirement under this section, until an investigation is completed and the Secretary determines that the public is adequately protected from counterfeit and violative prescription drugs being imported under subsection (b).

“(h) APPROVED LABELING.—The manufacturer of a prescription drug shall provide an importer written authorization for the importer to use, at no cost, the approved labeling for the prescription drug.

“(i) PROHIBITION OF DISCRIMINATION.—

“(1) IN GENERAL.—It shall be unlawful for a manufacturer of a prescription drug to discriminate against, or cause any other person to discriminate against, a pharmacist or wholesaler that purchases or offers to purchase a prescription drug from the manufacturer or from any person that distributes a prescription drug manufactured by the drug manufacturer.

“(2) DISCRIMINATION.—For the purposes of paragraph (1), a manufacturer of a prescription drug shall be considered to discriminate against a pharmacist or wholesaler if the manufacturer enters into a contract for sale of a prescription drug, places a limit on supply, or employs any other measure, that has the effect of—

“(A) providing pharmacists or wholesalers access to prescription drugs on terms or conditions that are less favorable than the terms or conditions provided to a foreign purchaser (other than a charitable or humanitarian organization) of the prescription drug; or

“(B) restricting the access of pharmacists or wholesalers to a prescription drug that is permitted to be imported into the United States under this section.

“(j) CHARITABLE CONTRIBUTIONS.—Notwithstanding any other provision of this section, section 801(d)(1) continues to apply to a prescription drug that is donated or otherwise supplied at no charge by the manufacturer of the drug to a charitable or humanitarian organization (including the United Nations and affiliates) or to a government of a foreign country.

“(k) WAIVER AUTHORITY FOR IMPORTATION BY INDIVIDUALS.—

“(1) DECLARATIONS.—Congress declares that in the enforcement against individuals of the prohibition of importation of prescription drugs and devices, the Secretary should—

“(A) focus enforcement on cases in which the importation by an individual poses a significant threat to public health; and

“(B) exercise discretion to permit individuals to make such importations in circumstances in which—

“(i) the importation is clearly for personal use; and

“(ii) the prescription drug or device imported does not appear to present an unreasonable risk to the individual.

“(2) WAIVER AUTHORITY.—

“(A) IN GENERAL.—The Secretary may grant to individuals, by regulation or on a case-by-case basis, a waiver of the prohibition of importation of a prescription drug or device or class of prescription drugs or devices, under such conditions as the Secretary determines to be appropriate.

“(B) GUIDANCE ON CASE-BY-CASE WAIVERS.—The Secretary shall publish, and update as necessary, guidance that accurately describes circumstances in which the Secretary will consistently grant waivers on a case-by-case basis under subparagraph (A), so that individuals may know with the greatest practicable degree of certainty whether a particular importation for personal use will be permitted.

“(3) DRUGS IMPORTED FROM CANADA.—In particular, the Secretary shall by regulation grant individuals a waiver to permit individuals to import into the United States a prescription drug that—

“(A) is imported from a licensed pharmacy for personal use by an individual, not for resale, in quantities that do not exceed a 90-day supply;

“(B) is accompanied by a copy of a valid prescription;

“(C) is imported from Canada, from a seller registered with the Secretary;

“(D) is a prescription drug approved by the Secretary under chapter V;

“(E) is in the form of a final finished dosage that was manufactured in an establishment registered under section 510; and

“(F) is imported under such other conditions as the Secretary determines to be necessary to ensure public safety.

“(I) STUDIES; REPORTS.—

“(1) BY THE INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMY OF SCIENCES.—

“(A) STUDY.—

“(i) IN GENERAL.—The Secretary shall request that the Institute of Medicine of the National Academy of Sciences conduct a study of—

“(I) importations of prescription drugs made under the regulations under subsection (b); and

“(II) information and documentation submitted under subsection (d).

“(ii) REQUIREMENTS.—In conducting the study, the Institute of Medicine shall—

“(I) evaluate the compliance of importers with the regulations under subsection (b);

“(II) compare the number of shipments under the regulations under subsection (b) during the study period that are determined to be counterfeit, misbranded, or adulterated, and compare that number with the number of shipments made during the study period within the United States that are determined to be counterfeit, misbranded, or adulterated; and

“(III) consult with the Secretary, the United States Trade Representative, and the Commissioner of Patents and Trademarks to evaluate the effect of importations under the regulations under subsection (b) on trade and patent rights under Federal law.

“(B) REPORT.—Not later than 2 years after the effective date of the regulations under subsection (b), the Institute of Medicine shall submit to Congress a report describing the findings of the study under subparagraph (A).

“(2) BY THE COMPTROLLER GENERAL.—

“(A) STUDY.—The Comptroller General of the United States shall conduct a study to determine the effect of this section on the price of prescription drugs sold to consumers at retail.

“(B) REPORT.—Not later than 18 months after the effective date of the regulations under subsection (b), the Comptroller General of the United States shall submit to Congress a report describing the findings of the study under subparagraph (A).

“(m) CONSTRUCTION.—Nothing in this section limits the authority of the Secretary relating to the importation of prescription drugs, other than with respect to section 801(d)(1) as provided in this section.

“(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.”.

(b) CONFORMING AMENDMENTS.—The Federal Food, Drug, and Cosmetic Act is amended—

(1) in section 301(aa) (21 U.S.C. 331(aa)), by striking “covered product in violation of section 804” and inserting “prescription drug in violation of section 804”;

(2) in section 303(a)(6) (21 U.S.C. 333(a)(6)), by striking “covered product pursuant to section 804(a)” and inserting “prescription drug under section 804(b)”.

Mr. WELLSTONE. Madam President, I am glad we have the opportunity today to introduce legislation that corrects a sad injustice. This injustice makes American consumers the least

likely of any in the industrialized world to be able to afford drugs manufactured by the American pharmaceutical industry. That's because of the unconscionable prices the industry charges only here in the United States.

When I return to Minnesota which I do frequently, I meet with many constituents, but none with more compelling stories than senior citizens struggling to make ends meet because of the high cost of prescription drugs, life-saving drugs that are not covered under the Medicare program. Ten or twenty years ago these same senior citizens were going to work everyday, in the stores, and factories, and mines in Minnesota, earning an honest paycheck, and paying their taxes without protest. Now they wonder, how can this government, their government, stand by, when the medicines they need are out of reach.

And it is not just that Medicare won't pay for these drugs. The unfairness which Minnesotans feel is exacerbated of course by the high cost of prescription drugs here in the United States, the same drugs that can be purchased for frequently half the price in Canada. These are the exact same drugs, manufactured in the exact same facilities with the exact same safety precautions.

All the legislators speaking today have heard the first-hand stories from our constituents back home. Our constituents are justifiably frustrated and discouraged when they can't afford to buy prescription drugs that are made in the United States, unless they go across the border to Canada where those same drugs, manufactured in the same facilities are available for about half the price.

Senior citizens have lost their patience in waiting for answers, and so have I. Driving to Canada every few months to buy prescription drugs at affordable prices isn't the solution; it's a symptom of how broken parts of our health care system are. Americans regardless of political party have a fundamental belief in fairness, and we know a rip-off when we see one. It is time to end that rip-off.

While we can be proud of both American scientific research that produces new miracle cures and the high standards of safety and efficacy that we expect to be followed at the FDA, it is shameful that America's most vulnerable citizens, the chronically ill and the elderly, are being asked to pay the highest prices in the world here in the U.S. for the exact same medicines that are manufactured here but sold more cheaply in other countries.

That is why I am introducing with my colleagues today the Medicine Equity and Drug Safety Act of 2002. This bill will amend the Food, Drug, and Cosmetic Act to allow American pharmacists and wholesalers to import prescription drugs from Canada into the United States, as long as the drugs meet FDA's strict safety standards. Pharmacists and wholesalers will be

able to purchase these drugs, often manufactured right here in the U.S., at much lower prices and then pass those savings on to consumers. In addition, the bill would give individuals a waiver to import prescription drugs from Canada as long as the medicine is for their own personal use and the amount of medicine imported is a 90-day supply or less. This provision will give consumers confidence that, if they follow the rules for personal importation, they won't have to worry about their medicines being stopped at the border.

Our bill addresses the absurd situation by which American consumers are paying substantially higher prices for their prescription drugs than are the citizens of Canada. The bill does not create any new Federal programs. Instead, it uses principles frequently cited in both houses of the Congress, principles of free trade and competition, the help make it possible for American consumers to purchase the prescription drugs they need.

And the need is clear. A recent informal survey by the Minnesota Senior Federation on the price of six commonly used prescription medications showed that Minnesota consumers pay, on average, nearly double, 196 percent, what their Canadian counterparts pay. These excessive prices apply to drugs manufactured by U.S. pharmaceutical firms, the same drugs that are sold in Canada for a fraction of the U.S. price.

Pharmacists could sell prescription drugs for less here in the United States, if they could buy and import these same drugs from Canada at lower prices than the pharmaceutical companies charge here.

Now, however, Federal law allows only the manufacturer of a drug to import it into the U.S. Thus American pharmacists and wholesalers must pay the exorbitant prices charged by the pharmaceutical industry in the U.S. market and pass along those high prices to consumers. It is time to stop protecting the pharmaceutical industry's outrageous profits, and they are outrageous.

Let's take a look at the numbers, so there can be no mistake:

Where the average Fortune 500 industry in the United States returned 2.2 percent profits as a percentage of revenue, the pharmaceutical industry returned 18.5 percent.

Where the average Fortune 500 industry returned 2.5 percent profits as a percentage of their assets, the pharmaceutical industry returned 16.5 percent.

Where the average Fortune 500 industry returned less than 10 percent profits as a percentage of shareholders equity, the pharmaceutical industry returned 33.2 percent.

Those huge profits are no surprise to America's senior citizens because they know where those profits come from, they come from their own pocketbooks. It is time to end the price gouging.

We need legislation that can assure our senior citizens and all Americans



that safe and affordable prescription medications at last will be as available in the United States of America as they are in Canada. The bill we are introducing today accomplishes that end.

I also want to point out that our bill includes important safety precautions to make sure we are not sacrificing safety for price. The safety measures provide strong protection for the American public. These protections include: Strict FDA oversight; importation from Canada only; strict handling requirements for importers, like those already in place for manufacturers; registration of Canadian pharmacists and wholesalers with the HHS Secretary; lab testing to screen out counterfeits; lab testing to ensure purity, potency, and safety of medications and; authority for the HHS Secretary to immediately suspend importation of prescription drugs that appear counterfeit or otherwise violate the law.

The only thing that is not protected in this bill is the excessive profits of the pharmaceutical industry. My job as a United States Senator is not to protect profits but to protect the people. Colleagues, please join us and support this thoughtful and important bill that will help make prescription drugs affordable to the American people.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3332. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3333. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3334. Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3335. Mr. SESSIONS (for himself, Mr. SHELBY, Mr. SPECTER, and Mr. SANTORUM) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3336. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3337. Mr. WELLSTONE submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3338. Mr. REID submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3339. Mr. DURBIN (for himself and Mr. HARKIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr.

BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3340. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3341. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3342. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3343. Mrs. LINCOLN (for herself, Mr. HAGEL, Mr. BOND, Mr. KERRY, Mrs. CARNAHAN, Mr. NELSON of Nebraska, and Mr. MILLER) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3344. Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3345. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3346. Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3347. Mr. INOUE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3348. Mr. INOUE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3349. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3350. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3351. Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3352. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3353. Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. BINGAMAN, and Mr. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3354. Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3355. Mr. CONRAD (for himself, Mr. SMITH of New Hampshire, and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3356. Mr. HOLLINGS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3357. Mr. ROCKEFELLER (for himself, Mrs. CARNAHAN, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3358. Mr. ROCKEFELLER (for himself, Mr. ALLEN, Mr. SPECTER, and Mr. WARNER) submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3359. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3360. Mr. TORRICELLI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3361. Mr. KERRY (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3362. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3363. Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3364. Mr. THOMAS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3365. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3366. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3367. Mr. HAGEL submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3368. Mr. CARPER submitted an amendment intended to be proposed by him to the bill S. 517, supra; which was ordered to lie on the table.

SA 3369. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3370. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3371. Mr. GRAHAM submitted an amendment intended to be proposed to

amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3372. Mr. GRAHAM (for himself and Mr. FEINGOLD) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3373. Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3374. Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 3344 submitted by Mrs. LINCOLN and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3375. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 3336 submitted by Mr. GRAMM and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

#### REPRINT OF AMENDMENT NO. 3325 SUBMITTED ON TUESDAY, APRIL 23, 2002

**SA 3325.** Mr. SHELBY (for himself, Mr. AKAKA, Mr. SCHUMER, and Mrs. CLINTON) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 205, between lines 8 and 9, insert the following:

( ) ESTABLISHMENT OF A PROGRAM FOR THE PRODUCTION OF FUEL ETHANOL FROM MUNICIPAL SOLID WASTE.—

(1) DEFINITION OF MUNICIPAL SOLID WASTE.—In this section, the term “municipal solid waste” has the meaning given the term “solid waste” in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(2) ESTABLISHMENT OF PROGRAM.—The Secretary of Energy shall establish a program that promotes expedited construction of facilities for the processing and conversion of municipal solid waste into fuel ethanol to supplement fossil fuels.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out programs that promote expedited construction of commercially viable facilities for the processing and conversion of municipal solid waste to fuel ethanol to supplement fossil fuels including, but not limited to, loan guarantees to private institutions.

