United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, TUESDAY, JULY 29, 2003 No. 114

Senate

(Legislative day of Monday, July 21, 2003)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

For the beauty of the Earth, for the glory of the skies, for the love which, from our birth over and around us lies, Lord of all, to You we raise this, our prayer of grateful praise.

We thank You for Your loving providence that sustains us each day. Thank You, also, for the liberty that provides the foundation for our Nation.

Bless our Senators today. May they remember to trust You for guidance and to believe that You will order their steps. Make their lives a source of wisdom, deep as the ocean and fresh as a flowing stream.

We pray this in Your strong name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore 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.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning the Senate will resume consideration of S. 14, the Energy bill. It is our intention this morning to reach an agreement to allow for the disposition of the two pending CAFE amendments. In addition, the Senate will conduct its third cloture vote on the Owen nomination at 12:15 today. Therefore, Senators should expect the possibility of several votes prior to the party lunches. Members will be notified when the first vote is scheduled.

The Senate will recess, following the cloture vote, until 2:15 p.m. for the weekly party lunches, and for the remainder of the day the Senate will resume debate on the Energy bill. The Senate may also resume debate on the Chile and Singapore free-trade agreements. This morning we would like to lock in the agreement for the consideration of those two bills. Therefore, Senators should expect votes throughout the afternoon and into the evening.

THE ENERGY BILL

Mr. FRIST. Mr. President, I want to very briefly comment on the Energy bill. I did not make a statement on the bill and indeed was a bit disappointed on the progress we made yesterday for lots of extenuating circumstances. I do want to point out my absolute commitment to aggressively addressing the bill this morning and over the course of this week. Today, we do begin our 16th day, our 16th day of consideration on this Energy bill on the Senate floor. Just to point out to my colleagues, 16 days is longer than we spent on any other single bill this year. In fact, it is twice as long as we spent on the Medicare reform bill, the Medicare prescription drug bill. I say that only to encourage my colleagues to come to the floor, offer amendments, allow us to offer the amendments so that we can debate and vote on the amendments that people are at least considering.

Time and time again the statement is made that we spent 7 weeks on this bill last year on the Senate floor. Seven weeks, that was 24 days that we spent last year, and last year the bill didn't go through committee. It was not marked up. It wasn't debated in committee. It was taken straight to the floor.

Now we have a bill that was marked up, debated in committee, and now we spend 16 days on it. We need to finish this bill this week. We need to stay focused with it and we can't tolerate the sort of delays we have seen to date. We need to aggressively recognize that we have a period of this week and use the time that is available.

The issue of organizing how we do these amendments and sort of getting them done procedurally is what I have been concentrating on, but I think all of us have to step back and recognize the substance of this bill is what is important. It is incumbent upon us as U.S. Senators to address an issue that has been put forth by the President.

An Energy bill has been passed by the House of Representatives, and we have a bill on the Senate floor that we are debating and we must address and finish and complete this week.

A strong energy policy is what Americans want. It is what Americans deserve, a policy that, indeed, balances new production with conservation, with the development of renewable resources, all of which is crucial to strengthening our economy and our national security.

In terms of the economy, we know this bill will have a direct impact on the creation of jobs—not just 100,000 jobs or 300,000 or 400,000 but 500,000 jobs it is predicted this bill will create.

We know what has happened with natural gas prices. We have seen what has happened with those prices just since we have been discussing this bill. Again, it calls upon us to pass this Energy bill which sets out our policy.

While we have addressed issues, not as aggressively as I would like, gas prices have shot up. Federal Reserve Chairman Alan Greenspan has made

the statement that there is no end in sight. To put this in some sort of perspective on a personal level, 80 percent of the Nation's 35,000 laundromats have raised prices in the past year due to high natural gas prices. Folks who have to take their laundry to the corner Sit and Spin are facing, every day, prices that increased over the past several weeks and months and may well increase into the future.

That is why we need to respond and respond expeditiously. If you take it beyond the personal level to the industry level, the U.S. chemical companies are closing plants. They are laying off workers. They are looking to expand their own production, not domestically but expand it abroad, as a result of high prices.

Next year, the United States is expected to import, to bring into this country, approximately $9 billion more in chemicals than it will export.

American industry is caught between regulations, on the one hand limiting the supply of natural gas, and regulations encouraging its use on the other. The result is rising gas prices with some industries cutting jobs. Again, I want to keep coming back to jobs because it is an Energy bill, an energy security bill, but it is also a jobs bill. We find some of these industries not just cutting jobs but sometimes being priced out altogether. And, of course, consumers are being hit with higher and higher electric bills.

We need to diversify our sources of energy. We must do so in a way that lessens our reliance on foreign sources. So when you summarize and step back, our energy policy should be one that is consistent with our foreign policy; that is, it is independent and it is secure. By increasing America's domestic production of clean coal, of oil and gas, nuclear, ethanol, solar, and other renewable energy sources, we increase not just our energy supply but we increase our national security.

Furthermore, by passing the comprehensive energy package we will be creating jobs; as I mentioned, as many as 500,000 jobs. Indeed, the Alaskan pipeline, for example, will create at least 400,000 jobs alone. The hundreds of millions of dollars that will be invested in research and development of new technologies will not only benefit the environment, which we know will be benefited, but it also will create new jobs in engineering, in math and chemistry, science, physics.

So, in summary, we cannot continue to dither or delay. We need to focus over the next 4 days on this bill, bring amendments to the chairman and ranking member, bring them to the floor for debate so we can vote.

We simply cannot let the behind-the-scenes political maneuvering in any way deny the American people energy that is cleaner, that is more abundant, and, indeed, more secure.

We need to take action this week for the sake of our economy, for our national security, and ultimately, and what is probably the bottom line, for our fellow Americans who are paying these bills each and every month. It is time to pass an energy policy for the 21st century. I am confident we can do so this week.

I yield the floor.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. REID. Mr. President, let the RECORD be spread with the fact that every Democrat in the Senate supports an Energy bill. There is not a single Senator who opposes an Energy bill.

I know that the distinguished majority leader has talked about our having been on this for 16 days—and we have been. But many of them have been extremely short days—Thursday afternoons and Friday mornings; a few days here and a few days there.

I think what we have to be concerned about is not how many days we have spent on it but the question is, Is this bill as good as it should be? I think the answer is a glaring no at this stage.

We have been willing to work with the majority to find consensus on a host of issues. There is not a single Senator on the other side of the aisle who I have worked more closely with than the chairman of the Energy Committee, the distinguished senior Senator from New Mexico. Not only have I worked with him on the Energy bill but I have worked with him on the Appropriations Committee. He and I have done energy and water bills for years. I have great respect for him. I know how badly he wants an Energy bill. He tells me once or twice a day. I know how important it is for him to move this bill through the Senate. But we can't move a bill through the Senate that doesn't have debate on important issues such as climate change, CAFE, electricity, renewable portfolio standards, and the tax title.

We on this side of the aisle are concerned about jobs. When we look at the last administration and 8 years, President Clinton created 25 million jobs. This administration and this President—as long as we have kept records where we have lost jobs—lost 3 million jobs in the private sector. I think that says it all.

On the Alaskan pipeline issue, I offered that amendment on the floor. That amendment passed. I am glad it did pass. We support that. It is good for the economy. It is good for the security of this Nation to bring that gas from Alaska. We want to do that.

We talked about Medicare legislation and doing that more quickly. Of course, that was bipartisan legislation. It makes it a little easier.

We have a number of northwestern Senators who are desperate to work out something on the electricity title. They could not get a copy of—it is a major title to this legislation—until late Friday night. Some got it but most didn't get it until yesterday; then to be asked, as we were yesterday, to go right to the electricity title.

There are three amendments pending. I think without any question we can have a vote on CAFE by 10:45 or 11 o'clock, according to how much time the opposition takes on it. I think we can do that quickly. We have discussed it with Senators LEVIN and STABENOW. Of course, there are others on the majority side who joined with these Senators on another CAFE amendment. That should take a very short period of time—I would say an hour or something like that, I would estimate.

Then we have to figure out some way as to what will be done with the Campbell amendment. Then there is nothing to stop us from going to the electricity title. There will be some debate on that. It is an extremely important issue for us.

As I said, I have the highest respect and regard for my friend from New Mexico, the senior Senator.

I don't see how we can do this bill this week. We are going to try. It is not as if this is some guerrilla attack. We have been saying all along that we need more time than this to complete the bill.

But on this side of the aisle, we recognize the importance of this legislation. We want to do what we can but there are certain issues that require debate and deliberation. We are going to make sure it takes place. If we have to stay in through next week, we have to stay in through next week. But there are issues that are so important to this country that we have to make sure that whatever bill comes out is the best bill we can get.

RESERVATION OF LEADERSHIP TIME

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

ENERGY POLICY ACT OF 2003

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 14, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Campbell amendment No. 886, to replace ''tribal consortia'' with ''tribal energy resource development organizations.''

Durbin amendment No. 1384, to amend title 49, United States Code, to improve the system for enhancing automobile fuel efficiency.

Durbin modified amendment No. 1385, to amend the Internal Revenue Code of 1986, to provide additional tax incentives for enhancing motor vehicle fuel efficiency.

Bond modified amendment No. 1386, to impose additional requirements for improving automobile fuel economy and reducing vehicle emissions.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, just briefly, I wish to respond because I can tell both in opening and closing the Senate each day that we are going to come down to this same sort of dialog of our side of the aisle wants to move this bill through and the Democrats, or the other side of the aisle, are saying we are not slow walking this and we need more time. There is going to be sort of the setup at the end of the week with the other side saying we just haven't had enough time.

I want to make it clear to my colleagues that for the last month this bill came before the Senate 16 days. This is the 16th day on the bill. We are going to spend every day this week on it. These are not new issues. These are issues that we debated, that we talked about, that we hashed and rehashed last year. Indeed, it was 7 weeks and 24 days, and the issues are essentially the same issues.

In this Congress, we have gone through the committee itself, and it came to the floor on May 6. We spent 16 days on it. We are going to spend the next 4 days.

When I hear these statements either from the Democratic leader last night or the potential of a charge at the end of the week that, Well, Democrats just didn't want to finish the bill—those are the Democratic leader's words—I am beginning to think there is some delaying, there is some slow walking. I say that because I set up this schedule a long time ago. We are now early in the week for this final week being spent on the bill.

Yesterday we had the other side of the aisle objecting to setting aside CAFE and laying down the electricity bill. Yet we just had the assistant Democratic leader and the Democratic leader last night say, Well, we just got it on Friday.

The whole point of laying it down yesterday was so we could look at it, so we could debate it, and so we could talk about it. Yet we spent all day yesterday—or they spent all day—objecting to laying it down and to setting other amendments aside.

It is too early to get into this sort of finger pointing back and forth. But I can tell from the Democratic leader's statements—no, we are not slow walking it, that you are going to accuse us of slow walking it—all I can say is that it is early enough in the week, and if we stay focused and if we expeditiously and systematically address the issues, we can complete this bill.

I encourage both sides of the aisle to allow the managers to deal with these amendments and organize in a systematic way so we can debate. It is our No. 1 priority this week so that we can do what the American people deserve, we can pass a bill which has been adequately debated and appropriately amended and which fulfills what both sides of the aisle want to do; that is, to develop good energy policy.

I yield the floor.

The PRESIDENT pro tempore. The minority leader.

Mr. DASCHLE. Mr. President, I just wanted to respond briefly to the comments made by the distinguished majority leader.

I, again, will publicly affirm what I have said to him privately—that we are more than ready to grind out amendments and work through the many contentious issues. I listed them last night. He knows very well what those issues are.

We have a very controversial electricity title that was redrafted. Once the bill was reported out of committee, for whatever reason, the majority decided they didn't like the electricity title and redrafted an entirely different electricity title that we had not seen until Friday. So we were not able to examine it for purposes of consideration of amendments and other issues until this weekend.

But we also have the question of nuclear licensing, the conservation questions which we have talked about, the renewable portfolio standards, and a number of issues that hopefully we can address in addition to the electricity matter. The tax title has yet to come up.

You can't slow walk a bill that has not been pending. And it has not been pending. We have urged our colleagues to bring the bill to the floor so we could walk through these issues one by one and address them constructively. For good reason, yesterday we were not able to come to the bill, in part because the two managers, out of necessity, had to be in New Mexico.

So we are prepared to deal with the Durbin amendment and then the Levin amendment. I know the Campbell amendment is pending after that. If we could dispose of that, there is no reason whatsoever we could not go to the electricity title and begin debating that and consider amendments to the electricity title.

So I will certainly again offer my cooperation to the distinguished majority leader in an effort to begin addressing these issues. But I wish it were the beginning of this work period rather than the end. I would feel a lot more confident about our ability to complete our work.

I yield the floor.

The PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, before the distinguished minority leader leaves the floor, might I say we, too, are prepared to move quickly to the Durbin amendment. Senator BINGAMAN and I are writing up a list we would agree on as to how we would proceed the next couple days. The problem is, the pending amendment is the Campbell amendment on Indians, and we were going to ask if we could set it aside so we could proceed with Durbin and then proceed with the subsequent amendment on automobiles which is just pending, and right on down—we have a list—including getting the amendment on electricity offered today for debate.

But there is an objection to our proceeding. So that means we probably will have to take one of two actions: either put the electricity amendment on the Indian amendment, which I do not like, or we do the Indian amendment first. I don't know if we can do that. So it is too bad. Whoever is objecting, it would be good if they would not object to just setting the Indian amendment aside. It is being worked on. It is not a game breaker; it is just a question that there are now people who want to work it out as compared with fighting over it.

Senator BINGAMAN is here. I think he wishes to speak.

Mr. DASCHLE. Mr. President, if I might respond quickly to the distinguished Senator from New Mexico, I simply say that however he wants to address the Campbell amendment managerially is his decision. I think it is important to dispose of it. You have plenty of options. Even though we have a finite list of amendments, you can easily bring it back if it is in other forms and address it later on to clear the path, if you wish, to bring up the electricity title. So whether or not there are objections to setting it aside should not be an impediment. There ought to be ways in which to address it, and I know he will find one. Again, I will work with him to see if that can be done.

The PRESIDENT pro tempore. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I agree with the points made by the minority leader and Senator DOMENICI as well. Let me just suggest, though, that I know Senator DURBIN is here ready to debate his amendment, on which we hope we can get a vote this morning.

I think we could go ahead with that debate and then possibly even go ahead with some debate on the Bond-Levin issue while we are trying to clear any objections on this side. The hope is then we would be able to vote on one or both of those amendments before we go to the discussion about the Priscilla Owen nomination.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I think the minority leader has convinced me, and his suggestion was a good one. I withdraw the Campbell amendment provided he has the right to offer it at a later date.

The PRESIDENT pro tempore. Is there an objection?

Mr. REID. Objection.

The PRESIDENT pro tempore. Objection is heard.

Mr. REID. Mr. President, under the present parliamentary situation, of course, it takes consent to withdraw because we have a finite list of amendments. We have at least one Senator here whom we have to protect. As a result of that, I object.

Mr. DOMENICI. Mr. President, I thought the other side said I could dispose of it however I would like so we

could get on with the business. I just tried to do that.

Mr. REID. But of course, Mr. President, we have two amendments ahead of that. It is not parliamentary procedure that is proper at this stage. When we get to the Campbell amendment, the distinguished Democratic leader said the Senator would have to do what he wanted in that regard. We stand on that.

Mr. DOMENICI. We can't proceed with any of the other amendments.

Mr. REID. But even at that time, even if the other two amendments were gone, the alternatives are, as the Senator said, second-degreeing the amendment or disposing of it with a motion to table or some other thing. But just to agree to withdraw it, I am not in a position to do that right now.

Mr. DOMENICI. We would like to proceed with the CAFE amendment at this point.

The PRESIDENT pro tempore. If the Senator will suspend, the Chair informs the Senator from New Mexico, the finite list requires that the amendment must be disposed of. It cannot be withdrawn except by unanimous consent.

Mr. DOMENICI. I say to Senator DURBIN, would you like to then proceed for a few minutes on your amendment?

Mr. REID. Mr. President, I had the floor, and I will yield in just 1 second. I would also say, so there is not a problem in the future, I don't think you can amend the Campbell amendment with an electricity title under the rules that are now before the Senate. I would just alert Senators to that.

The PRESIDENT pro tempore. I think the Senator from New Mexico had the floor.

Mr. DOMENICI. We will get to that. Senator BINGAMAN wants some time to speak to a Senator. So I ask Senator DURBIN, how much time would you like to speak on your amendment?

Mr. DURBIN. I am prepared to move to my amendment. It is my understanding that the minority leader may be seeking the floor. If he is, I will certainly yield to him.

The PRESIDENT pro tempore. The minority leader.

Mr. DASCHLE. Mr. President, I appreciate the Senator yielding. I will not take a lot of time now.

TRADING IN DEATH

Mr. DASCHLE. Mr. President, I come to the floor in part to call to the attention of my colleagues an article which appeared in the New York Times this morning. The article is entitled ''Pentagon Prepares A Futures Market On Terror Attacks.''

The article reports that the Bush administration is prepared to spend $8 million on a program that actually encourages betting on the probability of future terrorist attacks. I am really amazed. This fits in that category: ''We are not making this up.''

You ask whether there are traders or traitors—T-R-A-D-E-R-S or T-R-A-I-T-O-R-S. As we understand it, even terrorists would be allowed to bet on the likelihood of future terrorist attacks.

This program could provide an incentive, actually, to commit acts of terrorism. We are asking the administration this morning to renounce this plan to trade in death. The administration should issue a public apology, especially to the families of the victims of September 11. This is just wrong: The Pentagon calls its latest idea a new way of predicting events and part of its search for the ''broadest possible set of new ways to prevent terrorist attacks.'' I don't know how one can possibly use the marketplace for that purpose.

The initiative, which is called the Policy Analysis Market, is to begin registering up to 1,000 traders on Friday. It is the latest in a series of projects advanced by DARPA, a Pentagon unit that has run into a great deal of controversy over other issues.

But I must say, this is perhaps the most irresponsible, outrageous, and poorly thought out of anything I have heard the administration propose to date. For the life of me, I cannot believe anybody would seriously propose that we trade in death, that we set up a futures market on when, as the Web site proposed, the King of Jordan could be overthrown, when a leader would be assassinated, when a terrorist attack would occur. Most traders try to influence their investments. How long would it be before you saw traders investing in a way that would bring about the desired result?

I hope the administration will explain what it is they had in mind, why they are doing this, why we are investing taxpayer dollars in the probability of future terrorist attacks.

Mr. DURBIN. Will the Senator yield for a question?

Mr. DASCHLE. I am happy to yield to the Senator from Illinois.

Mr. DURBIN. I would like to ask the Senator from South Dakota, our distinguished minority leader, is it not true that those who find your statement incredulous can log on to policymarketanalysis.com and find this proposal from the Department of Defense to create some sort of investment speculation in the possibility of assassination and terrorism? Is that not a fact?

Mr. DASCHLE. The Senator from Illinois has exactly stated the fact. Policymarket.com can be called up on your Web site today. The Web site can be called up on the Internet and you can see for yourself.

Mr. DURBIN. In fairness to the Senator, I think the reference is policyanalysis.

The PRESIDENT pro tempore. Will the Senator please address through the Chair? The Senator from Nevada has the floor.

Mr. DURBIN. I believe the Senator from South Dakota has the floor.

Mr. DASCHLE. I sought recognition and the Chair recognized me.

The PRESIDENT pro tempore. Very well. I thought the Senator yielded to the Senator from Nevada. The minority leader has the floor.

Mr. DURBIN. If the minority leader would further yield, through the Chair, is it not true that the site referenced here is policyanalysismarket.org, for those who question whether what you are saying is accurate?

Mr. DASCHLE. That is correct. I don't have the Internet reference in front of me.

Mr. DURBIN. Is it not also, I say through the Chair, that the administration is proposing spending $8 million of taxpayer money through the year 2005 in creating this marketplace to trade in speculation about assassination and terrorism, $8 million over the next several years?

Mr. DASCHLE. It is my understanding they are actually encouraging investors to trade in this terrorist probability or possibility. Their view is that somehow, by those who invest, in watching or monitoring those who invest, they can better determine where this terrorist attack may occur. What they don't fail to appreciate is that investors try to make good on their investments. So would it not stand to reason that once this investment was made and the market moved in the direction of assassinating a given leader, indeed, that would be the ultimate outcome?

Mr. DURBIN. If the Senator would further yield for a question, is it not true that on their Web site yesterday they put up some hypothetical things that people could invest in, questions as to whether, for example, Mr. Arafat, with the Palestinian Authority, would be assassinated, whether North Korea would launch a missile attack, whether the King of Jordan would be overthrown, and whether Israel would be attacked with bioterrorism weapons? Weren't these some of the items on which the Department of Defense was suggesting we start opening speculation and investment and betting by people around the world, including possible terrorists? Wasn't this on the Web site yesterday and removed today?

Mr. DASCHLE. Each of the items that the Senator from Illinois has reported were on the Web site yesterday: When the first biological attack would occur in Israel, when the King of Jordan might be assassinated. Each of these were listed as possible investment opportunities. Of course, our distinguished colleagues—I cite them for their efforts, Senators WYDEN and DORGAN—called attention to these particularly unusual investments, and they were pulled from the Web site once the fact that these were listed was made public.

Mr. DURBIN. If the Senator would further yield, I would ask the Senator from South Dakota to reflect on the reaction of the United States and the Congress——

The PRESIDING OFFICER (Mr. ENSIGN). The Senator will suspend.

Mr. STEVENS. Is the Pastore rule in effect at this time?

The PRESIDING OFFICER. The Senator is correct.

Mr. DASCHLE. Mr. President, am I not recognized on leader time?

The PRESIDING OFFICER. The Senator is.

Mr. DASCHLE. I appreciate that.

Mr. DURBIN. If the Senator from South Dakota will further yield for a question, would the Senator from South Dakota indicate what his reaction would be if we learned that in some country overseas they were opening up betting on the assassination of American officials, opening up betting on the possibility that America would be the target of future terrorism? Could the Senator from South Dakota speculate on our reaction if a similar betting scheme were opened in some other country in the world?

The PRESIDING OFFICER. The Senator will address his questions through the Chair.

Mr. DURBIN. Through the President, I ask whether the Senator from South Dakota would respond.

Mr. DASCHLE. Responding to the Senator, I would simply say where do we limit this? What would prevent somebody from offering a futures market on terrorist acts within the United States on a leader of the United States? If these markets were available to leaders in the Middle East, countries in the Middle East, it doesn't take much of a stretch of the imagination to suggest that perhaps these new investment opportunities on terror for U.S. leaders, U.S. politicians, U.S. locations would be a big part of this market of death in a very short time. Once this is in the marketplace, as we say, there is no telling what the market may do.

This policyanalysismarket.org is something I would encourage my colleagues to check out. It is the most amazing Web site I think I have seen in my life. I just cannot imagine that somebody seriously would propose something as outrageously irresponsible as this.

Mr. DURBIN. Will the Senator yield for one final question?

Mr. DASCHLE. I am happy to yield.

Mr. DURBIN. I would like to ask through the Chair, it is my understanding from press reports that former Admiral John Poindexter has now been associated with this concepted idea, the same man who was involved in the controversy of Iran-contra and the same individual who, through this same office, suggested a massive intelligence-gathering operation across the United States involving the invasion of medical records, financial records, that was discredited by the administration? Is this the same John Poindexter who was behind this proposed scheme by the administration?

Mr. DASCHLE. Mr. President, I answer the Senator from Illinois by saying yes, indeed, the same John Poindexter with the checkered past that we have known him to have is back again. This time policyanalysismarket.org apparently is one of the projects for which he is responsible. This new trade in death is something that I am told he is heading. I am anxious to get more information, of course, from the administration and others about how this individual as well as this Web site came to be.

Just very quickly, this is the Web site the Senator from Illinois cited, the specific possibilities for investment: The King of Jordan overthrown, the price they suggest starts at just 23 cents on that one. Arafat assassinated, that is worth 23 cents as a possibility. The price range may be anywhere from 22 to 33 cents. They expect a volume of 2,333 investors.

We can move to the second chart. This is the actual Web site from DARPA: King of Jordan overthrown, North Korea missile attack, Arafat assassinated. All of these are on the Web site.

Whatever a prospective trader's interest in the web site, the involvement in this group prediction process should prove engaging and may prove profitable.

This is one of the most intriguing parts of their assertion, that these actual investments in these incidences could actually prove to be profitable, as they consider investments in any one of these tragedies. I should say, investing in these incidences for purposes of profit.

Mr. REID. Will the Senator yield for a question?

Mr. DASCHLE. I am happy to yield.

Mr. REID. Mr. President, I am wondering if the distinguished Democratic leader's reaction, when he and I read the front page of the New York Times today, was the same as mine—amazement, bewilderment—when reading on the front of the New York Times: ''Pentagon Prepares a Futures Market on Terrorist Attacks''?

The Pentagon office that proposed spying electronically on Americans to monitor potential terrorists has a new experiment. It is an online futures trading market, disclosed today . . . in which anonymous speculators would bet on forecasting terrorist attacks, assassinations, and coups.

Traders bullish on a biological attack on Israel or bearish on the chances of a North Korean missile strike would have the opportunity to bet on the likelihood of such events on a new Internet site established by the . . . [Pentagon].

Did the Senator read that in disbelief?

Mr. DASCHLE. I actually thought it was a hoax. I could not believe that we would actually commit $8 million to create a Web site that would encourage investors to bet on futures involving terrorist attacks and public assassinations. For the life of me, I cannot believe that we would spend the money this administration has committed for that purpose.

But, as you said, according to the article in the New York Times this morning, that is indeed what has happened. The Web site is up. I encourage my colleagues to check policyanalysismarket.org for themselves and consider what this remarkable development may mean for us in public policy and for the safety and security of our country as we consider its ramifications.

I yield the floor.

ENERGY POLICY ACT OF 2003—Continued

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I know the Senator from Illinois is seeking to speak on his amendment. Is there a time agreement on that amendment?

The PRESIDING OFFICER. There is not.

Mr. STEVENS. I would like to have an opportunity to speak on the Energy bill. I do not want to interfere with the Senator's amendment if we can get it done.

Mr. DURBIN. I am happy to yield to the Senator from Alaska if he would give me an idea how much time he would like.

Mr. STEVENS. The reverse is true also. I am glad to yield to the Senator if he would consider giving us a time agreement on his amendment.

Mr. DURBIN. If the Senator from Alaska would like to work with me through the leadership to come up with a time agreement, I will be happy to do that. At this point, with no time agreement, I will yield—without yielding my right to the floor on the amendment—for the Senator to speak on the Energy bill. He certainly has a right to do that. I am happy to yield for that purpose.

Mr. STEVENS. I have come to the floor to speak on the bill in general, but I would be happy to have an opportunity to have the Senator from Illinois debate his amendment and have it voted on. As I understood it, that was the plan this morning.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. STEVENS. Mr. President, I address the Senator from Nevada. Is it possible to get an agreement on the Durbin amendment?

Mr. REID. Mr. President, Senator DURBIN has always been agreeable to that. He has indicated he would want probably 45 minutes.

Mr. DURBIN. Yes.

Mr. REID. And Senator STABENOW may want 10 or 15 minutes. We will check with her. I am sure we can do it within an hour on our side. I would propose that on the Durbin amendment there be 1 hour of debate on our side, that there be no second-degree amendments in order, and we would then vote on or in relation to the Durbin amendment.

Mr. DOMENICI. We are trying to work with Senator BINGAMAN on the Durbin amendment and the other CAFE amendment.

Mr. REID. I say to my friend from New Mexico that we have seen the proposal. We are not going to agree to the

unanimous consent agreement that was given to me.

Mr. DOMENICI. We don't need a time agreement on Senator DURBIN at this point.

Mr. REID. Mr. President, if the Senator will yield so I may comment briefly, I think we have tried to be as reasonable as we can on the Durbin amendment, which is the pending amendment. The Senator from Illinois has agreed from the beginning on a time agreement. That still stands.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I will speak briefly. I hope, however, we can move on to the Durbin amendment as soon as we get a time agreement.

Mr. President, one of the basic goals of the Energy bill, as our leader has indicated, is job creation. According to the estimates that I have, based upon the Bureau of Labor Statistics, the natural gas pipeline project to bring Alaska's natural gas to market would create as many as 400,000 job years. There have been various press releases issued in that regard. The more conservative estimates by the Energy Committee staff put the number at 118,000. Even those figures include: 1,650 welders and helpers; 2,000 operators; 135 surveyors; 1,250 laborers; 755 teamsters; 418 inspectors; 90 UT technicians; and 170 salaried foremen. Beyond that are both manufacturing jobs and infrastructure jobs, including airstrip improvements at 5 airports.

Additionally, the project will require an enormous number of buses, loaders, and automatic welders. We will need 440 sidebooms, 225 other sidebooms, 18 trenchers, 250 backhoes, 236 large dozers, 125 stringing tractors, and 1,300 pickup trucks.

I have come to the floor to raise my voice in support of this Energy bill and to urge the Senate to complete it. I commend Senators DOMENICI and BINGAMAN and their staffs for their efforts so far. This Energy bill is an important step toward a comprehensive and balanced national energy policy. It contains many important provisions designed to ensure our energy security.

The most important of those, to me, is the authorization for a natural gas pipeline from the North Slope of Alaska connecting through Canada to what we call the Lower 48.

As we are all aware, our country faces a natural gas crisis. The leader spoke of that this morning, and I want to emphasize the importance of his remarks. In the last 10 years, demand for natural gas has increased by 19 percent. It is projected to grow over 50 percent in the next quarter century. Absent a new supply of natural gas, a gap of 15 billion cubic feet per day or 6 trillion cubic feet per year is likely in the next decade.

High natural gas prices have severely impacted our industries and our consumers and are hindering our economic recovery.

The fertilizer industry alone has seen its current operating capacity in the United States for ammonia plants drop to 60 to 65 percent of former capacity. High gas prices are responsible for the closure of almost 20 percent of the nitrogen fertilizer capacity.

This has severely impacted our farmers. They are now paying $350 per ton for fertilizer, more than twice what they paid last year.

Our chemical industry has been similarly affected as high gas prices continue to affect its market share, which again threatens millions of existing jobs.

The chemical industry employs more than 1 million Americans, with 5 million Americans working at jobs dependent upon that chemical industry. Millions of Americans are depending upon our ability to maintain an adequate supply of gas. Our constituents are also feeling the pressure from natural gas prices. Sixty million households in this country use natural gas.

In 1999, their average gas bill was $534. In 2001, the average gas bill was $750. This year, the average gas bill for American consumers at home will be $915—almost double what it was in 1999, Mr. President.

Given these disturbing facts and the negative impacts high gas prices are having on the Nation as a whole, I urge the Senate to act quickly to address this situation. This Energy bill must pass this year. It must be passed by the Senate now before we go on recess so a final conference package can be voted on in the fall.

The Energy Committee has taken the first step towards addressing this situation by including authorization for the Alaskan gas pipeline. The pipeline is vitally important to preventing an even more serious natural gas crisis in the future.

The gas pipeline will increase our supplies. Alaska's gas alone would meet approximately 10 percent of our country's natural gas needs, which means 4 billion to 6 billion cubic feet per day. It will decrease our dependency on foreign gas and imports of liquefied natural gas. It will generate over $40 billion in revenues for the Federal Government. It will create the jobs I outlined earlier.

I do hope the Senate will focus on the jobs created by the Energy bill and particularly the Alaska natural gas pipeline. The gas pipeline translates into 7,000 construction jobs, thousands of manufacturing jobs necessary to create equipment, and thousands of infrastructure jobs.

In addition to the authorization language, the Finance Committee has provided a fiscal incentive package to ensure the pipeline can begin delivering gas as quickly as possible. I will discuss the fiscal package once the energy tax provisions are introduced. We are working with the distinguished chairman of the Finance Committee to assure that those provision meet all the objectives of assuring financing for this enormous project.