(4) REQUIREMENTS.—The Secretary may provide a loan guarantee under paragraph (2) to an applicant if—

(A) without a loan guarantee, credit is not available to the applicant under reasonable terms or conditions sufficient to finance the construction of a facility described in paragraph (2);

(B) the prospective earning power of the applicant and the character and value of the security pledged provide a reasonable assur-

ance of repayment of the loan to be guaranteed in accordance with the terms of the loan; and

(C) the loan bears interest at a rate determined by the Secretary to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.

(5) CRITERIA.—In selecting recipients of loan guarantees from among applicants, the Secretary shall give preference to proposals that—

(A) meet all applicable Federal and State permitting requirements;

(B) are most likely to be successful; and

(C) are located in local markets that have the greatest need for the facility because of—

(i) the limited availability of land for waste disposal; or

(ii) a high level of demand for fuel ethanol or other commercial byproducts of the facility.

(6) MATURITY.—A loan guaranteed under paragraph (2) shall have a maturity of not more than 20 years.

(7) TERMS AND CONDITIONS.—The loan agreement for a loan guaranteed under paragraph (2) shall provide that no provision of the loan agreement may be amended or waived without the consent of the Secretary.

(8) ASSURANCE OF REPAYMENT.—The Secretary shall require that an applicant for a loan guarantee under paragraph (2) provide an assurance of repayment in the form of a performance bond, insurance, collateral, or other means acceptable to the Secretary in an amount equal to not less than 20 percent of the amount of the loan.

(9) GUARANTEE FEE.—The recipient of a loan guarantee under paragraph (2) shall pay the Secretary an amount determined by the Secretary to be sufficient to cover the administrative costs of the Secretary relating to the loan guarantee.

(10) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the loan for the guarantee with respect to principal and interest. The validity of the guarantee shall be incontestable in the hands of a holder of the guaranteed loan.

(11) REPORTS.—Until each guaranteed loan under this section has been repaid in full, the Secretary shall annually submit to Congress an report on the activities of the Secretary under this section.

(12) TERMINATION OF AUTHORITY.—The authority of the Secretary to issue a loan guarantee under paragraph (2) terminates on the date that is 10 years after the date of enactment of this Act.

#### TEXT OF AMENDMENTS

**SA 3332.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 4, line 8, strike “subparagraphs (A) and” and insert “Subparagraph”.

**SA 3333.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 17, line 9, strike all through page 55, line 7.

**SA 3334.** Mr. KYL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 17, line 9, strike all through page 55, line 7, and insert the following:

#### SEC. 2001. PERMANENT EXTENSION OF ABOVE-THE-LINE DEDUCTION FOR TEACHER CLASSROOM EXPENSES.

Section 62(a)(2)(D) is amended by striking “In the case of taxable years beginning during 2002 or 2003, the” and inserting “The”.

**SA 3335.** Mr. SESSIONS (for himself, Mr. SHELBY, Mr. SPECTER, and Mr. SANTORUM) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 202, between lines 22 and 23, insert the following:

(b) EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.—Paragraph (2) of section 29(f) (relating to application of section) is amended by inserting “(January 1, 2005, in the case of any coke or coke gas produced in a facility described in paragraph (1)(B))” after “January 1, 2003”.

**SA 3336.** Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 216, after line 21, add the following:

#### SEC. . TREATMENT OF DAIRY PROPERTY.

(a) QUALIFIED DISPOSITION OF DAIRY PROPERTY TREATED AS INVOLUNTARY CONVERSION.—

(1) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by designating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

“(k) QUALIFIED DISPOSITION TO IMPLEMENT BOVINE TUBERCULOSIS ERADICATION PROGRAM.—

“(1) IN GENERAL.—For purposes of this subsection, if a taxpayer elects the application of this subsection to a qualified disposition:

“(A) TREATMENT AS INVOLUNTARY CONVERSION.—Such disposition shall be treated as an involuntary conversion to which this section applies.

“(B) MODIFICATION OF SIMILAR PROPERTY REQUIREMENT.—Property to be held by the taxpayer either for productive use in a trade or business or for investment shall be treated as property similar or related in service or use to the property disposed of.

“(C) EXTENSION OF PERIOD FOR REPLACING PROPERTY.—Subsection (a)(2)(B)(i) shall be applied by substituting ‘4 years’ for ‘2 years’.

“(D) WAIVER OF UNRELATED PERSON REQUIREMENT.—Subsection (i) (relating to replacement property must be acquired from unrelated person in certain cases) shall not apply.

“(E) EXPANDED CAPITAL GAIN FOR CATTLE AND HORSES.—Section 1231(b)(3)(A) shall be applied by substituting ‘1 month’ for ‘24 months’.

“(2) QUALIFIED DISPOSITION.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified disposition’ means the disposition of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, as implemented pursuant to the Declaration of Emergency Because of Bovine Tuberculosis (65 Federal Register 63,227 (2000)).

“(B) PAYMENTS RECEIVED IN CONNECTION WITH THE BOVINE TUBERCULOSIS ERADICATION PROGRAM.—For purposes of this subsection, any amount received by a taxpayer in connection with an agreement under such bovine tuberculosis eradication program shall be treated as received in a qualified disposition.

“(C) TRANSMITTAL OF CERTIFICATIONS.—The Secretary of Agriculture shall transmit copies of certifications under this paragraph to the Secretary.

“(3) ALLOWANCE OF THE ADJUSTED BASIS OF CERTIFIED DAIRY PROPERTY AS A DEPRECIATION DEDUCTION.—The adjusted basis of any property certified under paragraph (2)(A) shall be allowed as a depreciation deduction under section 167 for the taxable year which includes the date of the certification described in paragraph (2)(A).

“(4) DAIRY PROPERTY.—For purposes of this subsection, the term ‘dairy property’ means all tangible or intangible property used in connection with a dairy business or a dairy processing plant.

“(5) SPECIAL RULES FOR CERTAIN BUSINESS ORGANIZATIONS.—

“(A) S CORPORATIONS.—In the case of an S corporation, gain on a qualified disposition shall not be treated as recognized for the purposes of section 1374 (relating to tax imposed on certain built-in gains).

“(B) PARTNERSHIPS.—In the case of a partnership which dissolves in anticipation of a qualified disposition (including in anticipation of receiving the amount described in paragraph (2)(B)), the dairy property owned by the partners of such partnership at the time of such disposition shall be treated, for the purposes of this section and notwithstanding any regulation or rule of law, as owned by such partners at the time of such disposition.

“(6) TERMINATION.—This subsection shall not apply to dispositions made after December 31, 2006.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to dispositions made and amounts received in taxable years ending after May 22, 2001.

(b) DEDUCTION OF QUALIFIED RECLAMATION EXPENDITURES.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by adding at the end the following new section:

**“SEC. 199B. EXPENSING OF DAIRY PROPERTY RECLAMATION COSTS.**

“(a) IN GENERAL.—Notwithstanding section 280B (relating to demolition of structures), a taxpayer may elect to treat any qualified reclamation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

“(b) QUALIFIED RECLAMATION EXPENDITURE.—

“(1) IN GENERAL.—For purposes of this subparagraph, the term ‘qualified reclamation expenditure’ means amounts otherwise chargeable to capital account and paid or incurred to convert any real property certified under section 1033(k)(2) (relating to qualified disposition) into unimproved land.

“(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—A rule similar to the rule of section 198(b)(2) (relating to special rule for expenditures for depreciable property) shall apply for purposes of paragraph (1).

“(c) DEDUCTION RECAPTURED AS ORDINARY INCOME.—Rules similar to the rules of section 198(e) (relating to deduction recaptured as ordinary income on sale, etc.) shall apply with respect to any qualified reclamation expenditure.

“(d) TERMINATION.—This section shall not apply to expenditures paid or incurred after December 31, 2006.”.

(2) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

“Sec. 199B. Expensing of dairy property reclamation costs.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred in taxable years ending after May 22, 2001.

**SA 3337.** Mr. WELLSTONE submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

**SEC. \_\_\_\_ FOREIGN CORPORATIONS CREATED THROUGH INVERSION TRANSACTIONS TAXED AS DOMESTIC CORPORATIONS.**

(a) IN GENERAL.—Paragraph (4) of section 7701(a) (defining domestic) is amended to read as follows:

“(4) DOMESTIC.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘domestic’ when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State unless, in the case of a partnership, the Secretary provides otherwise by regulations.

“(B) INVERSION TRANSACTIONS DISREGARDED.—

“(1) IN GENERAL.—A corporation which would (but for this subparagraph) be treated as a foreign corporation shall be treated as a

domestic corporation if such corporation is an inverted domestic corporation.

“(ii) INVERTED DOMESTIC CORPORATION.—For purposes of clause (i), a foreign corporation is an inverted domestic corporation if, immediately after a transaction in which—

“(I) property is directly or indirectly transferred by a domestic corporation to such foreign corporation, or

“(II) stock in a domestic corporation is transferred directly or indirectly by its shareholders to such foreign corporation,

more than 50 percent of the stock (by vote or value) of such foreign corporation is held by former shareholders of the domestic corporation by reason of holding stock in such domestic corporation.

“(iii) REGULATIONS RELATING TO INVERTED DOMESTIC CORPORATIONS.—The Secretary may by regulations provide that clause (i) shall not apply to a foreign corporation which is an inverted domestic corporation if, immediately before the transaction described in clause (ii), such foreign corporation was engaged in the active conduct of 1 or more trades or businesses which are substantial in relation to the trades or businesses which the domestic corporation described in clause (ii) was engaged in the active conduct of at such time.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of any inverted domestic corporation beginning after December 31, 2002, without regard to whether the corporation became an inverted domestic corporation before, on, or after such date.

**SA 3338.** Mr. REID submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 123, after line 25, add the following:

“(v) NONAPPLICATION OF CERTAIN RULES.—For purposes of determining if the term ‘combined heat and power system property’ includes technologies which generate electricity or mechanical power using back-pressure steam turbines in place of existing pressure-reducing valves or which make use of waste heat from industrial processes such as by using organic rankin, stirling, or kalina heat engine systems, subparagraph (A) shall be applied without regard to clauses (iii) and (iv) thereof.

**SA 3339.** Mr. DURBIN (for himself and Mr. HARKIN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in Division H, insert the following:

**SEC. \_\_\_\_ ENERGY CREDIT FOR WIND ENERGY PROPERTY.**

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) (defining energy property), as amended by this Act, is amended by striking “or” at the end of clause (iii), by adding “or”

at the end of clause (iv), and by inserting after clause (iv) the following new clause:

“(v) qualified wind energy property.”

(b) QUALIFIED WIND ENERGY PROPERTY.—Subsection (a) of section 48, as amended by this Act, is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

“(6) QUALIFIED WIND ENERGY PROPERTY.—For purposes of this subsection—

“(A) QUALIFIED WIND ENERGY PROPERTY.—The term ‘qualified wind energy property’ means a qualifying wind turbine if the property carries at least a 5-year limited warranty covering defects in design, material, or workmanship, and, for property that is not installed by the taxpayer, at least a 5-year limited warranty covering defects in installation.

“(B) QUALIFYING WIND TURBINE.—The term ‘qualifying wind turbine’ means a wind turbine of 75 kilowatts of rated capacity or less which meets the latest performance rating standards published by the American Wind Energy Association or the International Electrotechnical Commission and which is used to generate electricity.”

(c) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—Subsection (d) of section 39, as amended by this Act, is amended by adding at the end the following new paragraph:

“(20) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy credit with respect to property described in section 48(a)(6) may be carried back to a taxable year ending before January 1, 2003.”

(d) CONFORMING AMENDMENTS.—

(A) Section 25C(e)(6), as added by this Act, is amended by striking “section 48(a)(6)(C)” and inserting “section 48(a)(7)(C)”.

(B) Section 29(b)(3)(A)(i)(III), as amended by this Act, is amended by striking “section 48(a)(6)(C)” and inserting “section 48(a)(7)(C)”.

(C) Section 48(a)(3)(C) is amended by inserting “(other than property described in subparagraph (A)(v)),” before “with respect”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service or installed after December 31, 2002, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

**SA 3340.** Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 94, lines 18 and 19, strike “for use in such a dwelling unit”.

**SA 3341.** Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 91, strike lines 7 and 8.

**SA 3342.** Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

In Division H, on page 98, line 16, strike “If” and insert “Except in the case of qualified wind energy property expenditures, if”.