I urge the Senate to consider that this is gas that was produced alongside oil at Prudhoe Bay, almost 13 billion barrels of oil to date. As that oil was produced, natural gas was pumped to the surface as well. This gas was then separated from the oil and reinjected into the ground. This is not gas we have to look for; we know where it is. This is 35 trillion cubic feet of gas that is stored beneath Prudhoe Bay.

I point out to the Senate that 35 trillion cubic feet of gas is merely what has already been produced. The North Slope of Alaska has an abundant supply of gas, which has the potential to produce around 100 trillion cubic feet of gas. The Alaska gas pipeline project must begin so that we can start tapping into Alaska's gas reserves. No one is drilling gas wells in my State now because there is no transportation mechanism for gas. The known reserves of natural gas will be produceable as soon as there is a transportation mechanism to bring it to market. This pipeline will be that transportation mechanism to bring Alaska's gas to the Lower 48.

Nothing is more important to our Nation right now in terms of our economy than reassuring our people that we will have the natural gas supplies we need for the future. The Alaska natural gas pipeline can do it. It will help to fill the gap for the immediate future once it is constructed, and the benefits of the Alaska pipeline will have lasting effects on our Nation.

It will take a long time to construct the pipeline. We estimate it will be 2012 or 2013 before that gas actually gets to market. But once it gets to market, it will be competing with new liquefied natural gas that will be coming from foreign sources.

It is estimated that eventually we will import about 6 percent of our gas supplies in LNG. The counterweight to LNG is Alaska's gas. There is no other source in the United States with such an enormous amount of gas.

I urge us to move swiftly on this bill, and I will do anything I can to help accelerate the decisions on this bill. Again, I congratulate the two Senators from New Mexico for what they have done so far. I wish we could get together on a bipartisan basis and come up with a substitute. We ought to find some way to resolve these differences. The country needs this energy, and my State and the country need this project. I urge Senators to consider what we have to do to get this Energy bill passed as quickly as possible and that it contain the legislative authorization that is now in the bill and the tax provisions necessary to get the pipeline built.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we are preparing a unanimous consent request with reference to CAFE that has a reasonable chance. I wish to say to everyone, the distinguished Senator from Alaska just suggested that we attempt to get this bill completed, suggesting that we sit down and try to

find some alternative. In this Senator's humble opinion, there are ample votes to get the pending bill passed. Individual Senators, justifiably, have reason for delay. That is their business, and they are going to do just that.

The question is how long will they delay and to what end. There is no question that the Senator is correct with respect to natural gas. There are even other provisions with reference to natural gas. But the issue now is to get an agreement where we can have some votes.

It appears to me that we are now close to getting something done on CAFE. There are two very important CAFE amendments. We are trying to get them written up where we will get them scheduled for debate and votes shortly after the recess this afternoon, after which the pending amendment will obviously be the Campbell amendment, and we will attempt to dispose of that amendment. Then we are free to move with dispatch, I say to the Senator from Alaska.

I wonder if we are pretty close to getting a unanimous consent request?

Mr. REID. Will the Senator yield?

Mr. DOMENICI. Yes, I will be pleased to yield.

Mr. REID. Perhaps Senator DURBIN can start his debate, and as soon as the unanimous consent request is prepared, perhaps he will yield the floor so the Senator may put the request to the Chair.

Mr. DOMENICI. Might we count his time now? I have no objection. He is going to get some time in the unanimous consent request. I ask that whatever time he uses now be counted.

Mr. DURBIN. Mr. President, will the Senator from New Mexico yield?

Mr. DOMENICI. I will be pleased to yield.

Mr. DURBIN. I have been here an hour trying to begin the debate. I have tried to cooperate completely. I ask the Senator from New Mexico if he will give me assurance that I will get an up-or-down vote on my amendment.

Mr. DOMENICI. He will. Did the Senator ask for an up-or-down vote on his amendment?

Mr. DURBIN. Yes.

Mr. DOMENICI. I cannot give the Senator that assurance. It is not totally up to me. If it was up to me, it would be all right. It is not up to me.

Mr. DURBIN. Will it be included in the unanimous consent request?

Mr. DOMENICI. It is not included.

Mr. DURBIN. It could be.

Mr. REID. The unanimous consent request says ''on or in relation'' to the amendment.

Mr. DOMENICI. Yes, ''on or in relation.''

Mr. DURBIN. I know where that is headed. I will proceed to engage in a debate on this amendment if no one else is seeking recognition.

The PRESIDING OFFICER. Is there objection to the request of the Senator from New Mexico?

Mr. DOMENICI. I agree. The Senator can have an up-or-down vote.

Mr. DURBIN. I thank the Senator from New Mexico.

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

Mr. DURBIN. I thank the Senator from New Mexico.

Mr. REID. And as to Senator DOMENICI's request, Senator DURBIN's time will be counted against the time in the order; is that right?

The PRESIDING OFFICER. That is correct. The Senator from Illinois.

Mr. DURBIN. Mr. President, I understand my amendment is not pending, although it has been offered and set aside. I would like to address that amendment and engage in some explanation for my colleagues so they can understand what will be voted on shortly by the Senate.

I hold in my hand S. 14, and it is the bill that has been prepared, with long hours of work by the Senator from New Mexico and many others, to address the energy security of the United States of America. I suggest that if one visits the State of Nevada or the State of New Mexico or my home State of Illinois and asks the average person on the street, If the Senate is serious about energy security, should they consider the fuel efficiency and fuel economy of the cars and trucks that we drive, the answer would be universally yes because people intuitively know we are dependent on overseas oil to power our cars and trucks, and that, of course, is expensive not only in terms of dollar amounts but in terms of our political commitment to Saudi Arabia and other countries.

If we are talking about America's energy security, most Americans believe S. 14 would include provisions that lead to more fuel efficiency and more fuel economy of America's cars and trucks. But the sad report for the American people is this: They are wrong.

S. 14 includes no provisions requiring that automobile manufacturers provide us more fuel-efficient cars in the future. So how can it be a serious energy proposal? How can we talk about our energy security if we ignore the obvious?

Let's take a look for a moment at what we face. The vast majority of oil reserves in the world, according to this chart, are in the Middle East. In terms of the billions of barrels of oil, there are 677 billion barrels of oil in the Middle East. There is no other part of the world that can even come close in terms of its potential for providing oil. The closest I guess would be South and Central America with some 86 billion and then, of course, North America, some 76 billion. But the reserve of oil in the world, outside of the Middle East, pales in comparison.

That is important for us to consider because we in the United States and in Canada are the largest global consumers in the world of oil per capita. These 1999 figures show of what I am speaking. In the United States and Canada, we consumed 3 gallons of oil for every man, woman, and child every day in 1999. That is 3 gallons a day.

Let's look at other industrialized countries. It is 1.3 gallons per capita in other industrialized countries.

The world average was about half a gallon. So we have a veracious appetite for oil that we do not own.

When we are talking about energy security, we have to wonder how this bill, S. 14, can honestly address energy security without addressing the obvious—that unless and until we are less dependent on foreign oil to sustain our lives and our economy, how in the world can we reach energy security?

The obvious question is, What are we doing with all of this oil? Well, intuitively we know the answer, but this chart tells us with specifics: U.S. oil demand by sector, over a 50-year period of time.

What we will find is this: Cars, SUVs, minivans, pickup trucks, and other vehicles account for 40 percent of U.S. oil consumption; and the transportation sector in total, 60 percent. They own the oil. We consume it in quantities unparalleled in the world. We consume it to power our vehicles.

Stick with me because I think this takes us to the end point and why the Durbin amendment really gets to the heart of energy security.

The amendment which I have proposed would save a cumulative amount of 123 billion gallons of oil by 2015.

Now, some have said there are other ways to do this; we do not have to ask for Detroit or any automobile manufacturers to do anything responsible for fuel efficiency and fuel economy. We can ignore that. Let the market work. We continue to have bigger, heavier, less fuel efficient vehicles. Just ignore it. There are other ways out. There is an easy way to deal with it.

What is the easy way that opponents of my amendment are proposing? Take a look at it. One of them is, let's go drilling for oil in the Arctic National Wildlife Refuge. Take a refuge created by President Eisenhower in the 1950s, that is supposed to be protected, and open it up for oil exploration. They say: If we just open up the Arctic National Wildlife Refuge, we do not have to worry about cars, trucks, and fuel efficiency. There is so much oil up there, we just do not have to sweat it. So give a little. Compromise this national wildlife refuge. Let oil companies come in and make a few bucks and future generations are going to be in a much better position.

Look at the facts. Look at the comparison. Look at what the Arctic National Wildlife Refuge will save for us, or at least produce for us, in terms of billions of gallons of gasoline over a 17-year period of time. The number is down here and it shows, I think conclusively, that we are dealing with a very small amount that would come out of the Arctic National Wildlife Refuge; in fact, less than a tenth of what we would derive if we set about a sensible national energy policy calling for more fuel efficient cars and trucks.

NHTSA, the National Highway Traffic Safety Administration, has a proposal that would save 20 billion gallons of gas, and that is a good idea, but that again is just a fraction of what we can do if we address the obvious: The fuel economy of the cars we drive.

A lot of people have said: We can invent our way out of this problem. We do not have to sweat it in terms of demanding from Detroit and other automobile manufacturers that they come up with better cars and trucks. Let them continue to sell these behemoths on the road that have terrible fuel economy and eventually we are going to invent our way out of the problem.

Well, would that that were true. In this situation, when we take a look at the proposals for fuel cell vehicles, one of the things we have heard about is hydrogen power. I support that. I think the President's research is a good idea. But even if it is successful, in a matter of 12 years it could save us less than 10 billion gallons of gasoline. That is less than a tenth of what my amendment would achieve.

What about the consumers? I have heard Senators say: We have no right to dictate to American consumers what they want, what they prefer. We should let the consumers have what they want. Let the market govern.

I will tell my colleagues what consumers have said. An annual survey by J.D. Power and Associates found that fuel consumption was the second most common driver complaint industry-wide.

Mr. REID. Mr. President, if the Senator will yield for a unanimous consent request, I ask that Senator DOMENICI now be recognized to offer a unanimous consent agreement.

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

UNANIMOUS CONSENT AGREEMENT

Mr. DOMENICI. Mr. President, I ask unanimous consent that the following Senators be permitted to speak in relation to amendments Nos. 1384 and 1386: Senator LEVIN, 10 minutes; Senator BOND, 10 minutes; Senator LOTT, 10 minutes, to follow Senator DURBIN; Senator STABENOW, 10 minutes; Senator LAUTENBERG, 10 minutes; Senator DURBIN, 40 minutes; Senator BINGAMAN, 5 minutes; Senator DOMENICI, 5 minutes. Further, that the Bond amendment be amended with a Bingaman second-degree amendment which is at the desk and has been agreed to by both sides. Further, I ask unanimous consent that following the use or yielding back of the time, the votes occur on the Durbin amendment No. 1384, to be followed by a vote in relation to the Bond amendment No. 1386, as amended, at a time determined by the majority leader after consultation with the Democratic leader, and that there be no second-degree amendments in order to the amendments prior to the votes in relation to the amendments.

Mr. REID. Mr. President, I ask that the distinguished chairman of the committee modify his amendment to allow Senator BINGAMAN 5 minutes to speak after Senator LOTT on the Levin amendment.

Mr. DOMENICI. I have no objection.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from New Mexico?

Mr. DURBIN. Reserving the right to object, only to clarify where I am with my 40 minutes, I do not know how much time I have consumed. I inquire of the Chair how much time I have consumed.

The PRESIDING OFFICER. The Senator from Illinois has consumed 8½ minutes.

Mr. REID. Nothing happens until 11:15, and then we go to a judge. So the Senator has plenty of time to speak.

Mr. DURBIN. I thank the Senator. I have no objection to the unanimous consent request.

The PRESIDING OFFICER. Is there objection to the unanimous consent request of the Senator from New Mexico?

Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 2738 AND H.R. 2739

Mr. DOMENICI. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, with the concurrence of the Democratic leader, the Senate proceed to the immediate consideration of H.R. 2738 and H.R. 2739, en bloc, under the following conditions for debate only: Senators GRASSLEY, 45; BAUCUS, 45; HOLLINGS, 60; DASCHLE, 30; JEFFORDS, 60; SESSIONS in control of 45; HATCH, 15; STEVENS, 15; CORNYN, 15; FEINSTEIN, 60. I further ask that upon the use or yielding back of the time, the bills be read a third time and the Senate immediately proceed to a Senate resolution regarding immigration provisions included in the Singapore and Chile free trade agreements; the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table; provided, further, that the Senate then proceed to a vote on passage of the Singapore free trade agreement followed by a vote on passage of the Chile free trade agreement, with no intervening action or debate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask the distinguished manager of the bill if he would modify the agreement to allow Senator HARKIN 30 minutes.

Mr. DOMENICI. On the unanimous consent I just read?

Mr. REID. Yes.

Mr. DOMENICI. I have no objection.

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

Is there objection to the original unanimous consent request?

Without objection, it is so ordered.

Mr. DOMENICI. Before we proceed to Senator DURBIN, I say to all the Senators, so there will be no misunderstanding, we are going to dispose of the CAFE amendments this afternoon. That means that the next amendment which will be before us is the amendment regarding Indians. If there continues to be objection that we cannot set it aside, we will vote either on it or in relation to it immediately following disposition of the CAFE amendments. It is the intention of the manager that that occur, after which time it is the intention of the manager to proceed to lay before the Senate the electricity amendment which has been in the hands of Senators for almost 4 days now.

I thank everyone for their cooperation thus far. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Will the Chair be kind enough to notify me after I have used 25 minutes of the 40 minutes I have allocated under the unanimous consent request?

The PRESIDING OFFICER. The Chair will do so.

Mr. DURBIN. Going back to the point I was making about more fuel efficient vehicles, a lot of people say if we are going to have more fuel efficient vehicles, they are going to cost more and they have to add things to these vehicles that will be expensive to consumers. But they fail to account for several things. One is that a more fuel efficient vehicle costs more money to operate. If it costs $1,200—and that is the estimate from the National Academy of Sciences—to put on the new fuel-saving technology, over the life of the car that same consumer will save $2,000 in terms of the gasoline they have to buy.

Arguing that this is a consumer burden is plain wrong. In fact, most consumers are concerned about fuel economy; unfortunately, the Senate is not. The Senate has taken the position, which unfortunately major automobile manufacturers in this country espouse, that we should not be concerned about fuel efficiency and fuel economy.

As a person who makes a point of trying always to buy American vehicles and having done that all my life, it is becoming increasingly apparent that Detroit is falling further and further behind when it comes to new, environmentally responsible technology to deal with fuel efficiency.

What we have with the Levin-Bond amendment is a concession to the fact that Detroit continues to fail, Detroit continues to come in second when we deal with new technology. I am concerned about that. Our American automobile industry is critically important to our economy.

As a person who wants to buy American as often as possible, I look at this and say we have to do better. This Energy bill before the Senate does not challenge the automobile industry to do better at all. It basically says we are going to include language which does not place any burden on the automobile manufacturing industry or anyone else. We are going to ignore the CAFE standards and basically allow what is currently existing to continue indefinitely. That is energy security? I don't think so.

One of the concerns I have is the impact on pollution by automobile emissions. The United States produces a third of the greenhouse gases emitted from automobiles worldwide. Out of all of the emissions from automobiles in the world, the United States is responsible for one-third of the pollution. These greenhouse gases affect agriculture, public health, the economy, our sea levels and shore lines. The greatest impact is at the North and South Pole.

Scientists predict, for example, that many species will be threatened because of the greenhouse gases that are aggravated and exacerbated by the emissions from the tailpipes of our cars and trucks. That is a reality.

It is not just a question of lessening our dependence on foreign oil but a question of environmental responsibility. Let me give one illustration. When I was a young boy growing up in East St. Louis, IL, one of the biggest treats in my life was to go over to the St. Louis zoo. I would stand there watching the polar bears until my mom and dad finally said we had to go home. I got the biggest kick out of that as a kid. A lot of children around America look at polar bears—the big, huge, lumbering white bears in zoos—and think, what a magnificent creature. The sad reality is if we do not get honest about the environment and the destruction of the environment for which we are responsible, this species of animal will be threatened.

Scientists say if the most optimistic scenario should evolve, the polar bears will not be extinct for 100 years. It means that though your children may see them during their lifetime, their children will not. Others say, no, 50 years. If that is true, if in 50 years polar bears will be extinct because of the pollution coming out of tailpipes of our cars, because of the refusal of the Senate to accept the responsibility to reduce automobile emissions, to reduce the use of fuel, if that happens in 50 years, you can say to your children and grandchildren today, go to the zoo and look closely because this animal will not be here for your children to see. There is no way.

Do we want that burden? Do we want to accept that burden in the name of not pushing the automobile companies to make more fuel-efficient vehicles? That is what this vote comes down to.

From my point of view it is very simple and very sad. We sometimes have a responsibility to make tough decisions in the Senate. We have a responsibility to say to these big multinational corporations that produce these automobiles: You have to do better. You have to do better so the United States is not dependent on foreign oil, so we have true energy security and reduce the environmental degradation and damage of air pollution. We have to accept that responsibility. If we don't, who will? Do you expect the marketplace to answer this? The marketplace will answer this by eliminating this species from the Earth. That is how the marketplace will answer.

Mr. REID. Will the Senator yield for a question?

Mr. DURBIN. I am happy to yield.

Mr. REID. I take this opportunity to tell the Senator from Illinois through the Chair that this is the most important amendment dealing with the environment that will be offered all year. I was asked in a television interview yesterday what I believed was the most important environmental issue facing America today. I said fuel efficiency of automobiles. There is not a close second.

I believe in the Clean Air Act, clean water, endangered species, historical preservation, and there is not an issue that is more important to the people of America and to the world than fuel efficiency of these cars and trucks in America today.

I want the record to be spread with the fact that the Senator from Illinois has offered, in my opinion, the most important environmental amendment that could be offered this Congress. I give the Senator my support.

I know what the vote was previously on this issue. We will probably lose this, which is too bad. The majority of the people in America support this amendment. The majority of people in America support this legislation. The Senate does not. That is too bad. On this issue we are not reflecting the will of the American people.

Does the Senator acknowledge that?

Mr. DURBIN. I agree with the Senator. So does the League of Conservation Voters, an organization in Washington that looks for important environmental votes. They said the Durbin amendment is a critical vote on the scorecards of Senators across the United States because it gets to the basics: Do you care about the future? Do you care about the responsibilities of American consumers and American producers of automobiles to make a better car and a better truck? If you do not care, then you want the current situation to continue.

Remember the history. If you reflect on the history, where did we come up with the word ''cafe''? How was this created? It was created by a law in this Chamber in 1975 which said to automobile manufacturers: You have to do better; 14 miles a gallon is sinful. It will make us more dependent on foreign oil and it will pollute the environment. You must produce a more efficient car.

The chorus from Detroit and other automobile manufacturers could be heard all over the Chamber. They said the opponents of this amendment are saying it is technically impossible to make more fuel-efficient cars. It cannot be done.

Second, go ahead and make more fuel-efficient cars; they will not be as safe. We guarantee it. We will be riding around in these flimsy cars that are so light that lives will be lost right and left.

Third, they said: This is a job killer. More fuel efficiency for cars in America means we are going to ship American automobile manufacturing jobs overseas.

Those are the same three arguments they are making today. The Senate ignored them in 1975. The Senate said to the special interest groups: You are wrong. America's national interests demand we pass this bill. And we did.

As a result of passing that bill, we increased the fuel efficiency of America's vehicles from 14 miles a gallon to 27.5 miles a gallon in 10 years by Government mandate from a law we passed.

Is America a better place as a result? You bet. We have less air pollution; we did not sacrifice automobile safety; and we still have a vibrant automobile manufacturing industry.

To suggest we are going to kill jobs because we want cars that are more fuel efficient is, frankly, to wave the white flag and say Americans are not smart enough. We cannot figure this out.

Why is it, time and again, when it comes to fuel-efficient vehicles, automobile manufacturers from other countries seem to have it figured out? Look at these hybrid vehicles. Gasoline-electric hybrid vehicles have great potential. Is it as embarrassing to my colleagues in the Senate as it is to me that the first two companies to produce these vehicles were Toyota and Honda? Where was Ford? Where was General Motors? Where was Daimler-Chrysler? Why do we always have to come in second when it comes to this technology? Is it that our people are not smart enough? I don't buy that. What is lacking is leadership, leadership in the American automobile industry and leadership in the Senate.

My colleagues will come to the Senate today and say 40 miles a gallon on our cars in 12 years cannot be done. If it is going to be done, you are going to condemn soccer moms and their kids to driving back and forth in cars that are death traps.

Listen, another thing that is wrong with the Durbin amendment, you will hear, is it is going to cost us jobs to America. That is the same story, the same argument we heard 28 years ago, the same tired old arguments that give up and give in instead of showing real leadership as this amendment demands that we do.

I say to my colleagues in the Senate, for goodness' sake, don't take the telephone calls from the special interest groups for a few hours. Listen to your heart and your mind and understand where the American people are.

Yesterday I was in the south suburbs of Chicago, Palos Heights. A woman came up to me who appeared to be a soccer mom. She stopped by the Dominick's food store, and I saw her as she walked by. She knew about this amendment, and she said: ''Thank you for doing this. We have to do something about these gas guzzlers.''

She knows, as we know, that no individual consumer can change this. Unless we show leadership, Detroit is going to continue to make the most fuel inefficient vehicles, put them on the highway, creating more pollution, more dependence on foreign oil, and ultimately destroying the environment of the Earth on which we live.

I don't think I am overstating the case—not at all. When 60 percent of the oil we import into America goes into our transportation, I believe I am understating the case. You cannot have a serious bill about America's energy security, or any serious legislation that considers the impact of energy on the environment, and ignore this issue. Ignore it we have.

The Landrieu amendment, which I supported, is a good idea. It is a study. It is an important message. It has no teeth, no enforcement. The same thing is true on the Levin-Bond amendment. It is an amendment that, in name, says we are concerned about this but, in fact, creates no responsibility on the automobile industry to do anything.

We can do things. The technology is within our grasp. What we need is the leadership in the Senate. My amendment would say we have to improve the fuel efficiency of cars and SUVs, minivans and crossover utility vehicles, to 40 miles a gallon by the year 2015; to require pickup trucks and vans to achieve a CAFE standard of 27.5 miles per gallon by the same year.

It changes the definition of passenger vehicle. That has been one of the most egregious violations of the original intent of the CAFE law that has occurred. You know these huge monster vehicles called Hummers, Humvees, and the like. Take a look at those and realize for a minute they are exempt from the CAFE law.

Take a look at these massive SUVs and realize we create tax incentives for businesses to buy the most fuel inefficient cars in America. I have a tax amendment, which will not be part of the amendment I offer this morning, but it goes after this tax policy which encourages the worst instead of the best.

The argument was made here, as I said earlier, that this technology is so expensive, it is going to cost $1,200 a car.

Forgive me; I have been buying cars recently. Cars are pretty expensive nowadays, and $20,000 and up, I guess, is average. Mr. President, $1,200 on that cost at the front end, if you are going to save $2,000 in gasoline over the life of the vehicle, is certainly not too much to ask.

In terms of losing jobs, the Union of Concerned Scientists say the opponents of this amendment have it all wrong. The opponents say, if we talk about new technology and American leadership, we are going to lose jobs. Just the opposite occurs. We are going to be creating jobs to create this new technology. We will be reducing the cost of business. The businesses that are dependent on cars and trucks with better fuel efficiency will have lower costs, lower input costs, will be more productive and more competitive. But the opponents just don't see it. They have tunnel vision. What they see are these massive SUVs getting bigger and bigger and the American consumers having no alternative but to buy.

Many have said the Durbin amendment is not necessary. I would say the Landrieu measure includes no new authorities to help reach oil savings goals and no enforcement mechanisms to ensure that the requirement be fulfilled.

The Levin-Bond amendment, they say, is based on sound science. But I would say the contrary is true. In 2002, the National Academy of Sciences found that existing and emerging technologies—existing and emerging technologies—could improve fuel efficiency of a light truck 50 percent to 65 percent; the fuel efficiency of cars 40 to 60 percent.

The people who oppose this amendment ignore the reality. This technology is within our grasp. But, sadly, what we have found over and over again is that Detroit and other automobile manufacturers do not believe they have any obligation to offer it.

The Levin-Bond amendment does not require an increase in fuel efficiency. It delays the job, passes the buck to NHTSA. It adds new roadblocks to NHTSA's decisionmaking process. NHTSA has failed to make any meaningful increase to fuel economy for 10 years. The record is there. We know if you hand this over to the National Highway Traffic Safety Administration, you are not going to get fuel efficiency for a decade. Its latest increase of 1.5 miles per gallon to light trucks is almost laughable, to think that is the best they can do considering that the standards for light trucks were last changed 18 years ago.

So if every 18 years we are going to increase the efficiency of vehicles in America by 1.5 miles a gallon, how long do you think we will be dependent on foreign oil? The answer is obvious: Forever.

We are addressing fuel efficiency through the President's hydrogen fuel cell initiative. I support that. But that certainly is not the total answer.

I say to my colleagues, there are people in the business of selling cars. There are people in the business of buying cars. There are consumers across America who are going to ask one basic question: Is S. 14 for real? It is not for real if we do not include any provisions requiring more fuel efficiency and more fuel economy of our vehicles.

I ask my colleagues to join me in supporting this amendment.

The PRESIDING OFFICER. The Senator has consumed 25 minutes.

The Senator from Missouri.

Mr. BOND. Mr. President, I ask that I be notified when I have used 7 minutes of my time. I intend to yield the remaining 3 minutes to my colleague from Missouri.

The PRESIDING OFFICER. The Senator will be notified.

Mr. BOND. Mr. President, I think Senators are all aware, now, that if you are serious about doing something positive regarding fuel efficiency and safety standards but avoiding something negative for jobs, safety, and consumer choice impact, you should vote yes on the Levin-Bond CAFE amendment to the pending Energy bill.

I am only going to make this speech one time, not three times as those on the other side do, as we drag it out. I want to point out, again, a similar amendment was agreed to last year on a vote of 62 to 38, supported on both sides of the aisle.

As I said on the floor a few days ago, Members supported our amendment because they knew then and I hope they know now that setting fuel economy standards is complicated. Future standards should be based on sound science and take into account important criteria: Jobs, technology, consumer choice, and many others, but also safety—safety which has been compromised by the politically set lower CAFE standards of the past. They should not be based on the political numbers. I urge my colleagues to oppose the higher, politically set CAFE numbers included in the Durbin and Feinstein amendments.

There are a lot of people who are very strongly supportive of the Bond-Levin amendment—farmers, union members, soccer moms, small businesses. The United Auto Workers wrote to us specifically urging defeat of the Durbin and Feinstein bills. The Chamber of Commerce also did. Not often do you see the UAW and Chamber teamed up, in opposition, but the people who have proposed these unreasonable standards have managed to achieve it.

I spent a lot of time on this floor talking about the impact of excessive CAFE standards, and I think it is important to talk about the hard industry data, economic impact, and the National Academy of Sciences report. After listening to the debate of the last few years, it is clear there are many myths.

The first myth is automakers take advantage of an SUV loophole. Fact: During the creation of the program in 1975, Congress recognized, because of their utility, different standards should be set for light trucks and passenger cars. While light trucks feature more amenities than their predecessors and provide more than 50 percent better fuel economy than their 1970 counterparts, they remain fundamentally trucks. They satisfy consumer needs for safety, passenger cargo space, towing ability, and off-road capability.

Second myth: Only Congress can increase CAFE standards. The other side has floated the old canard that our amendment ignores CAFE standards.

Fact No. 1, the Bond-Levin amendment requires increasing CAFE standards to the maximum extent feasible as far as the technology will permit.

Fact No. 2, the National Highway Traffic Safety Administration has the authority and expertise to change fuel economy regulations, and a few months ago it announced the biggest increase in 20 years in CAFE levels for light trucks and SUVs. The agency has already announced its intention to set new CAFE standards starting in 2008.

The difference is they are going to use science and technology and not force the use of smaller cars that kill people on the road more frequently.

Another myth is that automakers need to use more technology in their vehicles to increase full economy.

Fact: The auto industry utilizes world-class technology across product lines. The average automobile contains 40 to 50 microprocessors and has far more power than the computers used for the Apollo mission to the Moon. Engineers and scientists for the big three domestic manufacturers and their international competitors have focused on developments in advanced technology to produce cleaner, more full-efficient vehicles along with a host of safety advancements.

In addition, my colleague from Illinois has said the National Academy of Sciences has a huge number that can be achieved. If you will read that NAS study, I ask my colleagues to focus on the part of the NAS report which states ''The committee cannot emphasize strong enough that the cost-efficient fuel economy levels are not recommended CAFE goals''—not recommended CAFE goals.

Let us stick with science.

Proponents of higher CAFE standards try to avoid any discussion of the job impact or just dismiss concerns as overreacting. But we have heard, as I have said, from union officials, technical experts, plant managers, local dealers, and small businesses. They tell me the only way for manufacturers to meet these unrealistic political numbers is to cut back significantly on producing light trucks, minivans, and SUVs, or to make them significantly smaller.

Look at this. This is a picture of a Ford F–250 series pickup truck. It is a workhorse. You buy this truck because you have a job to do, whether it is farming, construction, hauling, or any number of other legitimate needs. It weighs somewhere between 8,500 pounds gross vehicle weight or less than 10,000. It is currently not covered by CAFE as it is configured to do more than haul people. Under the Durbin proposal, these vehicles would be swept into the CAFE program to the detriment of everybody. They would become CAFE-constrained with several bad outcomes.

First, you tell this rancher or farmer that he will need to get a golf cart with a little wagon to carry one bale of hay at a time or you tell other farmers, ranchers, and construction workers they won't be able to buy these vehicles, and then you explain to the workers in the automobile industry how they will have jobs.

Did you know the average compensation by employees in the auto industry was $69,500 in 2001? This figure is 60-percent higher than the average U.S. job. Those would be the jobs we would lose because they could no longer make this machine.

Furthermore, as I have stated before, mandating politically set CAFE standards in the past has led to reduced weight, which, according to the National Academy of Sciences in the year they studied it, killed between 1,300 and 2,600 people a year on the road. That is roughly 2,000 people a year.

These are reasons to support the Bond-Levin amendment.

I yield 3 minutes to my colleague from Missouri.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Missouri.

Mr. TALENT. Mr. President, I thank my colleague for yielding.

We have six production facilities in Missouri that make vehicles. In Kansas City, they make the F-series truck for Ford, and the Escape. In St. Louis, they make the Dodge Ram and the Mercury Mountaineer. There are 36,000 jobs in Missouri that are directly dependent on auto manufacturing, and 220,000 jobs that are indirectly dependent on auto manufacturing.

The proposal before the Senate would require an immediate and substantial increase in CAFE standards which would increase the cost of those vehicles by anywhere from $3,000 to $5,000 and would mean, in short, that sales would go down and thousands and thousands of people in Missouri would be out of a job. It would be a disaster for them.

These are jobs that pay $50,000, $60,000, or $70,000 a year. These are jobs that mean kids can go to school and families can take vacations.

That is what we are talking about. This is not theory. This is not abstraction for them. It is bad enough when we try to help people get jobs and preserve their jobs and we fail because of extreme philosophies or partisanship or personalities or whatever. It is worse when we do something that actually takes their jobs away from them. They ought to be able to expect this Government is going to try to help them get jobs and preserve jobs. At a minimum, we ought not to pass legislation that takes it away from them.

I know this isn't going to happen. The Union of Concerned Scientists says the technology is available to do this without costing any jobs. That is a great comfort for my people back in Missouri who are trying to come out of a recession.