**SA 3343.** Mrs. LINCOLN (for herself, Mr. HAGEL, Mr. BOND, Mr. KERRY, Mrs. CARNAHAN, Mr. NELSON of Nebraska, and Mr. MILLER) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 202, between lines 17 and 18, insert the following:

“(5) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—

“(A) IN GENERAL.—In the case of facility for producing liquid, gaseous, or solid fuels from qualified agricultural and animal wastes, including such fuels when used as feedstocks, which was placed in service after the date of the enactment of this subsection and before January 1, 2005, this section shall apply with respect to fuel produced at such facility not later than the close of the 3-year period beginning on the date such facility is placed in service.

“(B) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—For purposes of this paragraph, the term ‘qualified agricultural and animal waste’ means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes, including wood shavings, straw, rice hulls, and other bedding for the disposition of manure.

**SA 3344.** Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 216, after line 21, add the following:

**SEC. \_\_\_\_ CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR AGRICULTURAL AERIAL APPLICATORS.**

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

“(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A)

of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.”

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section 6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence:

“For purposes of this paragraph, in the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.”

(c) EXEMPTION FROM TAX ON AIR TRANSPORTATION OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of section 4261 (relating to tax on air transportation of persons) is amended to read as follows:

“(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

“(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

“(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel use or air transportation after December 31, 2001, and before January 1, 2003.

**SA 3345.** Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

(a) EXTENSION TO SMALL SYSTEMS.—On page 121, strike lines 12 through 16 and insert the following:

“(ii) which has an electrical capacity of no more than 15 megawatts or a mechanical energy capacity of no more than 2,000 horsepower or an equivalent combination of electrical and mechanical energy capacities,”

(b) DEPRECIATION SCHEDULE.—

(1) On page 122, line 2, strike “(70 percent)” and all that follows through “capacities)” on page 122, line 8; and

(2) On page 124, strike lines 1 through 8.

**SA 3346.** Mr. KOHL submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 17, between lines 8 and 9, insert the following:

**SEC. \_\_\_\_ CREDIT FOR ELECTRICITY PRODUCED FROM MUNICIPAL BIOSOLIDS AND RECYCLED SLUDGE.**

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by this Act, is amended by striking “and” at the end of subparagraph (G), by striking the period at the end of subparagraph (H), and by adding at the end the following new subparagraphs:

“(I) municipal biosolids, and  
“(J) recycled sludge.”.

(b) QUALIFIED FACILITIES.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraphs:

“(H) MUNICIPAL BIOSOLIDS FACILITY.—In the case of a facility using municipal biosolids to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after December 31, 2001, and before January 1, 2007.

“(I) RECYCLED SLUDGE FACILITY.—

“(i) IN GENERAL.—In the case of a facility using recycled sludge to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service before January 1, 2007.

“(ii) SPECIAL RULE.—In the case of a qualified facility described in clause (i), the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this subparagraph.”.

(c) DEFINITIONS.—Section 45(c), as amended by this Act, is amended by redesignating paragraph (9) as paragraph (11) and by inserting after paragraph (8) the following new paragraphs:

“(9) MUNICIPAL BIOSOLIDS.—The term ‘municipal biosolids’ means the residue or solids removed by a municipal wastewater treatment facility.

“(10) RECYCLED SLUDGE.—

“(A) IN GENERAL.—The term ‘recycled sludge’ means the recycled residue byproduct created in the treatment of commercial, industrial, municipal, or navigational wastewater.

“(B) RECYCLED.—The term ‘recycled’ means the processing of residue into a marketable product, but does not include incineration for the purpose of volume reduction.”.

(d) EXEMPTION FROM CREDIT REDUCTION.—The last sentence of section 45(b)(3), as added by this Act, is amended by inserting “, (c)(3)(H), or (c)(3)(I)” after “(c)(3)(B)(i)(II)”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

**SA 3347.** Mr. INOUE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 216, after line 21, add the following:

**SEC. \_\_\_\_ TREATMENT OF FACILITIES USING BAGASSE TO PRODUCE ENERGY AS SOLID WASTE DISPOSAL FACILITIES ELIGIBLE FOR TAX-EXEMPT FINANCING.**

(a) IN GENERAL.—Section 142 (relating to exempt facility bond) is amended by adding at the end the following:

“(1) SOLID WASTE DISPOSAL FACILITIES.—For purposes of subsection (a)(6), the term ‘solid waste disposal facilities’ includes property located in Hawaii and used for the disposal of bagasse.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after the date of the enactment of this Act.

**SA 3348.** Mr. INOUE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 216, after line 21, add the following:

**SEC. \_\_\_\_ TREATMENT OF FACILITIES USING BAGASSE TO PRODUCE ENERGY AS SOLID WASTE DISPOSAL FACILITIES ELIGIBLE FOR TAX-EXEMPT FINANCING.**

(a) IN GENERAL.—Section 142 (relating to exempt facility bond) is amended by adding at the end the following:

“(1) SOLID WASTE DISPOSAL FACILITIES.—For purposes of subsection (a)(6), the term ‘solid waste disposal facilities’ includes property located in Hawaii and used for the disposal of bagasse which has been used in the manufacture of ethanol.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to bonds issued after the date of the enactment of this Act.

**SA 3349.** Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 199, lines 5 through 7, strike “at least 20 percent of the emissions of sulfur dioxide and nitrogen oxide” and insert “at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury”.

**SA 3350.** Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 17, between lines 8 and 9, insert the following:

**SEC. 1905. CREDIT FOR ELECTRICITY PRODUCED FROM SMALL IRRIGATION POWER.**

(a) IN GENERAL.—Section 45(c)(1) (defining qualified energy resources), as amended by

this Act, is amended by striking “and” at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting “, and”, and by adding at the end the following new subparagraph:

“(H) small irrigation power.”.

(b) QUALIFIED FACILITY.—Section 45(c)(3) (relating to qualified facility), as amended by this Act, is amended by adding at the end the following new subparagraph:

“(G) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term ‘qualified facility’ means any facility owned by the taxpayer which is originally placed in service after date of the enactment of this subparagraph and before January 1, 2007.”.

(c) DEFINITION.—Section 45(c), as amended by this Act, is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) SMALL IRRIGATION POWER.—The term ‘small irrigation power’ means power—

“(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

“(B) the installed capacity of which is less than 5 megawatts.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

**SA 3351.** Mr. BAUCUS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 91, line 15, strike all through page 95, line 17, and insert the following:

“(iii) \$250 for each advanced natural gas furnace,

“(iv) \$250 for each central air conditioner,

“(v) \$75 for each natural gas water heater, and

“(vi) \$250 for each geothermal heat pump.

(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless—

“(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

“(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

“(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

“(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

“(ii) in the case of the energy efficiency ratio (EER)—

“(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

“(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

“(iii) are in effect at the time of the acquisition of the property.

“(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

“(d) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.—The term ‘qualified solar water heating property expenditure’ means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

“(2) QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.—The term ‘qualified photovoltaic property expenditure’ means an expenditure for property that uses solar energy to generate electricity for use in such a dwelling unit.

“(3) SOLAR PANELS.—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

“(4) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term ‘qualified fuel cell property expenditure’ means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with such a dwelling unit.

“(5) QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.—The term ‘qualified wind energy property expenditure’ means an expenditure for property which uses wind energy to generate electricity for use in such a dwelling unit.

“(6) QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.—

“(A) IN GENERAL.—The term ‘qualified Tier 2 energy efficient building property expenditure’ means an expenditure for any Tier 2 energy efficient building property.

“(B) TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.—The term ‘Tier 2 energy efficient building property’ means—

“(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

“(ii) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 12.5,

“(iii) an advanced natural gas furnace which achieves at least 95 percent annual fuel utilization efficiency (AFUE).”.

**SA 3352.** Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 64, line 1, strike all through page 73, line 2, and insert the following:

#### SEC. 2008. INCENTIVES FOR BIODIESEL.

(a) CREDIT FOR BIODIESEL USED AS A FUEL.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by this Act, is amended by inserting after section 40A the following new section:

##### “SEC. 40B. BIODIESEL USED AS FUEL.

“(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the biodiesel mixture credit.

“(b) DEFINITION OF BIODIESEL MIXTURE CREDIT.—For purposes of this section—

“(1) BIODIESEL MIXTURE CREDIT.—

“(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is the sum of the products of the biodiesel mixture rate for each qualified biodiesel mixture and the number of gallons of such mixture of the taxpayer for the taxable year.

“(B) BIODIESEL MIXTURE RATE.—For purposes of subparagraph (A), the biodiesel mixture rate for each qualified biodiesel mixture shall be—

“(i) in the case of a mixture with only biodiesel V, 1 cent for each whole percentage point (not exceeding 20 percentage points) of biodiesel V in such mixture, and

“(ii) in the case of a mixture with biodiesel NV, or a combination of biodiesel V and biodiesel NV, 0.5 cent for each whole percentage point (not exceeding 20 percentage points) of such biodiesel in such mixture.

“(2) QUALIFIED BIODIESEL MIXTURE.—

“(A) IN GENERAL.—The term ‘qualified biodiesel mixture’ means a mixture of diesel and biodiesel V or biodiesel NV which—

“(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

“(ii) is used as a fuel by the taxpayer producing such mixture.

“(B) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—

“(i) IN GENERAL.—Biodiesel V or biodiesel NV used in the production of a qualified biodiesel mixture shall be taken into account—

“(I) only if the sale or use described in subparagraph (A) is in a trade or business of the taxpayer, and

“(II) for the taxable year in which such sale or use occurs.

“(ii) CERTIFICATION FOR BIODIESEL V.—Biodiesel V used in the production of a qualified biodiesel mixture shall be taken into account only if the taxpayer described in subparagraph (A) obtains a certification from the producer of the biodiesel V which identifies the product produced.

“(C) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

“(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel V shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such biodiesel V solely by reason of the application of section 4041(n) or section 4081(f).

“(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) BIODIESEL V DEFINED.—The term ‘biodiesel V’ means the monoalkyl esters of long chain fatty acids derived solely from virgin vegetable oils for use in compression-ignition (diesel) engines. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds.

“(2) BIODIESEL NV DEFINED.—The term ‘biodiesel nv’ means the monoalkyl esters of

long chain fatty acids derived from non-virgin vegetable oils or animal fats for use in compression-ignition (diesel) engines.

“(3) REGISTRATION REQUIREMENTS.—The terms ‘biodiesel V’ and ‘biodiesel NV’ shall only include a biodiesel which meets—

“(i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

“(ii) the requirements of the American Society of Testing and Materials D6751.

“(2) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

“(A) IMPOSITION OF TAX.—If—

“(i) any credit was determined under this section with respect to biodiesel V or biodiesel NV used in the production of any qualified biodiesel mixture, and

“(ii) any person—

“(I) separates such biodiesel from the mixture, or

“(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the biodiesel mixture rate applicable under subsection (b)(1)(B) and the number of gallons of the mixture.

“(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

“(3) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

“(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT NOT APPLY.—

“(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

“(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

“(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.”.

“(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.”.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking “plus” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, plus”, and by adding at the end the following new paragraph:

“(17) the biodiesel fuels credit determined under section 40B(a).”.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

“(12) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40B may be carried back to a taxable year beginning before January 1, 2003.”.

(B) Section 196(c) is amended by striking “and” at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

“(11) the biodiesel fuels credit determined under section 40B(a).”.



(C) Section 6501(m), as amended by this Act, is amended by inserting "40B(e)," after "40(f)."

(D) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding after the item relating to section 40A the following new item:

"Sec. 40B. Biodiesel used as fuel."

(4) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2002.

(b) **REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL V MIXTURES.**—

(1) **IN GENERAL.**—Section 4081 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

"(f) **BIODIESEL V MIXTURES.**—Under regulations prescribed by the Secretary—

"(1) **IN GENERAL.**—In the case of the removal or entry of a qualified biodiesel mixture with biodiesel V, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

"(2) **TAX PRIOR TO MIXING.**—

"(A) **IN GENERAL.**—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture with biodiesel V, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

"(B) **DETERMINATION OF RATE.**—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a percentage equal to 100 percent minus the percentage of biodiesel V which will be in the mixture.

"(3) **DEFINITIONS.**—For purposes of this subsection, any term used in this subsection which is also used in section 40B shall have the meaning given such term by section 40B.

"(4) **CERTAIN RULES TO APPLY.**—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection."

(2) **CONFORMING AMENDMENTS.**—

(A) Section 4041 is amended by adding at the end the following new subsection:

"(n) **BIODIESEL V MIXTURES.**—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40B(b)(2)) with biodiesel V, the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B))."

(B) Section 6427 is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) **BIODIESEL V MIXTURES.**—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40B(b)(2)) with biodiesel V which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40B(b)(1)(B)) with respect to such fuel."

(3) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2006.

(c) **HIGHWAY TRUST FUND HELD HARMLESS.**—There are hereby transferred (from time to time) from the funds of the Commodity Credit Corporation amounts determined by the Secretary of the Treasury to be

equivalent to the reductions that would occur (but for this subsection) in the receipts of the Highway Trust Fund by reason of the amendments made by this section.