Maybe we can forgive them for being concerned and not trusting the Union of Concerned Scientists when the people who make the cars—the auto manufacturers—say they can't do it. The engineers who design the cars say they can't do it. The unions that produce the cars say they can't do it. I hope we will forgive my people back home in Missouri who depend on these jobs for being a little bit concerned.

I presided over the House while we were debating the measure to explore for oil in ANWR, which I think is related to this a little bit. A lot of folks who didn't want to explore for oil in ANWR wouldn't accept the fact we have the technology available today to do that without affecting the environment. They said we can't take that chance because it might adversely affect the caribou. It might be bad for the tundra in ANWR. Many of the same people who are advocating this big increase in CAFE standards said the technology is not available and we can't do it. They weren't going to take a chance when what was at stake was the caribou or the tundra. But they are willing to take a chance when what is at stake is somebody else's job in Missouri.

I thank the Chair. I will look forward to having a little more time later.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I think I have 10 minutes under the reservation. I would like to reserve 2 minutes of that time so Senator BOND can close when the debate is finished on this side.

Mr. REID. Mr. President, if I could, just for a matter of parliamentary procedure, at 11:15 we consider the judges. I ask unanimous consent that the Senator from Mississippi be allowed to complete his statement before we start with the judgeship. It would be 3 minutes later. Is that what the Senator wants?

Mr. LOTT. That would be much appreciated.

Mr. REID. We would extend consideration of the judgeship for 3 minutes.

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

Ms. STABENOW. Mr. President, parliamentary inquiry: It is my understanding that I have been given 10 minutes. Is that right?

Mr. REID. Yes but not now. We are going to the judge at 11:15. The Senator from Mississippi has the floor.

Ms. STABENOW. Thank you.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I will speak more later on about the bill itself in general terms. But for 3 years the Senate has been trying to come to an agreement on legislation that could get through the conference and be sent to the President so we will have a national energy policy. I believe this is a very important issue for the future of this country. If we don't have a national energy policy and if we don't deal with these many areas of concern, the day will come when the lack of a national energy policy will cause national security or economic problems for this country. We could see that even this coming winter as we see a declining availability of natural gas.

By the way, it is inexcusable that we are having a national gas shortage. It is because of our policies. That led to

this shortage. If we don't have an adequate supply, it will affect the economy across the board. It is already affecting the chemical industry in my State, and the fertilizer industry. It is going to affect people's quality of life. This is so important. We need the whole package. We need more production. We need new technology. We need clean coal technology. That is just one example. We need more conservation of a responsible nature. We need to look at alternative fuels. I think a lot of these alternative fuels are, quite frankly, not very legitimate. But it is legitimate to try to find alternative fuels.

I urge my colleagues, let us work together. Let us get this done, get it into conference, and let us produce a national energy policy.

I think this issue is more important than any issue Congress is considering at this time. It is urgent that we get this work done.

I wanted to speak in support of the Bond-Levin amendment. I know very good work has been done on this amendment. I worked last year with Senator BOND and Senator LEVIN. They have given a lot of thought to how this should be designed. It bases decisions on these CAFE standards on science and solid data. I believe this idea of just plucking a number out of the air and saying that number is achievable is irresponsible. It may not even be achievable. Based on what? It makes somebody feel good? And what about the choices for the American people? What about the sacrifices in safety that we are asking them to make?

When you just pick a number, such as 32 miles per gallon or 37 miles per gallon, I don't think that is a wise decision, unless it has been based on thorough study and solid data. Of course, the organization to make that determination is the NHTSA. They have the expertise to analyze the numbers and consider all that should be involved, including the jobs that might be affected, the technology, how this improved fuel efficiency could be obtained, and, yes, safety. There are proposals out there which would adversely affect all these areas, including jobs, employment, consumer choice, and safety.

The National Academy of Sciences CAFE report declared there will be more deaths and injuries if fuel economy standards are raised too fast without proper consideration given to how that is being done and what impact it might have.

This amendment is supported by a broad coalition: labor, the UAW, the AFL-CIO, the Chamber of Commerce, the National Association of Manufacturers, the Farm Bureau, automobile dealers, and over 40 other organizations. That ought to tell you something. That type of broad support indicates that people are concerned about what might be done with this CAFE standard.

Yes, we should continue to work to improve fuel efficiency. We should have incentives to move in that direction. But I am very worried we are going to cause some real damage. What about the choice made by Americans? This is still America, isn't it?

Is the Federal Government going to mandate that every driver drive an automobile like the one in this picture? Last year, I talked about the ''purple people eater.'' Shown in this picture is a version of the ''purple people eater.'' That might be fine around town in Washington, DC, but I can tell you, on some of the back roads in my State of Mississippi that will get you killed. That is not practical and people will not choose to drive it. They want an SUV or they want a pickup truck. And they don't want to be penalized by the Federal Government saying to them: You have to do this. And, by the way, if you don't do this, we will make you pay some kind of a price. This is ridiculous.

In my own case, my family is growing. We have our children and grandchildren. It is a wonderful deal. Then, in August, when we take our annual family vacation, I have a choice. I can have a bigger automobile with the three seats in it, where we can securely carefully fasten our grandchildren in these safety seats. We can take two automobiles, each being an SUV, or we can take three automobiles. Now, how much fuel is saved? And how much safety is given up?

Mr. President, this is ridiculous. It continues to be. It was last year. The American people are speaking with their choices. They are voting with their feet and their cash. They can buy these more fuel-efficient automobiles, but they are not doing it.

What percent is actually buying these smaller automobiles? I think, any way you slice it, not more than 14 percent. The American people are making other choices.

So I think what we are doing is very important. I think there are a lot of very substantive issues involved, and the least of which is not the American people's choices.

I do not think we should be forced to drive that automobile shown in the picture. I don't know who makes that automobile. I don't know where it is made, but it is probably reposing somewhere in France or Germany. I like the bigger vehicle shown in the picture behind it.

The American people have a need for vans or SUVs or pickup trucks. I understand there is going to be an amendment offered that will pick on particularly light trucks. Goodness gracious, light trucks use less fuel. Why pick on a light truck versus a heavy truck? This makes no sense.

I oppose the amendment that is going to be advocated by Senator MCCAIN and, I think, Senator FEINSTEIN. I oppose the Durbin amendment.

This amendment by BOND and LEVIN is bipartisan. It makes common sense. It moves us in the right direction. But it is based on commonsense science and solid data. So I urge that we adopt this amendment, and let's leave the choice in the hands of the American people and not have the ''Grand Poobah Government'' tell us what we have to do in one more area. Don't make the American people drive this little grunt of a car shown here.

Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. LOTT. Mr. President, I yield the remainder of my time to the Senator from Missouri, keeping in mind that Senator BOND would have 2 minutes to close at the end of the debate on this section, I believe.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I doubt I will use the full 3½ minutes. It is just that I ran out of time before when I was in the middle of ranting and raving on this subject. I would hate to close my remarks on that tone, anyway.

Let me explain to the Senate why this is so important to me personally. I recently visited the Kansas City Ford plant where they make the new Ford 150 truck. It is a triumph of American engineering and the productivity of American workers.

The workers there are proud of that truck. And they should be proud of it. It means many people will be able to travel in this country safely and with comfort. I drive an SUV. I don't drive it because I am trying to hurt the environment or affect our energy independence. I drive it because we have small children. I used to drive a hatchback, but if we got in an accident in that hatchback, it would fold up like an accordion. That is why I drive an SUV. That is why millions of people do.

The Senator from Mississippi is right to say it is wrong to disparage these vehicles. People who make these vehicles in Missouri and around the country are proud of what they do. They are satisfied with their jobs. Let's not gamble with their jobs. We are trying to come out of a recession. We are trying to create jobs in this country.

Vote for the Bond-Levin amendment. It is a good, modern amendment and moves us forward. It protects people's jobs. I urge the Senate to support the amendment.

I thank the Senator from Mississippi for yielding me a few extra minutes. I yield back whatever time remains.

EXECUTIVE SESSION

NOMINATION OF PRISCILLA RICHMAN OWEN, OF TEXAS, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT—Resumed

The PRESIDING OFFICER. Under the previous order, not withstanding the provisions of rule XXII, there will now be 1 hour of debate equally divided between the Senator from Utah, Mr.

HATCH, or his designee, and the Senator from Vermont, Mr. LEAHY, or his designee.

The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally between Senator HATCH and Senator LEAHY.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. VOINOVICH. 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. REID. Mr. President, I know the Senator from Ohio has the floor, but through the Chair to him, I would note we are under a time constraint. If the Senator wishes to speak, I have no objection as long as it is charged off of Senator HATCH's time.

Mr. VOINOVICH. Mr. President, I would like permission to speak on the CAFE amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, as I indicated, I object unless the time is charged to Senator HATCH.

The PRESIDING OFFICER. Time will be so charged, unless the Senator from Utah objects.

Mr. HATCH. Mr. President, I ask what the request is.

The PRESIDING OFFICER. The unanimous consent request is that the Senator from Ohio be able to speak on CAFE standards.

Mr. VOINOVICH. For 6 minutes.

The PRESIDING OFFICER. Charged to the time for the judge.

Mr. HATCH. I ask the Senator, could you keep it a little lower than that because we—

Mr. REID. I cannot hear the Senator from Utah.

Mr. HATCH. Do you think you could do it in less time than that because we have very little time.

Mr. VOINOVICH. I can do it in 6 minutes.

Mr. HATCH. That is fine.

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

The Senator from Ohio.

Mr. VOINOVICH. I thank the Senator from Utah.

(The remarks of Mr. VOINOVICH are printed in today's RECORD in legislative session.)

Mr. VOINOVICH. Mr. President, I thank the Senator from Utah for giving me this opportunity to speak on behalf of the Bond-Levin CAFE standards.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, what is the parliamentary order?

The PRESIDING OFFICER. We are under an hour of time equally divided. The Senator controls 24 remaining minutes.

Mr. HATCH. Mr. President, I rise today to speak on behalf of the nomination of Priscilla Owen for the United States Court of Appeals for the Fifth Circuit and to speak about the pattern of political tactics being used against President Bush's well-qualified judicial nominees.

We find ourselves at an important point in Senate history. History will show an effort by a minority of Senators to completely block well-qualified circuit court nominees during the 108th Congress. History will further show that this minority group of Senators was not asking for a full and open debate on the Senate floor. They were not asking for meaningful deliberation on these well-qualified nominees. Rather, this minority group of Senators was committed to reworking the meaning of advice and consent.

I think we can agree that the confirmation process is broken. I certainly do hope we can find a constructive way to restore the process, but recent events do not lead me to be overly optimistic—not when I hear injudicious talk about plans for more filibusters and not when I hear my colleagues characterize our advice and consent duty in terms of batting averages or quarterback completion rates. If anything, my colleagues on the other side haven't let Justice Owen even get up to the plate. This is not a matter of acquiring a certain win-loss record on the baseball field; this is a matter of whether we will be fair to our judicial nominees—the many talented men and women who have volunteered to serve our country through judicial service.

In Justice Owen's case, a handful of Senators blocked her nomination in committee last year, preventing a simple up-or-down vote on the Senate floor. Nearly a year later, Justice Owen still has not been afforded a vote by the full Senate. How much longer must she wait? One of my colleagues on the other side has already answered this question for himself, saying that there are not enough hours in the universe for sufficient debate, but I strongly disagree. We have debated long enough. Justice Owen has been on the Senate floor for 4 months. It has been 7 months since she was renominated by President Bush. It has been more than a year since her first hearing, and it has been more than 2 years since she was first nominated by President Bush on May 9, 2001—811 days in total. During all that time, she has not been afforded a vote. I think it is time Justice Owen was given the courtesy of an up-or-down vote. Keep in mind, she has the unanimous well-qualified rating of the American Bar Association.

Priscilla Owen could not be a better selection for the Federal court. She attended Baylor University and Baylor University School of Law, graduating cum laude from both institutions. She finished third in her law school class. Justice Owen earned the highest score on the Texas bar exam, and she has 17 years of experience as a commercial litigator.

Justice Owen is committed to legal services for the poor. She successfully fought with others for more funding for legal aid services for the indigent.

Justice Owen is committed to creating opportunities for women in the legal profession. She has been a member of the Texas Supreme Court Gender Neutral Task Force, and she is viewed as a mentor by younger women attorneys. She was one of the first women to sit on the Texas Supreme Court. Incredibly, this is the woman the liberal attack groups smear as ''anti-woman.'' Give me a break.

Justice Owen's confirmation is supported by Texas lawyers such as E. Thomas Bishop, president of the Texas Association of Defense Counsel, and William B. Emmons, a Texas trial attorney and a Democrat who says that Justice Owen ''will serve [the Fifth Circuit] and the United States exceptionally well.'' After a full review of Justice Owen's rulings, Victor Schwartz, a respected trial attorney and co-author of the leading torts textbook, concluded that she is a ''moderate jurist,'' neither pro-plaintiff nor pro-defendant.

I ask unanimous consent that a copy of Mr. Schwartz's letter to the Judiciary Committee be printed in the RECORD.

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

SHOOK, HARDY, & BACON L.L.P.,
Washington DC, July 18, 2002.

Re nomination of Texas Supreme Court Justice Priscilla Owen.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Throughout the past three decades, many members of your Committee have been kind enough to ask my views about tort law. I have taught in law school, and practiced on behalf of plaintiffs in the 1970s. I currently practice in the defense firm of Shook, Hardy & Bacon, L.L.P. and represent the American Tort Reform Association. You have appreciated that when I share my views with you, I try my utmost to be objective. Because almost anyone's views on judges are likely to be seen as having bias, I have refrained from commenting on any judicial nominee.

I am now writing you about Texas Supreme Court Justice Priscilla Owen because she has been attacked as being unfair in the very area of my expertise, tort or liability law. Since 1976, I have been co-author of the most widely used torts textbook in the United States, Prosser, Wade & Schwartz's Cases and Materials on Torts. I have also served on the three principal American Law Institute Advisory Committees on the new Restatement of Torts (Third). The study of tort law has been the love of my professional life.

Because of my academic and practice obligations, I have had a very deep interest in opinions of law in the field of torts. Naturally, I am familiar with state supreme court judges or justices who are thought to be ''pro-plaintiff'' or ''pro-defendant.'' In that regard, when I heard about controversies surrounding Justice Owen, I was somewhat puzzled because I had not placed her in either group.

This past weekend, I reviewed most of her principal opinions in tort law. My review of

Justice Owen's opinions indicates that any characterization of Justice Owen as ''pro-plaintiff'' or ''pro-defendant'' is untrue. Those who have attacked her as being ''pro-defendant'' have engaged in selective review of her opinions, and have mischaracterized her fundamental approach to tort law.

Justice Owen's fundamental approach to tort law is to make it stable. On the one hand, she is not a judge who would be likely to jump to the front of a plaintiff's lawyers petition to expand the scope of tort law. Furthermore, she would be unlikely to allow claims for brand-new types of damages, such as hedonic damages, or create cutting-edge liability claims (e.g., allowing a lawsuit against a fast food chain, where there was no showing that an individual plaintiff's health was actually harmed by eating at that chain). On the other hand, she would not and has not arbitrarily thwarted the rights of plaintiffs under existing tort law.

Let me give you just a few examples. In *Merrell-Dow Pharmaceuticals, Inc.* v. *Havner*, 953 S.W.2d 706 (Tex. 1997), a decision for which she was roundly criticized by a group called ''Texans for Public Justice,'' Justice Owen held that the evidence was legally insufficient to establish that a birth defect was caused by exposure to the drug Bendectin.® Bendectin® is the only drug that helps alleviate the severe symptoms of morning sickness. It is still approved by the U.S. Food and Drug Administration and regulatory agencies throughout the world. As Justice Owen recognized, the attempts by plaintiff's counsel to tie the birth defects of the plaintiff's child to Bendectin® in the *Havner* case were insufficient. The Supreme Court of the United States itself recognized, in a case involving that very drug, that judges should act as gatekeepers, and not permit juries to make judgments based on bad science. See *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

I am not surprised that the Association of Trial Lawyers of America (ATLA), the organized plaintiffs bar, and those who have empathy with that group criticized Justice Owen for her decision. They also criticized the United States Supreme Court when it rendered the *Daubert* decision. ATLA and its sympathizers believe that judges should not act as gatekeepers; rather, they believe that juries should be permitted to weight scientific evidence as they choose.