**SA 3353.** Mr. BAUCUS (for himself, Mr. GRASSLEY, Mr. BINGAMAN, and Mr. MURKOWSKI) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 215, between lines 10 and 11, insert the following:

**SEC. 2404. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.**

(a) **IN GENERAL.**—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

"(i) **SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.**—

"(1) **IN GENERAL.**—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualifying electric transmission transaction in any taxable year—

"(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

"(B) any income derived from such transaction in excess of such ordinary income which is required to be included in gross income for such taxable year,

shall be so recognized and included ratably over the 8-taxable year period beginning with such taxable year.

"(2) **QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.**—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

"(A) property used by the taxpayer in the trade or business of providing electric transmission services, or

"(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

"(3) **INDEPENDENT TRANSMISSION COMPANY.**—For purposes of this subsection, the term 'independent transmission company' means—

"(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

"(B) a person—

"(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) is not a market participant within the meaning of such Commission's rules applicable to regional transmission organizations, and

"(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization before the close of the period specified in such authorization, but not later than the close of the period applicable under paragraph (1), or

"(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

"(4) **ELECTION.**—An election under paragraph (1), once made, shall be irrevocable.

"(5) **NONAPPLICATION OF INSTALLMENT SALES TREATMENT.**—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made."

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to transactions occurring after the date of the enactment of this Act.

**SA 3354.** Mr. CONRAD (for himself and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 202, between lines 23 and 24, insert the following:

(b) **EXTENSION FOR CERTAIN FUEL PRODUCED AT EXISTING FACILITIES.**—Paragraph (2) of section 29(f) (relating to application of section) is amended by inserting "(January 1, 2008, in the case of qualified fuel described in subsection (c)(1)(C))" after "January 1, 2003".

**SA 3355.** Mr. CONRAD (for himself, Mr. SMITH of New Hampshire, and Mr. DORGAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 103, line 1, strike all through page 105, line 12, and insert the following:

**SEC. 2104. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS AND STATIONARY MICROTURBINE POWER PLANTS.**

(a) **IN GENERAL.**—Subparagraph (A) of section 48(a)(3) (defining energy property) is amended by striking "or" at the end of clause (i), by adding "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) qualified fuel cell property or qualified microturbine property."

(b) **QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.**—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) **QUALIFIED FUEL CELL PROPERTY; QUALIFIED MICROTURBINE PROPERTY.**—For purposes of this subsection—

"(A) **QUALIFIED FUEL CELL PROPERTY.**—

"(i) **IN GENERAL.**—The term 'qualified fuel cell property' means a fuel cell power plant that—

"(I) generates at least 1 kilowatt of electricity using an electrochemical process, and

"(II) has an electricity-only generation efficiency greater than 30 percent.

“(ii) **LIMITATION.**—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

“(I) 30 percent of the basis of such property, or

“(II) \$1,000 for each kilowatt of capacity of such property.

“(iii) **FUEL CELL POWER PLANT.**—The term ‘fuel cell power plant’ means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.

“(iv) **TERMINATION.**—Such term shall not include any property placed in service after December 31, 2007.

“(B) **QUALIFIED MICROTURBINE PROPERTY.**—

“(i) **IN GENERAL.**—The term ‘qualified microturbine property’ means a stationary microturbine power plant which has an electricity-only generation efficiency not less than 26 percent at International Standard Organization conditions.

“(ii) **LIMITATION.**—In the case of qualified microturbine property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

“(I) 10 percent of the basis of such property, or

“(II) \$200 for each kilowatt of capacity of such property.

“(iii) **STATIONARY MICROTURBINE POWER PLANT.**—The term ‘stationary microturbine power plant’ means a system comprising of a rotary engine which is actuated by the aerodynamic reaction or impulse or both on radial or axial curved full-circumferential-admission airfoils on a central axial rotating spindle. Such system—

“(I) commonly includes an air compressor, combustor, gas pathways which lead compressed air to the combustor and which lead hot combusted gases from the combustor to 1 or more rotating turbine spools, which in turn drive the compressor and power output shaft,

“(II) includes a fuel compressor, recuperator/regenerator, generator or alternator, integrated combined cycle equipment, cooling-heating-and-power equipment, sound attenuation apparatus, and power conditioning equipment, and

“(III) includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency, and power factors.

“(iv) **TERMINATION.**—Such term shall not include any property placed in service after December 31, 2006.”

(c) **LIMITATION.**—Section 48(a)(2)(A) (relating to energy percentage) is amended to read as follows:

“(A) **IN GENERAL.**—The energy percentage is—

“(i) in the case of qualified fuel cell property, 30 percent, and

“(ii) in the case of any other energy property, 10 percent.”

(d) **CONFORMING AMENDMENTS.**—

(A) Section 29(b)(3)(A)(i)(III) is amended by striking “section 48(a)(4)(C)” and inserting “section 48(a)(5)(C)”.

(B) Section 48(a)(1) is amended by inserting “except as provided in subparagraph (A)(ii) or (B)(ii) of paragraph (4),” before “the energy”.

(e) **EFFECTIVE DATE.**—The amendments made by this subsection shall apply to property placed in service after December 31, 2002, under rules similar to the rules of sec-

tion 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

**SA 3356.** Mr. HOLLINGS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 215, between lines 10 and 11, insert the following:

**SEC. 2405. APPLICATION OF TEMPORARY REGULATIONS TO CERTAIN OUTPUT CONTRACTS.**

In the application of section 1-141-7(c)(4) of the Treasury Temporary Regulations to output contracts entered into after February 22, 1998, with respect to an issuer participating in open access with respect to the issuer's transmission facilities, an output contract in existence on or before such date that is amended after such date shall be treated as a contract entered into after such date only if the amendment increases the amount of output sold under such contract by extending the term of the contract or increasing the amount of output sold, but such treatment as a contract entered into after such date shall begin on the effective date of the amendment and shall apply only with respect to the increased output to be provided under such contract.

**SA 3357.** Mr. ROCKEFELLER (for himself, Mrs. CARNAHAN, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

**SEC. \_\_\_\_ . CREDIT FOR ENERGY EFFICIENT VENDING MACHINES.**

(a) **IN GENERAL.**—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

**“SEC. 45K. ENERGY EFFICIENT VENDING MACHINE CREDIT.**

“(a) **GENERAL RULE.**—For purposes of section 38, the energy efficient vending machine credit determined under this section for the taxable year is an amount equal to \$75, multiplied by the number of qualified energy efficient vending machines purchased by the taxpayer during the calendar year ending with or within the taxable year.

“(b) **QUALIFIED ENERGY EFFICIENT VENDING MACHINE.**—For purposes of this section, the term ‘qualified energy efficient vending machine’ means a refrigerated bottled or canned beverage vending machine which—

“(1) has a capacity of at least 500 bottles or cans, and

“(2) consumes not more than 8.66 kWh per day of electricity based on ASHRAE Standard 32.1-1997.

“(c) **VERIFICATION.**—The taxpayer shall submit such information or certification as the Secretary determines necessary to claim the credit amount under subsection (a).

“(d) **TERMINATION.**—This section shall not apply with respect to vending machines pur-

chased in calendar years beginning after December 31, 2005.”

(b) **LIMITATION ON CARRYBACK.**—Section 39(d) (relating to transition rules), as amended by this Act, is amended by adding at the end the following new paragraph:

“(20) **NO CARRYBACK OF ENERGY EFFICIENT VENDING MACHINE CREDIT BEFORE EFFECTIVE DATE.**—No portion of the unused business credit for any taxable year which is attributable to the energy efficient vending machine credit determined under section 45K may be carried to a taxable year ending before January 1, 2003.”

(c) **CONFORMING AMENDMENT.**—Section 38(b) (relating to general business credit), as amended by this Act, is amended by striking “plus” at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting “, plus”, and by adding at the end the following new paragraph:

“(24) the energy efficient vending machine credit determined under section 45K(a).”

(d) **CLERICAL AMENDMENT.**—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

“Sec. 45K. Energy efficient vending machine credit.”

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

**SA 3358.** Mr. ROCKEFELLER (for himself, Mr. ALLEN, Mr. SPECTER, and Mr. WARNER) submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

**SEC. \_\_\_\_ . CREDIT FOR RECYCLING CERTAIN COAL COMBUSTION WASTE MATERIALS.**

(a) **IN GENERAL.**—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by adding at the end the following new section:

**“SEC. 45K. CREDIT FOR RECYCLING CERTAIN COAL COMBUSTION WASTE MATERIALS.**

“(a) **ALLOWANCE OF CREDIT.**—For purposes of section 38, the credit for recycling certain coal combustion waste materials used by the taxpayer in qualifying production under this section for any taxable year is equal to the sum of—

“(1) \$6.00 for each wet ton of—

“(A) wet flue gas desulfurization sludge cake, and

“(B) any other wet waste material identified by the Secretary of Energy, plus

“(2) \$4.00 for each dry ton of—

“(A) dry flue gas desulfurization and fluidized bed combustion waste material, and

“(B) any other dry waste material identified by the Secretary of Energy.

“(b) **CERTAIN COAL COMBUSTION WASTE MATERIALS DEFINED.**—For purposes of this section, the term ‘certain coal combustion waste materials’ means any solid waste material generated using a sulfur dioxide emission control system and derived from the combustion of coal in connection with the generation of electricity or steam, including—

“(1) wet flue gas desulfurization sludge cake,

“(2) dry flue gas desulfurization and fluidized bed combustion waste material, and

“(3) any other coal combustion waste material identified by the Secretary of Energy as wet waste or dry waste material attributable to the use of a sulfur dioxide emission control system.

“(c) QUALIFYING PRODUCTION.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualifying production’ means the use of certain coal combustion waste materials by the taxpayer as substantial raw materials in the manufacture of commercially saleable products which are—

“(A) manufactured in a qualifying facility,

“(B) sold by the taxpayer, and

“(C) not used in a landfill application.

“(2) SUBSTANTIAL USE AND MANUFACTURING REQUIREMENT.—Certain coal combustion waste materials shall not be deemed to constitute substantial raw materials used in the manufacture of commercially saleable products unless such waste materials—

“(A) constitute at least 35 percent of the weight of the commercially saleable manufactured products, determined on a dry weight basis, and

“(B) undergo a physical and chemical change in the course of the manufacturing process.

“(3) UNRELATED PERSON SALE OR USE REQUIREMENT.—The taxpayer shall not be deemed to have engaged in qualifying production with respect to certain coal combustion waste materials used in manufacturing a product until—

“(A) the taxable year in which the taxpayer sells such product to an unrelated person, or

“(B) if such product is sold to a related person, the taxable year in which the related person—

“(i) resells such product to an unrelated person, or

“(ii) consumes or provides such product in the performance of services to an unrelated person.

“(4) QUALIFYING FACILITY.—

“(A) IN GENERAL.—The term ‘qualifying facility’ means a manufacturing facility which—

“(i) is located within the United States (within the meaning of section 638(1)) or within a possession of the United States (within the meaning of section 638(2)), and

“(ii) is placed in service after December 31, 2001.

“(B) 10 YEAR LIMIT.—A facility shall cease to be a qualifying facility on the date which is the tenth anniversary of the date on which the facility was placed in service.

“(5) DRY WEIGHT MEASUREMENT.—For purposes of paragraph (2)(A), dry weight shall be determined by excluding the weight of all water in the materials used in the manufacture of the products.

“(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) WET TON.—The term ‘wet ton’ shall mean the weight of the desulfurization sludge cake (and any other wet waste material) after adjusting the water content of the cake (and other wet waste material) to not greater than 50 percent of the total weight.

“(2) DRY TON.—The term ‘dry ton’ shall mean the weight of the dry flue gas desulfurization and fluidized bed combustion waste material (and any other dry waste material) after adjusting the water content of the material (and other dry waste material) to not greater than 2 percent of the total weight.

“(3) RELATED PERSONS.—Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b).

“(4) PASS-THROUGH IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.”.

(b) CREDIT TREATED AS A BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking “plus” at the end of paragraph (22), by striking the period at the end of paragraph (23) and inserting “, plus”, and by adding at the end the following new paragraph:

“(24) the credit for recycling certain coal combustion waste materials determined under section 45K(a).”.

(c) TRANSITIONAL RULE.—Section 39(d), as amended by this Act, is amended by adding at the end the following new paragraph:

“(20) NO CARRYBACK OF SECTION 45K CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit for recycling certain coal combustion waste materials determined under section 45K may be carried back to a taxable year ending before January 1, 2002.”.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by adding at the end of the following new item:

“Sec. 45K. Credit for recycling certain coal combustion waste materials.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

**SA 3359.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

In Division H, on page 74, line 16, strike “Code” and insert “Code, or a qualifying new home which is a manufactured home which meets the applicable standards of the Energy Star program managed jointly by the Environmental Protection Agency and the Department of Energy”.

**SA 3360.** Mr. TORRICELLI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 137, between lines 7 and 8, insert the following:

**SEC. \_\_\_\_ ALLOWANCE OF DEDUCTION FOR QUALIFIED NEW OR RETROFITTED WATER SUBMETERING DEVICES.**

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by inserting after section 179D the following new section:

**“SEC. 179E. DEDUCTION FOR QUALIFIED NEW OR RETROFITTED WATER SUBMETERING DEVICES.**

“(a) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an eligible resupplier, there shall be allowed as a deduction an amount equal to the cost of each qualified water submetering device placed in service during the taxable year.