Here is the rather interesting point. In a case decided almost simultaneously with *Havner*, not mentioned by ''Texans for Public Justice'' or other groups criticizing Justice Owen, she would have allowed an adult to pursue a sexual abuse claim against an alleged abuser who purportedly did the wrongful acts when the plaintiff was a child. In the case *S.V.* v. *R.V.*, 933 S.W.2d 1 (Tex. 1996), expert testimony indicated that the plaintiff had ''repressed memories'' that arose when the plaintiff was an adult. The majority held that expert testimony was insufficient to warrant the application of the ''discovery rule,'' which would have tolled the statute of limitations. It required ''objectively verifiable'' evidence of abuse to apply the discovery rule and toll the statute. Justice Owen noted, however, that such evidence was often unavailable, and the unavailability of the evidence is frequently due to acts done by the alleged abuser. She would have held that the repressed memory evidence was sufficient to toll the statute and allow the claim. I recommend that Members of this Committee read this case and note that Justice Owen wrote the sole dissenting opinion in the case.

In a later case, Justice Owen prevented another plaintiff from falling into a statute of limitations trap. A patient brought a malpractice case against a surgeon in his individual capacity. The patient later amended his complaint, and named the surgeon's professional association as a defendant. The association moved to dismiss the case because the statute of limitations had expired by the time the suit was brought against the association. Writing for the Texas Supreme Court, Justice Owen held that the cause of action brought against the surgeon in his individual capacity preserved the potential of the claim against the association. See *Chilkewitz* v. *Hyson*, 22 S.W.3d 825 (Tex. 1999).

Justice Owen's views about product liability law strike the same balance. For example, Justice Owen joined in a Supreme Court of Texas opinion that considered a question certified by a federal court as to whether a manufacturer of a product used by adults—a cigarette lighter—might have a duty, in some situations, to childproof the product. Justice Owen joined with the Court in holding that a manufacturer may have such an obligation. See *Hernandez* v. *Tokai Corp.*, 2 S.W.3d.251 (Tex. 1999).

One finds the same sense of ''balance'' in Justice Owen's opinions in other areas of tort law. In a very interesting opinion, Justice Owen joined with the Texas Supreme Court to strip a defendant business of its defenses based on a plaintiff's fault when that defendant business had decided to opt out of the workers' compensation system. Justice Owen supported the sound public policy that would discourage businesses from opting out of workers' compensation and taking their chance on their vagaries of a tort lawsuit in the workplace. As you and Members of your Committee know, a fundamental reason why workers' compensation was adopted in the first place is so that a worker's fault does not preclude him or her from obtaining compensation for a workplace injury. See *Kroger Co.* v. *Keng*, 23 S.W.3d 347 (Tex. 2000).

I wish to reiterate that I am not suggesting that Justice Owen is a plaintiffs' lawyer's ''dream judge.'' She is not. For example, when the Texas Supreme Court addressed the issue of whether jurors should be told that if they find a plaintiff more than 50% responsible for his or her own injury, the plaintiff might lose, Justice Owen dissented from the majority. The majority found that such information was allowed to go to the jury. Justice Owen believed such action could cause jurors to look more at the effect of the 50% rule than the facts of the case. See *H.E. Butt Grocery Co.* v. *Bilotto*, 985 S.W.2d 22 (Tex. 1998). While not everyone (including myself) would agree with Justice Owen's decision, it is anchored in logical judicial precedent and has a clear public policy basis. See Victor Schwartz, Comparative Negligence, §17–5(a) (3d Ed. 1994).

My fundamental point is that in the area of tort law, Justice Owen is a moderate jurist; she is neither a trailblazer for plaintiffs nor a captive of corporate interests.

I would be pleased to answer any questions or inquiries by Members of your Committee, and I value your taking the time to read this statement.

Sincerely,

VICTOR E. SCHWARTZ.

Mr. HATCH. Justice Owen is a consensus nominee. A bipartisan majority of the Senate supports her confirmation. Both of Justice Owen's home State Senators, Senators HUTCHISON and CORNYN, back her. The American Bar Association has awarded her a unanimous well-qualified rating, their highest rating, and the gold standard formerly used by many of my Democratic colleagues.

Former Texas Supreme Court Justices John Hill, Jack Hightower, and Raul Gonzalez—all Democrats—say Justice Owen is unbiased and restrained in her decision-making. Alberto Gonzales, another former Texas Supreme Court colleague, says she will perform superbly as a Federal judge.

Fifteen past presidents of the Texas State Bar, both Democrats and Republicans, who hold a variety of views on important legal and social issues, agree that Justice Owen is an outstanding nominee. Those who know Justice Owen best support her confirmation.

Sure, the usual abortion-rights groups and highly partisan Texas trial lawyer interest groups have announced that they expect Senators to filibuster. But what else is new? They have done and will continue to do what they do best: distort, smear, and profile. As Rena Pederson wrote in an op-ed published in the Dallas Morning News, ''The people who know Priscilla Owen the best all agree. They say the Texas Supreme Court judge is nothing like the person portrayed by critics of her appointment to the 5th U.S. Circuit Court of Appeals.''

I ask unanimous consent that a copy of this editorial be printed in the RECORD at this point.

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

[From the Dallas Morning News, Feb. 2, 2003]

SENATE DIDN'T GET TO KNOW THE REAL JUDGE OWEN

(By Rena Pederson)

The people who know Priscilla Owen the best all agree. They say the Texas Supreme Court just is nothing like the person portrayed by critics of here appointment to the 5th U.S. Circuit Court of Appeals.

Democrats on the Senate Judiciary Committee voted along party lines in September and rejected her appointment. They contended she had an anti-abortion bias and was a tool of big businesses like Enron.

But if they had bothered to check with the people who grew up with her in Waco or worked with her in top law firms in Houston or clerked at the Texas Supreme Court, they would have gotten a different, more accurate picture.

Those sources describe Judge Owen this way: She is a doggedly dutiful legal scholar who couldn't care less about party labels or moneyed interests. Many cite her as a helpful mentor for other women in the legal profession. She prefers cooking for friends to the political or social circuit. Yes, they say, she's a devoted Sunday school teacher, but not what used to be called a ''goody-two-shoes'' or a narrow-minded religious zealot. She was known to enjoy a few beers with her friends at Baylor University and has a smart sense of humor. She's a water-skier and was spunky enough to try rollerblading in her kitchen a few years ago, breaking her ankle.

The American Bar Association gave the 48-year-old Texas judge its highest rating, ''well qualified.'' Many prominent Democrats from Texas—including former Texas Supreme Court Chief Justice John Hill and former State Bar President Lynne Liberato—spoke up in Justice Owen's defense. But their voices were discounted. A public relations campaign was generated by several interest groups, using snippets from the hundreds of cases that had come before her bench, in order to make her look as bad as possible and snub President Bush.

What particularly dismayed those who know the Texas justice well is that she was made to look anti-abortion and anti-woman. They emphatically insist that, while conservative, she is not an activist or ideologue with an agenda.

Laura Rowe, who worked with Ms. Owen at the Andrews and Kurth law firm in Houston, said, ''I came across her when I was a young lawyer starting out, and she was a great mentor for the other women. She was so smart, hardworking, but funny and normal at the same time. When I met her, I thought 'that's a woman I would like to be like.' She was one of the lawyers that people wanted to work for, tough but fair. It did disturb me to see her vilified.''

Kristin O'Neal, who was a law clerk at the Texas Supreme Court, said, ''I understand why people distorted her opinions, because it furthered their agenda, but to say she has some kind of activist agenda is absurd to me. She takes very logical, methodical approach to everything. They tried to make her look bad for writing an opinion that benefited Enron because She had received a campaign contribution from Enron some time earlier. What people didn't know was that it was a unanimous ruling—and the judges don't select the opinions they write. It's a random drawing. You might disagree with one of her rulings, but I never, ever sensed that she was using her position in an activist manner or to further any personal beliefs. She takes her job and her role very seriously.''

Ruth Miller, who has known Ms. Owen since they were in high school in Waco, said, ''I don't know how Priscilla remained so composed and calm, when some of the senators cut her off. I though she handled herself with dignity, even when she should have been able to continue. What people don't know is that she had to work for weeks and weeks on her own to prepare, on the weekends, no vacation. But she knew I was going through a serious health problem, and so she would call to check on me every week. And in the throes of the confirmation process, she went with me to my appointmet at the hospital in Houston and just brought her portfolio with her.''

Nancy Lacy, Ms. Owen's sister, attended the hearings in Washington and sat behind Justice Owen, as did the minister from the church Justice Owen attends in Austin. ''It was eye-opening,'' she said. ''It was a hard experience because no matter what she said, they were going to stick with the propaganda. It was obvious. I was hoping they were going to really give her a shot, try to get to know who she really is, ask her thoughtful questions. But the information they has was wrong to begin with. I felt sorry for them at times; their staff didn't do a very good job; it was obvious the special interest groups gave them the information, and they didn't research to see if it was true. The handwriting was on the wall. I just wanted to say to them, 'You're missing the boat. You're missing the opportunity to get to know a really neat person.'''

By all accounts, it was a wearing experience for the Texas judge. Although she understood she had been caught in a political spite match, she couldn't help but be pained by the attacks on her character. Still, her nomination has been resubmitted by Mr. Bush, so Americans may get a chance to see the rest of her story after all.

Mr. HATCH. Mr. President, Justice Priscilla Owen will be an excellent Federal judge.

We have a choice: Will we continue to block another highly qualified nominee for partisan reasons or will we allow each Senator to decide the merits of the nomination for himself or herself?

I know my choice. We should allow a vote. I hope my colleagues will do the right thing and make the same choice.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. How much time does the Senator need?

Mr. CORNYN. Five to seven minutes.

Mr. HATCH. Mr. President, I yield 5 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I thank the chairman of the Judiciary Committee, who has done yeoman's work in shepherding President Bush's highly qualified judicial nominees through the Judiciary Committee and to the floor of the Senate.

Chairman HATCH has mentioned a number of people on both sides of the aisle who support the nomination of this good woman to the Fifth Circuit Court of Appeals. I have a few comments—first, to echo those comments in terms of the consensus of opinion in my State of Texas as to the good work that Priscilla Owen has done as a justice in the Texas Supreme Court. But I also bring a personal perspective to this debate because I served with Priscilla Owen for 3 years on the Texas Supreme Court. Frankly, I do not recognize the caricature that has been painted of this good judge in the debate before the Senate.

In May of this year, I spoke on the floor regarding the 2-year anniversary of Justice Owen's nomination. That dismal anniversary showed us just how far our confirmation process had gone awry. And now it has gotten even worse.

Today's vote is just the first in a series this week. Over the next 4 days, we will see just how far the minority in this body is willing to go to block well qualified nominees and parrot the talking points provided by special interest groups who oppose this and other highly qualified judicial nominees. It is my hope that the Senate will do the right thing and provide an up-or-down vote for this judicial nominee.

As I said, Justice Owen and I served for 3 years together on the Texas Supreme Court—from the time she came in January 1995 until the time I left in October of 1997. During those 3 years, I had a chance to observe Justice Owen's work habits and her basic judicial philosophy at work, how she approaches her job, how she thinks about the law, and how she acts given that position of public trust that judges hold.

I can tell you from my personal experience that Justice Owen is an exceptional judge who understands her profound duty to follow the law and enforce the will of the legislature.

That is, of course, one reason the American Bar Association has given her a unanimous well qualified rating, and that is why she has such strong bipartisan backing. That is why she enjoys the enthusiastic support of the people of Texas, where she got 84 percent in the last election from the people who know her the best.

Not once during my tenure with Justice Owen did I ever see her attempt to pursue some political or other agenda at the expense of the law as she understood it. I can tell you that Justice Owen believes very strongly, as I do and Americans do across this land, that judges are called upon not to act as another legislative branch, or as a politician, but as judges—to faithfully read statutes and to follow the law as written by the legislature and the precedents established by higher courts in earlier times.

Some of my colleagues have, unbelievably, taken the position that Justice Owen is to be criticized for disagreeing with other members of the Texas Supreme Court in some of her opinions. Some of my colleagues act shocked that appellate judges, particularly on the highest court in my State, will disagree with one another and have spirited debates in the form of opinions they write. But I firmly believe that is exactly the job that is expected of a judge and that Justice Owen has fulfilled that position well.

There are those who apparently believe a judge is not supposed to have a real debate about their interpretation of the law and is just supposed to assert his or her own will, regardless of what the law actually says. Perhaps these advocates believe a judge is supposed to follow the practice of what author James Lileks has called ''teasing penumbras from the emanations of the glow of the spark of the reflection of the echo of the intent of the Framers.''

I fundamentally disagree with that idea. If we did not have judges disagree with one another, it would mean somebody was not doing their job.

By the time cases get to the top echelons of our judicial system, they are the hardest cases. They are the cases that cannot be solved by lower levels of the judiciary or indeed by settlement between the parties. These are important issues and must be decided, through study and debate.

A judge, unlike a Member of this body, cannot choose to simply walk away and ignore a thorny legal issue. Judges are not supposed to make law. They are supposed to interpret and enforce the law written by the legislature.

In Texas, Justice Owen followed this duty to the letter. From experience and from observation, I know that Justice Owen believes strongly that judges are called upon to faithfully read the statutes on the books, read the precedents in the case, and then apply them to the case before the court.

Justice Owen did this job, and she did it well. She is a brilliant legal scholar and a warm and engaging person. To see the kind of disrespect the nomination of such a great Texas judge—and a great Texas woman—has received in this body is more than just disappointing. It is an insult to Justice Owen. It is an offense against the great

State of Texas. And it is beneath the dignity of this institution.

It is clear who is calling the tune repeated by the minority opposition here on this floor. The beltway special interest groups are not interested in trying to understand or evaluate Justice Owen by her real record because, if they were, they would see it as a sterling record of intelligence, accomplishment, and bipartisan support. The special interest groups are not interested in the confirmation of nominees who merely interpret the law and render judgment responsibly. They are only interested in confirming people who they believe are advocates of their interests, something that is totally at odds with the role a judge is supposed to perform.

Sadly, it is clear that these same special interest groups are interested in obstructing as many of President Bush's judicial nominees as they possibly can. Those who oppose Justice Owen's confirmation appear to have really no stomach for debate and talking about the facts. They choose instead to filibuster and engage in the worst kind of mean-spirited and destructive political attacks.

I can only hope that my colleagues will realize the truth of what is going on, and reject this special interest influence on the judicial confirmation process. I can only hope that ultimately we will all strive for a process that is fair and consistent with our constitutional duty.

And I can only hope my colleagues realize that by blocking a vote on Priscilla Owen, they make themselves allies to these groups, groups that rejoice at the prospect of a Senate in constant gridlock over these qualified nominees.

My colleagues should not think the American people do not know what is going on here. They see when a nominee's well-recognized abilities are ignored in favor of scare tactics and revisionist history, and they see some ignore the interests of the States from which they were elected, and instead kowtow to special interest groups.

I am confident that Members of the Senate are wise enough to reject this inhuman caricature that has been drawn of Justice Priscilla Owen by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee. And I know that if we were allowed to hold a vote, a bipartisan majority of this body stands ready to confirm Justice Priscilla Owen to the Fifth Circuit Court of Appeals. The question is whether that vote will ever happen.

I hope that my colleagues will give these qualified nominees what they deserve, and allow them to have an up or down vote, today, tomorrow, and every day this week. For the sake of the Senate, the Nation, and our independent judiciary, I hope that we will not have 4 days of filibusters.

I hope my colleagues will vote to allow this fine judge an up-or-down vote.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, time will be charged equally to both sides.

Mr. HATCH. Mr. President, how much time does the Senator from Utah have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. HATCH. Mr. President, how much time does the Senator from Alabama desire?

Mr. SESSIONS. Five minutes.

Mr. HATCH. Mr. President, I yield 5 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 5 minutes.