“(b) MAXIMUM DEDUCTION.—The deduction allowed by this section with respect to each qualified water submetering device shall not exceed \$30.

“(c) ELIGIBLE RESUPPLIER.—For purposes of this section, the term ‘eligible resupplier’ means any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property.

“(d) QUALIFIED WATER SUBMETERING DEVICE.—The term ‘qualified water submetering device’ means any tangible property to which section 168 applies if such property is a submetering device (including ancillary equipment)—

“(1) which is purchased and installed by the taxpayer to enable consumers to manage their purchase or use of water in response to water price and usage signals, and

“(2) which permits reading of water price and usage signals on at least a daily basis.

“(e) PROPERTY USED OUTSIDE THE UNITED STATES NOT QUALIFIED.—No deduction shall be allowed under subsection (a) with respect to property which is used predominantly outside the United States or with respect to the portion of the cost of any property taken into account under section 179.

“(f) BASIS REDUCTION.—

“(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the amount of the deduction with respect to such property which is allowed by subsection (a).

“(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property that is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.

“(g) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2007.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking “or” at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting “, or”, and by inserting after subparagraph (K) the following new subparagraph:

“(L) expenditures for which a deduction is allowed under section 179E.”.

(2) Section 312(k)(3)(B), as amended by this Act, is amended by striking “or 179D” each place it appears in the heading and text and inserting “, 179D, or 179E”.

(3) Section 1016(a), as amended by this Act, is amended by striking “and” at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting “, and”, and by adding at the end the following new paragraph:

“(36) to the extent provided in section 179E(f)(1).”.

(4) Section 1245(a), as amended by this Act, is amended by inserting “179E,” after “179D,” both places it appears in paragraphs (2)(C) and (3)(C).

(5) The table of contents for subpart B of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179D the following new item:

“Sec. 179E. Deduction for qualified new or retrofitted water submetering devices.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified water submetering devices placed in service after the date of the enactment of this Act, in taxable years ending after such date.

**SEC. \_\_\_\_ THREE-YEAR APPLICABLE RECOVERY PERIOD FOR DEPRECIATION OF QUALIFIED WATER SUBMETERING DEVICES.**

(a) IN GENERAL.—Subparagraph (A) of section 168(e)(3) (relating to classification of

property) is amended by striking “and” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, and”, and by adding at the end the following new clause:

“(v) any qualified water submetering device.”.

(b) **DEFINITION OF QUALIFIED WATER SUBMETERING DEVICE.**—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting at the end the following new paragraph:

“(16) **QUALIFIED WATER SUBMETERING DEVICE.**—The term ‘qualified water submetering device’ means any qualified water submetering device (as defined in section 179E(d)) which is placed in service before January 1, 2008, by a taxpayer who is an eligible resupplier (as defined in section 179E(c)).”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

**SA 3361.** Mr. KERRY (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, beginning on page 91, line 9, strike all through page 96, line 3, and insert the following:

“(E) for property described in subsection (d)(6)—

“(i) \$150 for each electric heat pump water heater,

“(ii) \$250 for each electric heat pump, furnace,

“(iv) \$250 for each central air conditioner,

“(v) \$150 for each advanced natural gas water heater,

“(vi) \$250 for each geothermal heat pump,

“(vii) \$50 for each main air circulating fan in a natural gas, propane, or oil-fired furnace,

“(viii) \$50 for each natural gas water heater,

“(ix) \$150 for each advanced combination space and water heating system, and

“(x) \$50 for each combination space and water heating system.

“(2) **SAFETY CERTIFICATIONS.**—No credit shall be allowed under this section for an item of property unless—

“(A) in the case of solar water heating property, such property is certified for performance and safety by the non-profit Solar Rating Certification Corporation or a comparable entity endorsed by the government of the State in which such property is installed,

“(B) in the case of a photovoltaic property, a fuel cell property, or a wind energy property, such property meets appropriate fire and electric code requirements, and

“(C) in the case of property described in subsection (d)(6), such property meets the performance and quality standards, and the certification requirements (if any), which—

“(i) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the Administrator of the Environmental Protection Agency, as appropriate),

“(ii) in the case of the energy efficiency ratio (EER)—

“(I) require measurements to be based on published data which is tested by manufacturers at 95 degrees Fahrenheit, and

“(II) do not require ratings to be based on certified data of the Air Conditioning and Refrigeration Institute, and

“(iii) are in effect at the time of the acquisition of the property.

“(c) **CARRYFORWARD OF UNUSED CREDIT.**—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

“(d) **DEFINITIONS.**—For purposes of this section—

“(1) **QUALIFIED SOLAR WATER HEATING PROPERTY EXPENDITURE.**—The term ‘qualified solar water heating property expenditure’ means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence by the taxpayer if at least half of the energy used by such property for such purpose is derived from the sun.

“(2) **QUALIFIED PHOTOVOLTAIC PROPERTY EXPENDITURE.**—The term ‘qualified photovoltaic property expenditure’ means an expenditure for property that uses solar energy to generate electricity for use in such a dwelling unit.

“(3) **SOLAR PANELS.**—No expenditure relating to a solar panel or other property installed as a roof (or portion thereof) shall fail to be treated as property described in paragraph (1) or (2) solely because it constitutes a structural component of the structure on which it is installed.

“(4) **QUALIFIED FUEL CELL PROPERTY EXPENDITURE.**—The term ‘qualified fuel cell property expenditure’ means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with such a dwelling unit.

“(5) **QUALIFIED WIND ENERGY PROPERTY EXPENDITURE.**—The term ‘qualified wind energy property expenditure’ means an expenditure for property which uses wind energy to generate electricity for use in such a dwelling unit.

“(6) **QUALIFIED TIER 2 ENERGY EFFICIENT BUILDING PROPERTY EXPENDITURE.**—

“(A) **IN GENERAL.**—The term ‘qualified Tier 2 energy efficient building property expenditure’ means an expenditure for any Tier 2 energy efficient building property.

“(B) **TIER 2 ENERGY EFFICIENT BUILDING PROPERTY.**—The term ‘Tier 2 energy efficient building property’ means—

“(i) an electric heat pump water heater which yields an energy factor of at least 1.7 in the standard Department of Energy test procedure,

“(ii) an electric heat pump which has a heating seasonal performance factor (HSPF) of at least 9, a seasonal energy efficiency ratio (SEER) of at least 15, and an energy efficiency ratio (EER) of at least 12.5,

“(iii) a natural gas or propane furnace which achieves at least 95 percent annual fuel utilization efficiency (AFUE),

“(iv) a central air conditioner which has a seasonal energy efficiency ratio (SEER) of at least 15 and an energy efficiency ratio (EER) of at least 12.5,

“(v) an advanced natural gas water heater which has an energy factor of at least 0.80 in the standard Department of Energy test procedure,

“(vi) a geothermal heat pump which has an energy efficiency ratio (EER) of at least 21,

“(vii) a main air circulating fan in a natural gas, propane, or oil-fired furnace using a brushless permanent motor, or another type

of motor which achieves similar or greater efficiency at half and full speed, as determined by the Secretary,

“(viii) a natural gas water heater which is not described in clause (v) and which has an energy factor of at least 0.65 in the standard Department of Energy test procedure,

“(ix) an advanced combination space and water heating system which has a combined energy factor of at least .80 in the standard Department of Energy test procedure, and

“(x) a combination space and water heating system which is not described in clause (ix) and which has a combined energy factor of at least .65 in the standard Department of Energy test procedure and achieves at least 78 percent combined annual fuel utilization efficiency (AFUE).”.

**SA 3362.** Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

#### **SEC. . MODIFICATION OF RURAL AIRPORT DEFINITION.**

(a) **IN GENERAL.**—Clause (ii) of section 4261(e)(1)(B) (defining rural airport) is amended by striking the period at the end of subclause (II) and inserting “, or” and by adding at the end the following new subclause:

“(III) is not connected by paved roads to another airport”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to calendar years beginning after 2002.

**SA 3363.** Mr. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

#### **SEC. . EXEMPTION FROM TICKET TAXES FOR TRANSPORTATION PROVIDED BY SEA PLANES.**

(a) The taxes imposed by sections 4261 and 4271 shall not apply to transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to calendar years beginning after 2002.

**SA 3364.** Mr. THOMAS submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 215, between lines 10 and 11, insert the following:

# SEC. \_\_\_\_ TREATMENT OF CERTAIN DEVELOPMENT INCOME OF COOPERATIVES.

(a) IN GENERAL.—Subparagraph (C) of section 501(c)(12), as amended by this Act, is amended by striking “or” at the end of clause (iv), by striking the period at the end of clause (v) and insert “, or”, and by adding at the end the following new clause:

“(vi) from the receipt before January 1, 2007, of any money, property, capital, or any other contribution in aid of construction or connection charge intended to facilitate the provision of electric service for the purpose of developing qualified fuels from non-conventional sources (within the meaning of section 29).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

**SA 3365.** Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

On page 202, between lines 17 and 18, insert the following:

“(5) FACILITIES PRODUCING OIL OR GAS ON INDIAN LANDS, INCLUDING LANDS OWNED AND HELD BY ALASKA NATIVE VILLAGE CORPORATIONS AND REGIONAL CORPORATIONS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.—

“(A) IN GENERAL.—In the case of facility for producing Indian oil or gas which was placed in service after the date of the enactment of this subsection and before January 1, 2007, this section shall apply with respect to Indian oil or gas produced at such facility not later than the close of the 5-year period beginning on the date such facility is placed in service.

“(B) INDIAN OIL OR GAS.—For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘Indian oil or gas’ means oil or gas which is produced from Indian lands.

“(ii) INDIAN LANDS.—The term ‘Indian lands’ means—

“(I) land held in trust by, or restricted against alienation by, the United States for the benefit of an individual Indian or an Indian tribe, or

“(II) land owned and held by any Alaska Native Village Corporation or Regional Corporation organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

“(iii) INDIVIDUAL INDIAN.—The term ‘individual Indian’ means any individual member of an Indian tribe.

“(iv) INDIAN TRIBE.—The term ‘Indian tribe’ means any Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), including any Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the Indian Reorganization Act (25 U.S.C. 461 et seq.)).

“(C) APPLICATION OF PARAGRAPH.—This paragraph shall not apply with respect to any Indian oil or gas for which a credit is allowed under any other provision of this section.”

**SA 3366.** Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to

enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 73, between lines 2 and 3, insert the following:

# SEC. \_\_\_\_ MODIFICATIONS TO THE INCENTIVES FOR ALTERNATIVE VEHICLES AND FUELS.

(a) MODIFICATION TO NEW QUALIFIED HYBRID MOTOR VEHICLE CREDIT.—The table in section 30B(c)(2)(A) of the Internal Revenue Code of 1986, as added by this Act, is amended by striking “5 percent” and inserting “4 percent”.

(b) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR CERTAIN REFUELING PROPERTY.—

(1) IN GENERAL.—Subsection (f) of section 179A of the Internal Revenue Code of 1986 is amended to read as follows:

“(f) TERMINATION.—This section shall not apply to any property placed in service—

“(1) in the case of property relating to hydrogen, after December 31, 2011, and

“(2) in the case of any other property, after December 31, 2007.”.

(2) EXTENSION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code, as amended by section 606(a) of the Job Creation and Workforce Assistance Act of 2002, is amended—

(A) by striking “calendar year 2004” in clause (i) and inserting “calendar years 2004 and 2005 (calendar years 2004 through 2009 in the case of property relating to hydrogen)”,

(B) by striking “2005” in clause (ii) and inserting “2006 (calendar year 2010 in the case of property relating to hydrogen)”, and

(C) by striking “2006” in clause (iii) and inserting “2007 (calendar year 2011 in the case of property relating to hydrogen)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after December 31, 2003, in taxable years ending after such date.

(c) MODIFICATION TO CREDIT FOR INSTALLATION OF ALTERNATIVE FUELING STATIONS.—Subsection (l) of section 30C of the Internal Revenue Code of 1986, as added by this Act, is amended to read as follows:

“(1) TERMINATION.—This section shall not apply to any property placed in service—

“(1) in the case of property relating to hydrogen, after December 31, 2011, and

“(2) in the case of any other property, after December 31, 2007.”.

(d) EFFECTIVE DATE.—Except as provided in subsection (b)(3), the amendments made by this section shall apply to property placed in service after September 30, 2002, in taxable years ending after such date.

**SA 3367.** Mr. HAGEL submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the end of Division H, insert the following:

# SEC. \_\_\_\_ PERMANENT TAX CREDIT FOR RESEARCH AND DEVELOPMENT REGARDING GREENHOUSE GAS EMISSIONS REDUCTION, AVOIDANCE, OR SEQUESTRATION.

Section 41(h) (relating to termination) is amended by adding at the end the following:

“(3) EXCEPTION FOR CERTAIN RESEARCH.—Paragraph (1)(B) shall not apply in the case of any qualified research expenses if the research—

“(A) has as one of its purposes the reducing, avoiding, or sequestering of greenhouse gas emissions, and

“(B) has been reported to the Department of Energy under section 1605(b) of the Energy Policy Act of 1992 or under the national greenhouse gas emissions register established in Division I of this Act.”.