Mr. SESSIONS. Mr. President, in the history of this country, we have not had a filibuster of a circuit judge or a district judge before and really never even one for a supreme court judge. This is an unprecedented obstruction of a nominee—something that really is unheard of.

It is particularly distressing to me, beyond words almost, that this fine nominee, Priscilla Owen, would be a person who would be blocked by a filibuster when she clearly has the votes, if given an up-or-down vote in this body, to be confirmed for the Fifth Circuit Court of Appeals. She is extraordinarily capable. She finished at the top of her class in law school. She made the highest possible score on the Texas bar exam. What a strong statement that is. She won her last race for the Supreme Court of Texas with 84 percent of the vote. She was unanimously rated well qualified, the highest possible rating the American Bar Association can give for this position, when they evaluated her. She has the support of 15 former presidents of the Texas Bar Association and is just extraordinary in every way.

As I looked through her record, I stumbled on this letter from a female attorney, Julie Woody, who clerked for the Texas Supreme Court. She noted she is a lifetime Democrat and she had the occasion to observe Justice Owen. She wrote these words. She went to Yale Law School, is a native of Pennsylvania, and practiced law in New York City. She said:

> As a result of my encounters with Judge Owen during my clerkship, I came to regard her as a judge and legal scholar of the highest caliber. She has a brilliant legal mind that is matched by her legendary work ethic. Her analysis of any issue is rigorous and true to the letter and spirit of the law. Her impeccable ethics and honesty and lack of political motivation in her decisionmaking were apparent in her discussions of cases and the manner in which she decided them.
>
> Justice Owen is among the best and the brightest—she will bring integrity, intelligence and the highest ethical standards to the Fifth Circuit.

She goes on to note that she got to know her later because her husband was in the seminary and at St. Barnabas, an Episcopal Church in Austin, a mission church. Priscilla was one of the original leaders and a member of the altar guild where she teaches Sunday school. She said about her:

> Priscilla worked incredibly hard behind the scenes, never seeking any attention or praise for her efforts. She exemplified servant leadership.

What is the complaint about this excellent, magnificent justice on the Texas Supreme Court? What is the objection? They do not like the fact that she affirmed lower court opinions concerning parental notification when children, minors, desire to have an abortion. Eighty percent of the American people believe parents should be notified before a minor child should be allowed to have an abortion. The Texas law is not an extreme law. It simply says the parents should be notified, and they do not have a right to object or stop an abortion from going forward—just one of the parents be notified, actually. If the minor does not like that, they can go to court. They go to court, and they have a hearing before a judge. A judge takes evidence on these issues and makes a decision at that point whether the child who does not want to notify even one of their parents should notify one of their parents.

If the judge concludes that she should notify a parent and the child and her lawyer are not happy, then the child can appeal to the Court of Appeals in Texas. Three judges will then hear the case. They will decide whether the trial judge who heard the evidence ruled correctly or not. If they rule that the child has to notify her parents that she intends to have an abortion, or at least one of the parents, only then does it go to the Supreme Court of Texas.

Priscilla Owen never heard one of these cases, never made an initial decision on one of these cases. She was one of a number of justices on the Texas Supreme Court. Her only responsibility was to review the record of judges who had already decided and concluded, based on facts and evidence, having seen the minor and heard the evidence and saw the witnesses in person, her question was: Should the decision be affirmed?

The opponents are unhappy that she voted to affirm both the trial judge and the three-court panel below the Texas Supreme Court. This is not good. This is a radical obsession with eliminating any restriction whatsoever, even for a minor child notifying her parent. It is not on any basis to object. Priscilla Owen would be a wonderful nominee.

I yield the floor.

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

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The 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.

Mr. REID. Mr. President, I yield myself whatever time I shall consume.

We have heard for several weeks the urgency of passing the Energy bill. As I said this morning, we accept that urgency, but we have also said for several weeks that we cannot complete the Energy bill with 382 amendments in a period of 1 week, 4 or 5 working days. It cannot be done. The majority leader has come to the floor and said we have been on the bill 16 days. That is not fair because a lot of those days have been late Thursday and Friday mornings and sometimes on Monday. We have probably had about 7 real days of work on this Energy bill.

Complicating matters, the leader is scheduling issues that are unnecessary. To have votes on these judges when cloture has been attempted on a number of occasions and has not worked, and will not work again, is wasting valuable time. We could be working on Senator DOMENICI's and Senator BINGAMAN's Energy bill.

If the majority wanted to move judges—and we have moved 140 judges—but if the majority wanted to move judges, we have some who have already been cleared from the committee, something that is very unique because a lot of them are being cleared. We would be able to work out agreements to have James Cohn of Florida to be a U.S. district judge; Frank Montalvo of Texas to be a U.S. district judge; Xavier Rodriguez of Texas to be a U.S. district judge. We could also work something out for H. Brent McKnight of North Carolina to be a U.S. district judge. We could work something out on James Browning of New Mexico to be a U.S. district judge.

I recognize there are intense feelings about Judge Owen, but the intense feelings have not changed during the period of time since we last failed to invoke cloture on this nomination.

When there is an urgent need, according to the majority leader, to move the Energy bill, it is almost beyond my ability to understand why we would go to something when everyone knows what the outcome will be. We lose momentum. Every time we go off a bill, as we have gone off the Energy bill again, and try to start again, it takes time. I think the majority leader should understand he is his own worst enemy in trying to move the Energy bill by going to all these extraneous issues that are doomed to failure before he starts.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. How much time is remaining?

The PRESIDING OFFICER. The Senator from Utah controls 4 minutes 21 seconds.

Does the Senator from Utah yield time?

Mr. HATCH. I yield the remainder of my time to the distinguished Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I rise to speak on behalf of my friend Priscilla Owen. I cannot think of a person who is being treated worse by the Senate than my friend Priscilla Owen. This is the nicest, gentlest person one could ever meet, and she also happens to be smart as a whip.

I watched her before the Senate committee. The chairman of the committee, Senator HATCH, took the extraordinary step of having two hearings because Priscilla Owen was nominated over 2 years ago. She had her hearing and went through the process and did very well in her first hearing. Then, after the new Senate came in, in January, the chairman brought her back before the committee, and she did an excellent job.

She knows exactly what she has done throughout her tenure on the Supreme Court of Texas, and she could cite the reasoning for all of the questions she was asked about the positions she has taken. She answered the questions in the most exemplary fashion. She showed exactly why she should be a Federal judge. She showed it by her brilliance.

We know she was a magna cum laude graduate from Baylor Law School as well as earning the highest score on the Texas bar exam that year, and she showed in that way that she is qualified to be a member of the Federal judiciary. Her demeanor also showed why she would be such an excellent Federal judge, because she has maintained the nicest and most patient demeanor I have ever seen of anyone who has been attacked in such a way. She has shown she has the temperament to be a good, honest, fair judge who also happens to be brilliant.

Priscilla Owen has been nominated for the Fifth Circuit. We have been talking about her now for over 2 years. Since May 9, 2001, Priscilla Owen has been before the Senate. She has handled herself beautifully. She has never shown any defiance. She has never shown any bitterness at the way she is being treated. She just answers the questions like a professional.

She is a wonderful member of the Texas Supreme Court. She has been elected in her own right to the Texas Supreme Court, and when she was running for the bench, the Dallas Morning News called her record one of accomplishment and integrity.

The Houston Chronicle wrote:

> She has the proper balance of judicial experience, solid legal scholarship and real-world know-how.

She was endorsed by every daily newspaper in Texas that endorsed in Supreme Court races. She has a wonderful record. The ABA gave her a unanimously well qualified ranking when she went before their committee.

I will read the words of former Texas Supreme Court Chief Justice John Hill. John Hill is a Democrat. John Hill was attorney general of Texas. He was chief justice of the Texas Supreme Court. He denounced the false accusations about Priscilla Owen's record, saying:

> Their attacks on Justice Owen in particular are breathtakingly dishonest, ignoring her long-held commitment to reform and grossly distorting her rulings. Tellingly, the groups make no effort to assess whether her decisions are legally sound . . . I know Texas politics and can clearly say these assaults on Justice Owen's record are false, misleading, and deliberate distortions.

This is a judge who deserves to be confirmed, and I hope the Senate will stop the delaying tactics on this wonderful woman and this qualified judge, and vote for cloture on Justice Priscilla Owen.

I yield the floor.

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

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

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

Mr. LEAHY. Mr. President, we are again being asked to consider the very controversial nomination of Justice Priscilla Owen to the United States Court of Appeals for the Fifth Circuit. The Senate has voted on this before.

One might ask what has changed since the last Senate vote? The only thing that has changed is that the administration, the Republicans, have ratcheted up their unprecedented partisanship in the use of judicial nominees for partisan political purposes.

Recently, they reached a new low through political ads and statements that should offend all Americans. The White House and the backers should understand with these ads they have gone far too far. They should withdraw and disavow.

Last week I urged our Republican Senate colleagues to disavow those despicable efforts. Unfortunately, they are choosing to continue the unfounded smear campaign of insult and division.

In that regard, I ask unanimous consent the articles in the New York Times of this past Sunday, both editorials from the Washington Post, the Boston Globe, Huntsville Times, Palm Beach Post, Atlanta Journal-Constitution, and Pittsburgh Post-Gazette, be printed in the RECORD at this point.

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

[From the New York Times, July 27, 2003]

ACCUSATION OF BIAS ANGERS DEMOCRATS

(By Robin Toner)

WASHINGTON, July 26.—The battle over judicial nominations has grown ever more bitter on Capitol Hill, but Democrats on the Senate Judiciary Committee say they are

particularly outraged over the latest turn: the accusation that their resistance to some conservative nominees amounts to anti-Catholic bias.

In a recent newspaper advertising campaign, run by groups supporting the Bush administration's judicial nominees, a closed courtroom door bears the sign ''Catholics Need Not Apply.'' The advertisement argues that William Pryor Jr., the Alabama attorney general and a conservative, anti-abortion nominee to the federal appeals court, was under attack in the Senate because of his ''deeply held'' Catholic beliefs.

Democrats say they oppose Mr. Pryor because of his record, including what they assert is a history of extreme statements on issues like abortion and the separation of church and state. All nine Democrats on the Senate Judiciary Committee voted against Mr. Pryor's confirmation this week, while the 10 Republicans voted for it, sending the issue to the full Senate—and the likelihood of further Democratic opposition.

Republicans and their conservative allies argue that the Democrats have created a de facto religious test by their emphasis on a nominee's stand on issues like abortion. ''It's not just Catholics,'' said Sean Rushton, executive director of the Committee for Justice, one of the groups that paid for these advertisements, which are running in Maine and Rhode Island. ''I think there's an element of the far left of the Democratic Party that sees as its project scrubbing the public square of religion, and in some cases not only religion but of religious people.''

Senator Orrin G. Hatch, Republican of Utah and chairman of the Judiciary Committee, sounded a similar theme this week, asserting that ''the left is trying to enforce an antireligious litmus test'' whereby ''nominees who openly adhere to Catholic and Baptist doctrines, as a matter of personal faith, are unqualified for the federal bench in the eyes of the liberal Washington interest groups.''

The accusation of anti-Catholic bias seemed especially galling to some of the Democratic senators who happen to be Catholic. Four of the Democrats on the Judiciary Committee are Catholic. In fact, 57 percent of the Catholics in the House and the Senate are Democrats, according to the forthcoming Vital Statistics on Congress, 2003–4 edition.

Like many Americans of Irish descent, Senator Patrick J. Leahy of Vermont, the ranking Democrat on Judiciary, said he grew up hearing his father talk about the bad old says when Irish Catholics were greeted with signs saying they ''need not apply.'' He added, ''It was a horrible part of our history, and it's almost like you have people willing to rekindle that for a short-term political gain, for a couple of judges.''

Senator Richard J. Durbin, who is Catholic, said he reached his limit at a committee meeting on Wednesday when Senator Jeff Sessions, Republican of Alabama (and a Methodist), began explaining Mr. Pryor's positions as ''what a good Catholic believes.''

Mr. Durbin, an Illinois Democrat who personally opposes abortion but backs abortion rights, added, ''I understand the painful process I have to go through with the elders of the church on many of these issues, explaining my position. But it is galling, to say the least, when my colleagues in the Senate, of another religion, start speaking ex cathedra.''

Many Catholic elected officials are, perhaps, particularly sensitive to the line between religious faith and public responsibilities. It was a line drawn most vividly by President John F. Kennedy, the first Catholic president, who had to deal with widespared fears that a Roman Catholic president would serve both Rome and the American people.

Kennedy responded by declaring, ''I believe in an America where the separation of church and state is absolute, where no Catholic prelate would tell the president, should he be a Catholic, how to act, and no Protestant minister would tell his parishioners for whom to vote.'' In recent years, Gov. Mario M. Cuomo reasserted that line, particularly regarding abortion.

Behind the anger of many Democrats is the suspicion that this advertising campaign is part of the Republican Party's courtship of Catholics, an important swing vote. In general, Andy Kohut, director of the Pew Research Center for the People and the Press, said Mr. Bush was ''doing pretty well with white Catholics'' lately.

It is all part of a politics that has changed radically since 1960. Among the nine Democrats on the Judiciary Committee accused of working against the interests of Catholic judicial nominees is, of course, John Kennedy's brother, Senator Edward M. Kennedy.

[From the Boston Globe, July 28, 2003]

PRYOR'S BAD-FAITH BACKERS

Congressional supporters of Alabama Attorney General William Pryor have descended to low blows in promoting his nomination to the federal bench. recently an independent committee launched an advertising blitz in Rhode Island and Maine, two states with swing Republican senators, claiming that Pryor's opponents are motivated by anti-Catholic bigotry. In the Senate committee hearing last week that advanced Pryor's nomination to the floor, Republicans repeated the allegation that Pryor's opponents believe ''No Catholics need apply.'' This canard is designed to muddy the only real issue—Pryor's fitness to be a federal judge. When the full Senate considers Pryor's nomination, it must not allow itself to be swayed by such intimidation tactics.

Pryor, a Catholic, opposes abortion even for victims of rape or incest not just as a religious view but as a legal principle. He has called Roe v. Wade, the 1973 Supreme Court decision legalizing some abortions ''an abomination.'' He also supported the Texas law banning sodomy that was recently overturned by the Supreme Court. Pryor's backers now claim that anyone questioning these views—views that, after all, conflict with existing federal law—is really targeting his religion. ''Some in the U.S. Senate are attacking Bill Pryor for having deeply held Catholic beliefs,'' the ad reads.

In trying to cloak Pryor's views in protective religious garb, the Republicans have covered themselves in hypocrisy. First of all, Pryor holds one view at odds with Catholic teaching: He ardently supports the death penalty, which Pope John Paul declared in 1995 was permissible only in cases of ''absolute necessity'' to maintain civil order, occasions the pope said were so rare as to be ''practically nonexistent.'' Pryor supports capital punishment so fiercely he even fought state legislation to replace Alabama's electric chair with lethal injection.

The ironies don't stop there. Conservative Republicans are forever railing against ''identity politics,'' when minorities seek special assistance from the government. But when it comes to stacking the federal bench with right-wing judges, these same folks reach for the race or religion card with impunity. Opponents of nominee Miguel Estrada were accused of being anti-Hispanic, for example, and Clarence Thomas called opposition to his Supreme Court appointment ''a high-tech lynching.''

It was Senator Orrin Hatch, a Republican supporters, who first inserted Pryor's religion into the committee proceedings, not opponents. Pryor and his pious backers should take heed of John Kennedy's remarks in 1960, just before he became the nation's first Catholic president: ''I believe in an America where the separation of church and state is absolute.'' That should apply to political tactics as well as matters of law. It was Senator Orrin Hatch, a Republican supporter, who first inserted Pryor's religion into the committee proceedings, not opponents. Pryor and his pious backer should take heed of the John Kennedy's remarks in 1970, just before he became the nation's first Catholic president: I believe in an America where the separation of church and state is absolute.'' That should apply to political tactics as well as matters of law.