# SEC. \_\_\_\_ TAX CREDIT FOR GREENHOUSE GAS EMISSIONS FACILITIES.

(a) ALLOWANCE OF GREENHOUSE GAS EMISSIONS FACILITIES CREDIT.—Section 46 (relating to amount of credit), as amended by this Act, is amended by striking “and” at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting “, and”, and by adding at the end the following:

“(5) the greenhouse gas emissions facilities credit.”.

(b) AMOUNT OF CREDIT.—Subpart E of part IV of subchapter A of chapter 1 (relating to rules for computing investment credit), as amended by this Act, is amended by inserting after section 48A the following:

# “SEC. 48B. CREDIT FOR GREENHOUSE GAS EMISSIONS FACILITIES.

“(a) IN GENERAL.—For purposes of section 46, the greenhouse gas emissions facilities credit for any taxable year is the applicable percentage of the qualified investment in a greenhouse gas emissions facility for such taxable year.

“(b) GREENHOUSE GAS EMISSIONS FACILITY.—For purposes of subsection (a), the term ‘greenhouse gas emissions facility’ means a facility of the taxpayer—

“(1)(A) the construction, reconstruction, or erection of which is completed by the taxpayer, or

“(B) which is acquired by the taxpayer if the original use of such facility commences with the taxpayer,

“(2) the operation of which—

“(A) replaces the operation of a facility of the taxpayer,

“(B) reduces, avoids, or sequesters greenhouse gas emissions on a per unit of output basis as compared to such emissions of the replaced facility, and

“(C) uses the same type of fuel (or combination of the same type of fuel and biomass fuel) as was used in the replaced facility,

“(3) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

“(4) which meets the performance and quality standards (if any) which—

“(A) have been jointly prescribed by the Secretary and the Secretary of Energy by regulations,

“(B) are consistent with regulations prescribed under section 1605(b) of the Energy Policy Act of 1992, and

“(C) are in effect at the time of the acquisition of the facility.

“(c) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is one-half of the percentage reduction, avoidance, or sequestration of greenhouse gas emissions described in subsection (b)(2) and reported and certified under section 1605(b) of the Energy Policy Act of 1992.

“(d) QUALIFIED INVESTMENT.—For purposes of subsection (a), the term ‘qualified investment’ means, with respect to any taxable year, the basis of a greenhouse gas emissions facility placed in service by the taxpayer during such taxable year, but only with respect to that portion of the investment attributable to providing production capacity not greater than the production capacity of the facility being replaced.

“(e) QUALIFIED PROGRESS EXPENDITURES.—

“(1) INCREASE IN QUALIFIED INVESTMENT.—In the case of a taxpayer who has made an election under paragraph (5), the amount of the qualified investment of such taxpayer for the taxable year (determined under subsection (d) without regard to this subsection)

shall be increased by an amount equal to the aggregate of each qualified progress expenditure for the taxable year with respect to progress expenditure property.

“(2) **PROGRESS EXPENDITURE PROPERTY DEFINED.**—For purposes of this subsection, the term ‘progress expenditure property’ means any property being constructed by or for the taxpayer and which it is reasonable to believe will qualify as a greenhouse gas emissions facility which is being constructed by or for the taxpayer when it is placed in service.

“(3) **QUALIFIED PROGRESS EXPENDITURES DEFINED.**—For purposes of this subsection—

“(A) **SELF-CONSTRUCTED PROPERTY.**—In the case of any self-constructed property, the term ‘qualified progress expenditures’ means the amount which, for purposes of this subpart, is properly chargeable (during such taxable year) to capital account with respect to such property.

“(B) **NON-SELF-CONSTRUCTED PROPERTY.**—In the case of non-self-constructed property, the term ‘qualified progress expenditures’ means the amount paid during the taxable year to another person for the construction of such property.

“(4) **OTHER DEFINITIONS.**—For purposes of this subsection—

“(A) **SELF-CONSTRUCTED PROPERTY.**—The term ‘self-constructed property’ means property for which it is reasonable to believe that more than half of the construction expenditures will be made directly by the taxpayer.

“(B) **NON-SELF-CONSTRUCTED PROPERTY.**—The term ‘non-self-constructed property’ means property which is not self-constructed property.

“(C) **CONSTRUCTION, ETC.**—The term ‘construction’ includes reconstruction and erection, and the term ‘constructed’ includes reconstructed and erected.

“(D) **ONLY CONSTRUCTION OF GREENHOUSE GAS EMISSIONS FACILITY TO BE TAKEN INTO ACCOUNT.**—Construction shall be taken into account only if, for purposes of this subpart, expenditures therefor are properly chargeable to capital account with respect to the property.

“(5) **ELECTION.**—An election under this subsection may be made at such time and in such manner as the Secretary may by regulations prescribe. Such an election shall apply to the taxable year for which made and to all subsequent taxable years. Such an election, once made, may not be revoked except with the consent of the Secretary.”

(c) **RECAPTURE.**—Section 50(a) (relating to other special rules), as amended by this Act, is amended by adding at the end the following:

“(7) **SPECIAL RULES RELATING TO GREENHOUSE GAS EMISSIONS FACILITY.**—For purposes of applying this subsection in the case of any credit allowable by reason of section 48B, the following shall apply:

“(A) **GENERAL RULE.**—In lieu of the amount of the increase in tax under paragraph (1), the increase in tax shall be an amount equal to the investment tax credit allowed under section 38 for all prior taxable years with respect to a greenhouse gas emissions facility (as defined by section 48B(b)) multiplied by a fraction whose numerator is the number of years remaining to fully depreciate under this title the greenhouse gas emissions facility disposed of, and whose denominator is the total number of years over which such facility would otherwise have been subject to depreciation. For purposes of the preceding sentence, the year of disposition of the greenhouse gas emissions facility property shall be treated as a year of remaining depreciation.

“(B) **PROPERTY CEASES TO QUALIFY FOR PROGRESS EXPENDITURES.**—Rules similar to

the rules of paragraph (2) shall apply in the case of qualified progress expenditures for a greenhouse gas emissions facility under section 48B, except that the amount of the increase in tax under subparagraph (A) of this paragraph shall be substituted in lieu of the amount described in such paragraph (2).

“(C) **APPLICATION OF PARAGRAPH.**—This paragraph shall be applied separately with respect to the credit allowed under section 38 regarding a greenhouse gas emissions facility.”

(d) **TECHNICAL AMENDMENTS.**—

(1) Section 49(a)(1)(C), as amended by this Act, is amended by striking “and” at the end of clause (iii), by striking the period at the end of clause (iv) and inserting “, and”, and by adding at the end the following:

“(v) the portion of the basis of any greenhouse gas emissions facility attributable to any qualified investment (as defined by section 48B(d)).”

(2) Section 50(a)(4), as amended by this Act, is amended by striking “and (6)” and inserting “, (6), and (7)”.

(3) The table of sections for subpart E of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 48A the following:

“Sec. 48B. Credit for greenhouse gas emissions facilities.”

(e) **EFFECTIVE DATE.**—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(f) **STUDY OF ADDITIONAL INCENTIVES FOR VOLUNTARY REDUCTION, AVOIDANCE, OR SEQUESTRATION OF GREENHOUSE GAS EMISSIONS.**—

(1) **IN GENERAL.**—The Secretary of the Treasury and the Secretary of Energy shall jointly study possible additional incentives for, and removal of barriers to, voluntary, non recoupable expenditures for the reduction, avoidance, or sequestration of greenhouse gas emissions. For purposes of this subsection, an expenditure shall be considered voluntary and non recoupable if the expenditure is not recoupable—

(A) from revenues generated from the investment, determined under generally accepted accounting standards (or under the applicable rate-of-return regulation, in the case of a taxpayer subject to such regulation), or

(B) from any tax or other financial incentive program established under Federal, State, or local law.

(2) **REPORT.**—Within 6 months of the date of enactment of this Act, the Secretary of the Treasury and the Secretary of Energy shall jointly report to Congress on the results of the study described in paragraph (1), along with any recommendations for legislative action.

(g) **SCOPE AND IMPACT.**—

(1) **POLICY.**—In order to achieve the broadest response for reduction, avoidance, or sequestration of greenhouse gas emissions and to ensure that the incentives established by or pursuant to this Act do not advantage one segment of an industry to the disadvantage of another, it is the sense of Congress that such incentives should be available for individuals, organizations, and entities, including both for-profit and non-profit institutions.

(2) **LEVEL PLAYING FIELD STUDY AND REPORT.**—

(A) **IN GENERAL.**—The Secretary of the Treasury and the Secretary of Energy shall jointly study possible additional measures

that would provide non-profit entities (such as municipal utilities and energy cooperatives) with economic incentives for greenhouse gas emissions facilities comparable to those incentives provided to taxpayers under the amendments made to the Internal Revenue Code of 1986 by this Act.

(B) **REPORT.**—Within 6 months after the date of enactment of this Act, the Secretary of the Treasury and the Secretary of Energy shall jointly report to Congress on the results of the study described in subparagraph (A), along with any recommendations for legislative action.

## DIVISION I—CLIMATE CHANGE MITIGATION

### TITLE —NATIONAL GREENHOUSE GAS REGISTRY

#### SECTION. . SHORT TITLE.

This title may be cited as the “National Climate Registry Initiative of 2002”.

#### SEC. . PURPOSE.

The purpose of this title is to establish a new national greenhouse gas registry—

(1) to further encourage voluntary efforts, by persons and entities conducting business and other operations in the United States, to implement actions, projects and measures that reduce greenhouse gas emissions;

(2) to encourage such persons and entities to monitor and voluntarily report greenhouse gas emissions, direct or indirect, from their facilities, and to the extent practicable, from other types of sources;

(3) to adopt a procedure and uniform format for such persons and entities to establish and report voluntarily greenhouse gas emission baselines in connection with, and furtherance of, such reductions;

(4) to provide verification mechanisms to ensure for participants and the public a high level of confidence in accuracy and verifiability of reports made to the national registry;

(5) to encourage persons and entities, through voluntary agreement with the Secretary, to report annually greenhouse gas emissions from their facilities;

(6) to provide to persons or entities that engage in such voluntary agreements and reduce their emissions transferable credits which, inter alia, shall be available for use by such persons or entities for any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts; and

(7) to provide for the registration, transfer and tracking of the ownership or holding of such credits for purposes of facilitating voluntary trading among persons and entities

#### SEC. . DEFINITIONS.

In this title—

(1) “person” means an individual, corporation, association, joint venture, cooperative, or partnership;

(2) “entity” means a public person, a Federal, interstate, State, or local governmental agency, department, corporation, or other publicly owned organization;

(3) “facility” means those buildings, structures, installations, or plants (including units thereof) that are on contiguous or adjacent land, are under common control of the same person or entity and are a source of emissions of greenhouse gases in excess for emission purposes of a threshold as recognized by the guidelines issued under this title;

(4) “reductions” means actions, projects or measures taken, whether in the United States or internationally, by a person or entity to reduce, avoid or sequester, directly or indirectly, emissions of one or more greenhouse gases;

(5) “greenhouse gas” means—



(A) an anthropogenic gaseous constituent of the atmosphere (including carbon dioxide, methane, nitrous oxide, chlorofluorocarbons, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and tropospheric ozone) that absorbs and reemits infrared radiation and influences climate; and

(B) an anthropogenic aerosol (such as black soot) that absorbs solar radiation and influences climate;

(6) "Secretary" means the Secretary of Energy;

(7) "Administrator" means the Administrator of the Energy Information Administration; and

(8) "Interagency Task Force" means the Interagency Task Force established under title X of this Act.

#### SEC. . ESTABLISHMENT.

(a) IN GENERAL.—Not later than 1 year after the enactment of this title, the President shall, in consultation with the Interagency Task Force, establish a National Greenhouse Gas Registry to be administered by the Secretary through the Administrator in accordance with the applicable provisions of this title, section 205 of the Department of Energy Act (42 U.S.C. 7135) and other applicable provisions of that Act (42 U.S.C. 7101, et seq.).

(b) DESIGNATION.—Upon establishment of the registry and issuance of the guidelines pursuant to this title, such registry shall thereafter be the depository for the United States of data on greenhouse gas emissions and emissions reductions collected from and reported by persons or entities with facilities or operations in the United States, pursuant to the guidelines issued under this title.

(c) PARTICIPATION.—Any person or entity conducting business or activities in the United States may, in accordance with the guidelines established pursuant to this title, voluntarily report its total emissions levels and register its certified emissions reductions with such registry, provided that such reports—

(1) represent a complete and accurate inventory of emissions from facilities and operations within the United States and any domestic or international reduction activities; and

(2) have been verified as accurate by an independent person certified pursuant to guidelines developed pursuant to this title, or other means.

(d) CONFIDENTIALITY OF REPORTS.—Trade secret and commercial or financial information that is privileged and confidential submitted pursuant to activities under this title shall be protected as provided in section 552(b)(4) of title 5, United States Code.

#### SEC. . IMPLEMENTATION.

(a) GUIDELINES.—Not later than 1 year after the date of establishment of the registry pursuant to this title, the Secretary shall, in consultation with the Interagency Task Force, issue guidelines establishing procedures for the administration of the national registry. Such guidelines shall include—

(1) means and methods for persons or entities to determine, quantify, and report by appropriate and credible means their baseline emissions levels on an annual basis, taking into consideration any reports made by such participants under past Federal programs;

(2) procedures for the use of an independent third-party or other effective verification process for reports on emissions levels and emissions reductions, using the authorities available to the Secretary under this and other provisions of law and taking into account, to the extent possible, costs, risks, the voluntary nature of the registry, and other relevant factors;

(3) a range of reference cases for reporting of project-based reductions in various sectors, and the inclusion of benchmark and default methodologies and practices for use as reference cases for eligible projects;

(4) safeguards to prevent and address reporting, inadvertently or otherwise, of some or all of the same greenhouse gas emissions or reductions by more than one reporting person or entity and to make corrections and adjustments in data where necessary;

(5) procedures and criteria for the review and registration of ownership or holding of all or part of any reported and independently verified emission reduction projects, actions and measures relative to such reported baseline emissions level;

(6) measures or a process for providing to such persons or entities transferable credits with unique serial numbers for such verified emissions reductions; and

(7) accounting provisions needed to allow for changes in registration and transfer of ownership of such credits resulting from a voluntary private transaction between persons or entities, provided that the Secretary is notified of any such transfer within 30 days of the transfer having been effected either by private contract or market mechanism.

(b) CONSIDERATION.—In developing such guidelines, the Secretary shall take into consideration—

(1) the existing guidelines for voluntary emissions reporting issued under section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)), experience in apply such guidelines, and any revisions thereof initiated by the Secretary pursuant to direction of the President issued prior to the enactment of this title;

(2) protocols and guidelines developed under any Federal, State, local, or private voluntary greenhouse gas emissions reporting or reduction programs;

(3) the various differences and potential uniqueness of the facilities, operations and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the registry;

(4) issues, such as comparability, that are associated with the reporting of both emissions baselines and reductions from activities and projects; and

(5) the appropriate level or threshold emissions applicable to a facility or activity of a person or entity that may be reasonably and cost effectively identified, measured and reported voluntarily taking into consideration different types of facilities and activities and the de minimis nature of some emissions and their sources; and

(6) any other consideration the Secretary may deem appropriate.

(c) EXPERTS AND CONSULTANTS.—The Secretary, and any member of the Interagency Task Force, may secure the services of experts and consultants in the private and non-profit sectors in accordance with the provisions of section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emissions trading. In securing such services, any grant, contract, cooperative agreement, or other arrangement authorized by law and already available to the Secretary or the member of the Interagency Task Force securing such services may be used.

(d) TRANSFERABILITY OF PRIOR REPORTS.—Emissions reports and reductions that have been made by a person or entity pursuant to section 1605(b) of the Energy Policy Act of 1992 (42 U.S.C. 13385(b)) or under other Federal or State voluntary greenhouse gas reduction programs may be independently verified and registered with the registry using the same guidelines developed by the Secretary pursuant to this section.

(e) PUBLIC COMMENT.—The Secretary shall make such guidelines available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them for use in implementation of the registry established pursuant to this title.

(f) REVIEW AND REVISION.—The Secretary, through the Interagency Task Force, shall periodically thereafter review the guidelines and, as needed, revise them in the same manner as provided for in this section.

#### SEC. . VOLUNTARY AGREEMENTS.

(a) IN GENERAL.—In furtherance of the purposes of this title, any person or entity, and the Secretary, may voluntarily enter into an agreement to provide that—

(1) such person or entity (and successors thereto) shall report annually to the registry on emissions and sources of greenhouse gases from applicable facilities and operations which generate net emissions above any de minimis thresholds specified in the guidelines issued by the Secretary pursuant to this title;

(2) such person or entity (and successors thereto) shall commit to report and participate in the registry for a period of at least 5 calendar years, provided that such agreements may be renewed by mutual consent;

(3) for purposes of measuring performance under the agreement, such person or entity (and successors thereto) shall determine, by mutual agreement with the Secretary—

(A) pursuant to the guidelines issued under this title, a baseline emissions level for a representative period preceding the effective date of the agreement; and

(B) emissions reduction goals, taking into consideration the baseline emissions level determined under subparagraph (A) and any relevant economic and operational factors that may affect such baseline emissions level over the duration of the agreement; and

(4) for certified emissions reductions made relative to the baseline emissions level, the Secretary shall provide, at the request of the person or entity, transferable credits (with unique assigned serial numbers) to the person or entity (and successors thereto) which, inter alia,—

(A) can be used by such person or entity towards meeting emissions reductions goals set forth under the agreement;

(B) can be transferred to other persons or entities through a voluntary private transaction between persons or entities; or

(C) shall be applicable towards any incentive, market-based, or regulatory programs determined by the Congress in a future enactment to be necessary and feasible to reduce the risk of climate change and its impacts.

(b) PUBLIC NOTICE AND COMMENT.—At least 30 days before any agreement is final, the Secretary shall give notice thereof in the Federal Register and provide an opportunity for public written comment. After reviewing such comments, the Secretary may withdraw the agreement or the parties thereto may mutually agree to revise it or finalize it without substantive change. Such agreement shall be retained in the national registry and be available to the public.

(c) EMISSIONS IN EXCESS.—In the event that a person or entity fails to certify that emissions from applicable facilities and operations are less than the emissions reduction goals contained in the agreement, such person or entity shall take actions as necessary to reduce such excess emissions, including—

(1) redemption of transferable credits acquired in previous years if owned by the person or entity;

(2) acquisition of transferable credits from other persons or entities participating in the registry through their own agreements; or

(3) the undertaking of additional emissions reductions activities in subsequent years as may be determined by agreement with the Secretary.

(d) NO NEW AUTHORITY.—This section shall not be construed as providing any regulatory or mandate authority regarding reporting of such emissions or reductions.

#### SEC. . MEASUREMENT AND VERIFICATION.

(a) IN GENERAL.—The Secretary of Commerce, through the National Institute of Standards and Technology and in consultation with the Secretary of Energy, shall develop and propose standards and practices for accurate measurement and verification of greenhouse gas emissions and emissions reductions. Such standards and best practices shall address the need for—

(1) standardized measurement and verification practices for reports made by all persons or entities participating in the registry, taking into account—

(A) existing protocols and standards already in use by persons or entities desiring to participate in the registry;

(B) boundary issues such as leakage and shifted utilization;

(C) avoidance of double-counting of greenhouse gas emissions and emissions reductions; and

(D) such other factors as the panel determines to be appropriate;

(2) measurement and verification of actions taken to reduce, avoid or sequester greenhouse gas emissions;

(3) in coordination with the Secretary of Agriculture, measurement of the results of the use of carbon sequestration and carbon recapture technologies, including—

(A) organic soil carbon sequestration practices;

(B) forest preservation and re-forestation activities which adequately address the issues of permanence, leakage and verification; and

(4) such other measurement and certification standards as the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of Energy shall determine to be appropriate.

(b) PUBLIC COMMENT.—The Secretary of Commerce shall make such standards and practices available in draft form for public notice and opportunity for comment for a period of at least 90 days, and thereafter shall adopt them, in coordination with the Secretary of Energy, for use in the guidelines for implementation of the registry as issued pursuant to this title.

#### SEC. . CERTIFIED INDEPENDENT THIRD PARTIES.

(a) CERTIFICATION.—The Secretary of Commerce shall, through the Director of the National Institute of Standards and Technology and the Administrator, develop standards for certification of independent persons to act as certified parties to be employed in verifying the accuracy and reliability of reports made under this title, including standards that—

(1) prohibit a certified party from themselves participating in the registry through the ownership or transaction of transferable credits recorded in the registry;

(2) prohibit the receipt by a certified party of compensation in the form of a commission where such party receives payment based on the amount of emissions reductions verified; and

(3) authorize such certified parties to enter into agreements with persons engaged in trading of transferable credits recorded in the registry.

(b) LIST OF CERTIFIED PARTIES.—The Secretary shall maintain and make available to persons or entities making reports under this title and to the public upon request a list of such certified parties and their clients making reports under the title.

#### SEC. . REPORTS TO CONGRESS.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, and biennially thereafter, the President, through the Interagency Task Force, shall report to the Congress on the status of the registry established by this title. The report shall include—

(a) an assessment of the level of participation in the registry (both by sector and in terms of total national emissions represented);

(b) effectiveness of voluntary reporting agreements in enhancing participation in the registry;

(c) use of the registry for emissions trading and other purposes;

(d) assessment of progress towards individual and national emissions reduction goals; and

(e) an inventory of administrative actions taken or planned to improve the national registry or the guidelines, or both, and such recommendations for legislative changes to this title or section 1605 of the Energy Policy Act of 1992 (42 U.S.C. 13385) as the President believes necessary to better carry out the purposes of this title.

#### SEC. . REVIEW OF PARTICIPATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this title, the Director of the Office of National Climate Change Policy shall determine whether the reports submitted to the registry represent less than 60 percent of the national aggregate greenhouse gas emissions as inventoried in the official U.S. Inventory of Greenhouse Gas Emissions and Sinks published by the Environmental Protection Agency for the previous calendar year.

(b) MANDATORY REPORTING.—If the Director of the Office of National Climate Change Policy determines under subsection (a) that less than 60 percent of such aggregate greenhouse gas emissions are being reported to the registry—

(1) all persons or entities, regardless of their participation in the registry, shall submit to the Secretary a report that describes, for the preceding calendar year, a complete inventory of greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of each greenhouse gas emitted by such person or entity, expressed in terms of mass and in terms of the quantity of carbon dioxide equivalent;

(B) an estimate of the emissions from products manufactured and sold by such person or entity in the previous calendar year, determined over the average lifetime of those products; and

(C) such other categories of emissions as the Secretary determines by regulation to be practicable and useful for the purposes of this title, such as—

(i) direct emissions from stationary sources;

(ii) indirect emissions from imported electricity, heat, and steam;

(iii) process and fugitive emissions; and

(iv) production or importation of greenhouse gases; and

(2) each person or entity shall submit a report described in this section—

(A) not later than the earlier of—

(i) April 30 of the calendar year immediately following the year in which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); or

(ii) the date that is 1 year after the date on which the Director of the Office of National Climate Change Policy makes the determination under subsection (a); and

(B) annually thereafter.

(c) EXEMPTIONS FROM REPORTING.—

(1) IN GENERAL.—A person or entity shall be required to submit reports under sub-

section (b) only if, in any calendar year after the date of enactment of this title—

(A) the total greenhouse gas emissions of at least 1 facility owned by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation);

(B) the total quantity of greenhouse gas produced, distributed, or imported by the person or entity exceeds 10,000 metric tons of carbon dioxide equivalent greenhouse gas (or such greater quantity as may be established by a designated agency by regulation); or

(C) the person or entity is not a feedlot or other farming operation (as defined in section 101 of title 11, United States Code).

(2) ENTITIES ALREADY REPORTING.—A person or entity that, as of the date of enactment of this title, is required to report carbon dioxide emissions data to a Federal agency shall not be required to report that data again for the purposes of this title. Such emissions data shall be considered to be reported by the entity to the registry for the purpose of this title and included in the determination of the Director of the Office of National Climate Change Policy made under subsection (a).

(d) ENFORCEMENT.—If a person or entity that is required to report greenhouse gas emissions under this section fails to comply with that requirement, the Attorney General may, at the request of the Secretary, bring a civil action in United States district court against the person or entity to impose on the person or entity a civil penalty of not more than \$25,000 for each day for which the entity fails to comply with that requirement.

(e) RESOLUTION OF DISAPPROVAL.—If made, the determination of the Director of the Office of National Climate Change Policy made under subsection (a) shall be considered to be a major rule (as defined in section 804(2) of title 5, United States Code) subject to the congressional disapproval procedure under section 802 of title 5, United States Code.

#### SEC. . NATIONAL ACADEMY REVIEW.

Not later than 1 year after guidelines are issued for the registry pursuant to this title, the Secretary, in consultation with the Interagency Task Force, shall enter into an agreement with the National Academy of Sciences to review the scientific and technological methods, assumptions, and standards used by the Secretary and the Secretary of Commerce for such guidelines and report to the President and the Congress on the results of that review, together with such recommendations as may be appropriate, within 6 months after the effective date of that agreement.

#### SEC. . INAPPLICABILITY OF TITLE XI OF THIS ACT.

Title XI of this Act shall be null and void.

**SA 3368.** Mr. CARPER submitted an amendment intended to be proposed by him to the bill S. 517, to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table, as follows:

In Division H, on page 17, line 23, strike “and” and all that follows through line 25, and insert the following:

“(3) the new qualified alternative fuel motor vehicle credit determined under subsection (d), and

“(4) the new qualified advanced lean burn technology motor vehicle credit determined under subsection (aa).

“(aa) ADVANCED LEAN BURN TECHNOLOGY MOTOR VEHICLE CREDIT.—

“(1) IN GENERAL.—For purposes of subsection (a), the advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new qualified advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

“(2) CREDIT AMOUNT.—

“(A) INCREASE FOR FUEL EFFICIENCY.—The credit amount determined under this paragraph shall be—

“(i) \$750, if such vehicle achieves at least 125 percent but less than 150 percent of the 2000 model year city fuel economy,

“(ii) \$1,250, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

“(iii) \$1,750, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

“(iv) \$2,250, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

“(v) \$2,750, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy, and

“(vi) \$3,250, if such vehicle achieves at least 250 percent of the 2000 model year city fuel economy.

“(B) INCREASE FOR LOW EMISSIONS.—The credit amount determined under subparagraph (A) shall be increased by—

“(i) \$250, if such vehicle achieves the emission standards equivalent to TIER 2, bin 6,

“(ii) \$500, if such vehicle achieves the emission standards equivalent to TIER 2, bin 5,

“(iii) \$750, if such vehicle achieves the emission standards equivalent to TIER 2, bin 4,

“(iv) \$1,000, if such vehicle achieves the emission standards equivalent to TIER 2, bin 3 or lower.”

**SA 3369.** Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H (relating to energy tax incentives), strike section 2307.

**SA 3370.** Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H (relating to energy tax incentives), strike section 2308.

**SA 3371.** Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H (relating to energy tax incentives), strike section 2311.

**SA 3372.** Mr. GRAHAM (for himself and Mr. FEINGOLD) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 216, after line 21, add the following:

**SEC. . . LIMITATION ON EFFECTIVE DATES.**

Notwithstanding any other provision of this division, no provision of nor any amendment made by this division shall take effect until the date of the enactment of legislation which raises Federal revenues or reduces Federal spending sufficient to offset the Federal budgetary cost of such provisions and amendments for the 10-fiscal year period beginning on October 1, 2002.

**SA 3373.** Mr. GRAHAM submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In Division H, on page 216, after line 21, add the following:

**SEC. . . LIMITATION ON EFFECTIVE DATES.**

Notwithstanding any other provision of this division, no provision of nor any amendment made by this division shall take effect until the date of the enactment of legislation which raises Federal revenues sufficient to offset the Federal budgetary cost of such provisions and amendments for the 10-fiscal year period beginning on October 1, 2002.

**SA 3374.** Mrs. LINCOLN submitted an amendment intended to be proposed to amendment SA 3344 submitted by Mrs. LINCOLN and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

**SEC. . . CLARIFICATION OF EXCISE TAX EXEMPTIONS FOR AGRICULTURAL AERIAL APPLICATORS.**

(a) NO WAIVER BY FARM OWNER, TENANT, OR OPERATOR NECESSARY.—Subparagraph (B) of section 6420(c)(4) (relating to certain farming use other than by owner, etc.) is amended to read as follows:

“(B) if the person so using the gasoline is an aerial or other applicator of fertilizers or other substances and is the ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial or other applicator shall be treated as having used such gasoline on a farm for farming purposes.”

(b) EXEMPTION INCLUDES FUEL USED BETWEEN AIRFIELD AND FARM.—Section

6420(c)(4), as amended by subsection (a), is amended by adding at the end the following new flush sentence:

“For purposes of this paragraph, in the case of an aerial applicator, gasoline shall be treated as used on a farm for farming purposes if the gasoline is used for the direct flight between the airfield and 1 or more farms.”

(c) EXEMPTION FROM TAX ON AIR TRANSPORTATION OF PERSONS FOR FORESTRY PURPOSES EXTENDED TO FIXED-WING AIRCRAFT.—Subsection (f) of section 4261 (relating to tax on air transportation of persons) is amended to read as follows:

“(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

“(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

“(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel use or air transportation after the date of enactment, and before January 1, 2004.

**SA 3375.** Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 3336 submitted by Mr. GRAMM and intended to be proposed to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

In Division H, on page 216, after line 21, add the following:

**SEC. . . TREATMENT OF DAIRY PROPERTY.**

(a) QUALIFIED DISPOSITION OF DAIRY PROPERTY TREATED AS INVOLUNTARY CONVERSION.—

(1) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by designating subsection (k) as subsection (l) and inserting after subsection (j) the following new subsection:

“(k) QUALIFIED DISPOSITION TO IMPLEMENT BOVINE TUBERCULOSIS ERADICATION PROGRAM.—

“(1) IN GENERAL.—For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified disposition:

“(A) TREATMENT AS INVOLUNTARY CONVERSION.—Such disposition shall be treated as an involuntary conversion to which this section applies.

“(B) MODIFICATION OF SIMILAR PROPERTY REQUIREMENT.—Property to be held by the taxpayer either for productive use in a trade or business or for investment shall be treated as property similar or related in service or use to the property disposed of.

“(C) EXTENSION OF PERIOD FOR REPLACING PROPERTY.—Subsection (a)(2)(B)(i) shall be applied by substituting ‘4 years’ for ‘2 years’.

“(D) WAIVER OF UNRELATED PERSON REQUIREMENT.—Subsection (i) (relating to replacement property must be acquired from unrelated person in certain cases) shall not apply.

“(E) EXPANDED CAPITAL GAIN FOR CATTLE AND HORSES.—Section 1231(b)(3)(A) shall be applied by substituting ‘1 month’ for ‘24 months’.

“(2) QUALIFIED DISPOSITION.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘qualified disposition’ means the disposition of dairy property which is certified by the Secretary of Agriculture as having been the subject of an agreement under the bovine tuberculosis eradication program, as implemented pursuant to the Declaration of Emergency Because of Bovine Tuberculosis (65 Federal Register 63,227 (2000)).

“(B) PAYMENTS RECEIVED IN CONNECTION WITH THE BOVINE TUBERCULOSIS ERADICATION PROGRAM.—For purposes of this subsection, any amount received by a taxpayer in connection with an agreement under such bovine tuberculosis eradication program shall be treated as received in a qualified disposition.

“(C) TRANSMITTAL OF CERTIFICATIONS.—The Secretary of Agriculture shall transmit copies of certifications under this paragraph to the Secretary.

“(3) ALLOWANCE OF THE ADJUSTED BASIS OF CERTIFIED DAIRY PROPERTY AS A DEPRECIATION DEDUCTION.—The adjusted basis of any property certified under paragraph (2)(A) shall be allowed as a depreciation deduction under section 167 for the taxable year which includes the date of the certification described in paragraph (2)(A).

“(4) DAIRY PROPERTY.—For purposes of this subsection, the term ‘dairy property’ means all tangible or intangible property used in connection with a dairy business or a dairy processing plant.

“(5) SPECIAL RULES FOR CERTAIN BUSINESS ORGANIZATIONS.—

“(A) S CORPORATIONS.—In the case of an S corporation, gain on a qualified disposition shall not be treated as recognized for the purposes of section 1374 (relating to tax imposed on certain built-in gains).

“(B) PARTNERSHIPS.—In the case of a partnership which dissolves in anticipation of a qualified disposition (including in anticipation of receiving the amount described in paragraph (2)(B)), the dairy property owned by the partners of such partnership at the time of such disposition shall be treated, for the purposes of this section and notwithstanding any regulation or rule of law, as owned by such partners at the time of such disposition.

“(6) TERMINATION.—This subsection shall not apply to dispositions made after December 31, 2006.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to dispositions made and amounts received in taxable years ending after the date of enactment of this Act.

(b) DEDUCTION OF QUALIFIED RECLAMATION EXPENDITURES.—

(1) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations), as amended by this Act, is amended by adding at the end the following new section:

**“SEC. 199B. EXPENSING OF DAIRY PROPERTY RECLAMATION COSTS.**

“(a) IN GENERAL.—Notwithstanding section 280B (relating to demolition of structures), a taxpayer may elect to treat any qualified reclamation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be al-

lowed as a deduction for the taxable year in which it is paid or incurred.

“(b) QUALIFIED RECLAMATION EXPENDITURE.—

“(1) IN GENERAL.—For purposes of this subparagraph, the term ‘qualified reclamation expenditure’ means amounts otherwise chargeable to capital account and paid or incurred to convert any real property certified under section 1033(k)(2) (relating to qualified disposition) into unimproved land.

“(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—A rule similar to the rule of section 198(b)(2) (relating to special rule for expenditures for depreciable property) shall apply for purposes of paragraph (1).

“(c) DEDUCTION RECAPTURED AS ORDINARY INCOME.—Rules similar to the rules of section 198(e) (relating to deduction recaptured as ordinary income on sale, etc.) shall apply with respect to any qualified reclamation expenditure.

“(d) TERMINATION.—This section shall not apply to expenditures paid or incurred after December 31, 2006.”.

(2) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by adding at the end the following new item:

“Sec. 199B. Expensing of dairy property reclamation costs.”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to expenditures paid or incurred in taxable years ending after the date of enactment of this Act.

**AUTHORITY FOR COMMITTEES TO MEET**

COMMITTEE ON ENERGY AND NATURAL RESOURCES

COMMITTEE ON INDIAN AFFAIRS

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Committee on Indian Affairs be authorized to hold a joint hearing during the session of the Senate on Wednesday, April 24th, 2002, at 2:30 p.m. in SD-366.

The purpose of this hearing is to receive testimony on S. 2018, to establish the T'uf Shur Bien Preservation Trust Area within the Cibola National Forest in the State of New Mexico to resolve a land claim involving the Sandia Mountain Wilderness, and for other purposes.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, April 24, 2002 at 9:30 a.m. to hold a hearing on U.S.-Columbia Foreign Policy.

**Agenda**

**Witnesses**

Panel 1: The Honorable Marc Grossman, Under Secretary for Political Affairs, Department of State, Washington, DC; the Honorable Peter W. Rodman, Assistant Secretary for International Security Affairs, Department of Defense, Washington, DC; and Major

General Gary D. Speer, USA, Acting Commander in Chief, U.S. Southern Command Miami, FL.

Panel 2: Mr. Mark Schneider, Senior Vice President, International Crisis Group, Washington, DC; and Mr. Jose Miguel Vivanco, Executive Director, Americas Division, Human Rights Watch, Washington, DC.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, April 24, 2002, at 10 a.m.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, April 24, 2002, at 10 a.m. in room 485 of the Russell Senate Office Building to conduct a hearing on S. 2017, a bill to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, April 24, 2002 at 2:30 p.m. to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY, AND SPACE

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology, and Space be authorized to meet on Wednesday, April 24, 2002, at 2:30 p.m. on Homeland Security and the Technology Sector, S. 2037 and S. 2182.

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

**UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR**

Mr. REID. Madam President, as in executive session, I ask unanimous consent that immediately following the Pledge of Allegiance tomorrow morning, the Senate proceed to executive session to consider the following nominations: Calendar Nos. 776 and 781; that the Senate vote immediately on the nominations; that the motions to reconsider be laid upon the table; the President be immediately notified of the Senate's action; that any statements therein be printed in the RECORD; and the Senate return to legislative session, with the preceding occurring without any intervening action or debate.

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

Mr. REID. I further ask unanimous consent that it be in order to order the yeas and nays on both the nominations with one show of seconds.

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

Mr. REID. I ask for the yeas and nays on the nominations.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. REID. Madam President, I ask unanimous consent that the time on these two votes be counted against the 30 hours.

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

#### EXTENDING AUTHORITY OF EXPORT-IMPORT BANK

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to the consideration of S. 2248 introduced earlier today by Senator SARBANES.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2248) to extend the authority of the Export-Import Bank until May 31, 2002.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. I ask unanimous consent the bill be read three times, passed, and the motion to reconsider be laid upon the table, without any intervening action or debate.

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

The bill (S. 2248) was read the third time and passed, as follows:

S. 2248

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

#### SECTION 1. EXTENSION OF EXPORT-IMPORT BANK.

Notwithstanding the dates specified in section 7 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) and section 1(c) of Public Law 103-428, the Export-Import Bank of the United States shall continue to exercise its functions in connection with and in furtherance of its objects and purposes through May 31, 2002.

#### ORDERS FOR THURSDAY, APRIL 25, 2002

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m., Thursday, April 25; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed to have expired; the time for the two leaders be reserved for their use later in the day; and the Senate proceed to executive session under the previous order; that there be 6 hours

remaining under cloture on the Daschle-Bingaman substitute amendment, and that time consumed in executive session count against cloture.

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

#### PROGRAM

Mr. REID. There will be two rollcall votes beginning at approximately 9:30 a.m. tomorrow morning. Following these votes, the Senate will resume consideration of the energy reform bill. We expect to complete action on the bill Thursday. There will be no question we would complete action on the bill Thursday.

There is a lot to do. We ask the continued cooperation of Members. We have been able to make a lot of headway. Tomorrow is the day we are going to complete action on this bill, which has been around for approximately 6 weeks.

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. 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.

There being no objection, the Senate, at 7:48 p.m., adjourned until Thursday, April 25, 2002, at 9:30 a.m.