[From the Washington, Post, July 29, 2003]

BAD FAITH ADVERTISING

(By Richard Cohen)

When Lance Armstrong took a spill during the Tour de France, the cyclists chasing him slowed until he could right himself and resume the race. Lucky for him his competitors were not conservative Republicans. They would have run right up his back.

For an example of how these conservatives play the game, it is probably best to live in Maine or Rhode Island. In those states, an organization called the Committee for Justice has been running newspaper ads accusing Senate Democrats of using a religion test for judicial nominations. The nominee in question is William H. Pryor Jr. of Alabama. The ad says that if Pryor were not a strict Catholic, the Democrats would have no problem with him.

The newspaper ads show a picture of a door labeled ''Judicial Chambers.'' A sign says ''Catholics Need Not Apply.'' The ad goes on to say that Pryor is being opposed because of his ''deeply held'' Catholic beliefs, omitting the awkward fact that some of the Democrats who oppose him are also Catholic. The ad—not to put too fine a point on it—is a lie.

What's more, it's an insult to Catholics. It employs a historically redolent phrase, once so familiar to New England's Irish Americans, to sidestep the real problem with Pryor's nomination to a Federal appeals court—not his ''deeply held'' religious convictions but his deeply held determination to impose them on others. The ad's sponsors deeply hope that Catholics react viscerally. I pray that they don't.

Pryor's record is unequivocal. As Alabama's attorney general, he not only made statements deploring Supreme Court decisions upholding the separation of church and state—''it seems our government has lost God''—but repeatedly expressed his conviction that the God he had in mind was the Christian one. ''The challenge of the next millennium will be to preserve the American experiment by restoring its Christian perspective,'' he said in 1997.

On another occasion—his investiture as Alabama's attorney gengeral—he concluded his remarks by saying, ''With trust in God, and his Son, Jesus Christ, we will continue the American experiment of liberty and law.''

Although a state official, Pryor chose to intervene in federal court cases on the side of Roy Moore, now the state's chief justice. As a trial judge, Moore opened court with a prayer delivered by a Christian clergyman. He displayed the Ten Commandments in his courtroom and later, when elected the state's chief judge, had a monster statue of the Ten Commandments placed before the courthouse. Higher courts told him to remove it.

Whatever Pryor's religious convictions, they are no business of the Senate. But they

are its business when he seeks to impose those beliefs on others—as he has repeatedly tried to do. This is what the Democrats on the Judiciary Committee object to. Yet the ads, sponsored by a committee led by C. Boyden Gray, the first President Bush's White House counsel, simply label Pryor's opponents as religious bigots. Gray lent his name to this cause, and so did former president George H.W. Bush, who lent his house for a fundraiser. This is a GOP operation, pure and simple.

Gray ought to be ashamed. Instead of battling religious prejudice, he is using the fear of it to stack the courts with conservative Republicans. At the same time, he has allied himself with those who traffic in their own kind of religious bigotry—a smug disdain for the beliefs of others, including dissenting Christians, non-Christians and people who have no religion at all. Pryor clearly feels his religion is the better religion—the one the state should support, the one with which to open a court session or to proclaim in stone on the courthouse steps.

This is dangerous stuff. We are a pluralistic society. I happen to think some religions are just plain weird. I also happen to think that Pryor cannot for a second explain through reason—reason, not faith—why his convictions are better, truer or closer to God's than mine. Such matters cannot be debated. Historically, they have been settled at sword's point. If you believe that a cow is sacred, I cannot argue with you. The same holds for the virign birth, or, for that matter, the burning bush. You believe what you believe. It is that simple.

Gray and by extension former president Bush ought to repudiate the ad. At its core, it is a demagogic lie. As for Pryor, by statements and actions, he has disqualified himself for the federal bench. I don't care if he's a good Catholic. I do care that he'd make a bad judge.

[From the Washington Post, July 26, 2003]

BEYOND THE PALE

''Some in the U.S. Senate are attacking Bill Pryor for having 'deeply held' Catholic beliefs to prevent him from becoming a federal judge. Don't they know the Constitution expressly prohibits religious tests for public office?''

So reads a wildly inappropriate ad run in newspapers in Maine and Rhode Island by a group called the Committee for Justice. Mr. Pryor is the elected attorney general of Alabama and President Bush's choice to sit on the U.S. Court of Appeals for the 11th Circuit. We oppose the nomination—which the Senate Judiciary Committee this week reported on a party-line vote—and hope it will be defeated on the Senate floor. Yet some of Mr. Pryor's supporters seem unwilling even to debate this troubling nomination on its merits. So they have hit on an alternative: branding his opponents as motivated by anti-Catholic bigotry.

The tactic is not entirely new. Republican senators—including committee Chairman Orrin Hatch (R-Utah) and Majority Leader Bill Frist (R-Tenn.)—have been complaining for some time of what Mr. Frist has called ''a religious test on the confirmation of our judges.'' And Democrats during the last administration complained of bias in the Senate's treatment of women and minority nominees—as, indeed, Republicans now complain of bias in the treatment of appeals court nominee Miguel Estrada. But the new ad campaign ratchets up this gross kind of politics a notch, and the unwillingness of key Republican senators to distance themselves from it is striking.

The Committee for Justice was formed by former White House counsel C. Boyden Gray to support Mr. Bush's nominees. Its ad ran in states with large numbers of Catholics and moderate Republican senators. It shows a picture of a courthouse door with a sign hung on it saying, ''Catholics Need Not Apply.'' And it asks ''Why are some in the U.S. Senate playing politics with religion?'' It goes on to describe the nominee as ''a loving father'' and ''a devout Catholic'' and insists that ''it's time for his political opponents to put his religion aside and give him an up or down vote.''

But who exactly is ''playing politics with religion'' here? We are aware of no instance in which any Senate opponent of Mr. Pryor has raised his religion—nor did the Committee for Justice produce an example in response to our inquiries. The only people raising Mr. Pryor's Catholicism, rather, seem to be his supporters. Mr. Pryor's nomination is controversial for the simple reason that he has never shied away from taking strident positions on matters of national moment: His record is replete with the sort of unblinking partisanship and ideological fervor that properly should raise questions about potential service on the bench. We have criticized liberal groups for smearing President Bush's nominees. Smearing senators is no better.

[From the Huntsville Times, July 25, 2003]

SHAM ISSUE INVOKED TO HELP PRYOR

(By David Person)

Bogus. That's the only word that accurately describes this week's dust-up on the Senate Judicial Committee over the nomination of Alabama Attorney General Bill Pryor to the Federal Appeals Court. Sens. Jeff Sessions of Alabama and Orrin Hatch of Utah, both members of the committee, suggested that other committee members were opposed to Pryor because he is a Catholic

This criticism seems part of a larger strategy. According to National Public Radio, some ads have been running in Maine and Rhode Island that suggest the same thing. And according to NPR, it was Hatch who introduced Pryor's faith into the proceedings by asking Prior about his religious affiliation during the nominee's June hearing before the committee.

Methinks the GOP doth protest suspiciously and a bit too much. Four of the nine Democrats on the committee—ranking member Patrick Leahy of Vermont, Dick Durbin of Illinois, Edward Kennedy of Massachusetts, and Joe Biden of Delaware—are Catholics.

That probably disqualifies them from being against Pryor due to his faith, you think?

My guess: The GOP knew that Pryor's right-wing views on Roe vs. Wade, Alabama Chief Justice Roy Moore's Ten Commandments monument and homosexuality would be lightning rods. So instead of going the stealth route—which would have been difficult since Pryor, to his credit, has been upfront about his views—why not spin out the ruse that opposition to Pryor's politics is actually opposition to his faith?

As a political strategy, it's clever. But discerning observers will know that the baloney-salami quotient is high.

Being anti-religion and opposing the insertion of religion into the public life are as different as being a meat-eater and vegan. The two aren't even remotely the same.

Pryor, a smart, competent, compassionate and honest elected official, has made it no secret that he follows one of Alabama's most practiced political traditions: fusing faith and politics. Again, to his credit, he's aboveboard. He doesn't pretend to be anything other than what he is. That's why many Democrats and liberals have supported him here and even in his quest to be appointed to the federal bench.

But history shows that when religious dogma collides with public policy and practice, someone will be hurt. (Please turn in your history books to the chapters on the Crusades, the Reformation, and Salem witch trials, and the conflicts between Protestants and Catholics in Ireland, Muslims and Christians on the African continent, and fundamentalist Islamic regimes and their opposition.)

In fact, isn't the United States currently resisting attempts by fundamentalist Muslims to assume control in a reconstituted Iraq?

Pryor's fellow Catholics on the Senate Judiciary Committee oppose how he applies his religion, not the religion itself.

This shouldn't be hard to grasp. Religions, like political parties, often have competing ideological wings.

Some of my Catholic friends in town also oppose Pryor. They mince no words as they spit out their criticism of him.

Not one had anything to do with his faith.

The committee, by the way, has voted along party lines to send Pryor's nomination to the full Senate for a vote. By the end of the summer, we may know if Pryor will get the appointment or if it will be derailed by a Democratic filibuster.

If the latter, I guess Leahy, Durbin and any others who will have opposed him will be called bigots by GOP extremists. But this will be a false charge. The only thing they will be guilty of is disagreeing in matters of faith.

Last time I checked, the Constitution gives them that freedom.

[From the Palm Beach Post, July 27, 2003]

NO DEFENSE FOR PRYOR'S CONVICTIONS

(By Randy Schultz)

As part of their ongoing effort to stack the federal courts, Republicans first accused Democrats of being anti-Hispanic. Now, they're accusing Democrats of being anti-Catholic. Here's the funnier part: Many of the Democrats in question are Catholics.

When it comes to judicial nominations, the Supreme Court obviously gets most of the attention. The highest court is the last word on issues that prompt fund-raising letters. In June, for example, the justices reaffirmed that race can be a consideration in college admissions and rules that sexual orientation can't be a consideration when states make laws about sex between consenting adults.

In fact, the highest court hears only about 100 cases each year. The 13 federal appeals courts, however, rule on nearly 30,000 cases in 2001. In practical terms, appeals court judges set most of the law. Also, they are the Supreme Court's farm teams. Seven of the nine justices—William Rehnquist and Sandra Day O'Connor are the exceptions—were promoted from the federal appeals courts.

So President Bush wants to put the youngest, most conservative people he can on those courts. The lastest is 41-year-old William Pryor, and you can tell how unqualified he is by the lengths to which Republicans are going.

TO FLORIDA FROM ALABAMA? NO WAY

Mr. Pryor is Alabama's attorney general. He believes that the 1973 Supreme Court did greater harm by legalizing abortion than the 1857 court did by legalizing slavery. President Bush wants to put him on the 11th U.S. Circuit Court of Appeals, which hears cases from Florida, Georgia and Alabama. To maintain geographical balance, this vacancy on the 12-member court goes to Alabama.

But to William Pryor? No way. There's evidence that he solicited political donations

from companies that do business with his office. There's evidence that he wasn't straight about that when he testified before the judiciary committee last month.

So Democrats have objected, as they have when Mr. Bush has tried to put similarly ultra-orthodox conservatives such as Miguel Estrada and Priscilla Owen onto other appeals courts. When Democrats blocked Mr. Estrada's nomination, Republicans whooped that Democrats don't like Hispanics. Except that Republicans blocked Hispanics whom President Clinton had picked for the appellate bench.

Last week, the GOP kicked up the hysteria another notch. A group run by the first President Bush's chief counsel ran ads saying that Democrats want to keep Catholics such as Mr. Pryor off the court. The ads show a courthouse with a sign reading, ''Catholics need not apply.'' Boston merchants used the same language in the 19th century, saying ''Irish'' instead of ''Catholics.'' Sen. Jeff Sessions, R-Ala., parroted the ad Wednesday. ''Are we saying that good Catholics can't apply?''

NON-CATHOLICS LECTURING CATHOLICS

How hilarious that must have sounded to the four out of nine Democratic committee members who are Catholic. As National Public Radio reported, one of them, Sen. Dick Durbin, D-Ill., first said, ''This is disgusting.'' Then he remarked, ''I want to express my gratitude to my colleagues who are members of the Church of Christ and the Methodist Church and the Church of Jesus Christ of Latter-Day Saints for explaining Catholic doctrine today.''

Sen. Orrin Hatch, the Mormon in question, yelped that Democrats were opposed to any Catholic with ''deeply held'' beliefs or any nominee who opposed abortion. Sen. Durbin noted that the Catholic Church opposes the death penalty while Mr. Pryor supports it. Also, a Bush nominee who called abortion ''evil'' got a seat on another appeals court with Democratic support.

For all the Republican fussing, President Bush got more of his nominees through a Democratic Senate than President Clinton got through a Republican Senate. Nearly half of Mr. Clinton's appeals court nominees got no vote in the congressional term when they were nominated.

Now that Democrats are going all-out to block Mr. Bush's worst nominees, Republicans can't take it. They rant, and they pout. They can't argue the facts, and they can't argue the law. So they are trying to argue ethnicity and religion. The problem isn't their Democratic opponents. It's their president's nominees.

[From the Atlanta Journal-Constitution, July 25, 2003]

BRING ON THE FILIBUSTER AGAINST ULTRACONSERVATIVE

Southerners who care about the separation of church and state should hope Alabama Attorney General William Pryor never sits on the 11th Circuit appellate bench, which rules on appeals in cases from Alabama, Georgia and Florida. The ultraconservative Pryor, who preaches that Christianity should be more a part of American public life, was approved by the Senate Judiciary Committee Wednesday in a 10–9 vote along partisan lines.

If ever there were a nomination that merits a filibuster, it is this one. Not just because Pryor holds views far out of the mainstream, but also because of the unprecedented twisting of the Constitution's advise and consent process by President Bush's corporate pals. Misleading ads, funded by the deceitfully names ''Committee for Justice,'' have already run in Maine and Rhode Island to pressure moderate Republican senators into voting for Pryor's confirmation on the Senate floor. The despicable ads show a courthouse door with a sign across it saying ''No Catholics allowed.''

Sen. RICHARD DURBIN (D–Ill.), who is Catholic and opposes the Pryor nomination, is infuriated that he and others were being accused of discriminating against Pryor for his religion, a false charge. Sen. PATRICK LEAHY, the ranking Democrat on Senate Judiciary, said religion is irrelevant to consideration of a judicial candidate. ''Just as we're supposed to be colorblind, we must be religion-blind,'' he said.

The committee funding the ads is headed by the White House counsel to former President Bush, C. Boyden Gray, and includes lawyers and lobbyists who represent huge tobacco, insurance and investment banking corporations with cases pending before the federal courts. Because it would be unseemly to campaign for judges who favor corporations, they have cleverly aligned with the Ava Maria List, a Catholic pro-life political action committee.

Pryor's record is sufficient to disqualify him from any judgeship. In addition to his extreme views on abortion (he opposes it for rape victims), he favors prayer in public school classrooms and the Ten Commandments in the Alabama courthouse. He was also the only attorney general in the nation to argue that the Violence Against Women Act is unconstitutional.

Georgians ought to let U.S. Sens. SAXBY CHAMBLISS and ZELL MILLER know their opposition to Pryor. He is simply unfit for the decision-making essential to a fair, independent and nonpartisan judiciary.

[From the Pittsburgh Post-Gazette, July 25, 2003]

PRYOR RESTRAINT: SPECTER SHOULD HAVE BALKED AT AN EXTREME NOMINEE

With Pennsylvania's Sen. Arlen Specter trying to have it both ways, the Senate Judiciary Committee on Wednesday sent to the floor an unacceptably extreme nominee to a federal appeals courts—but not before some silly sniping over whether the nominee, Alabama Attorney General William Pryor Jr., has been the victim of anti-Catholicism.

The anti-Catholic canard, raised by a conservative pressure group and echoed by some Republican senators, would be laughable if anti-Catholicism weren't an ugly part of American history. Fortunately, excluding people from public life because they are ''papists'' is largely a thing of the past. Mr. Pryor himself is proof of that: Alabama, where he serves as the chief law enforcement officer, was historically home to Bible Belt anti-Catholicism.

But if some of Mr. Pryor's supporters are to be believed, opponents of his nomination to the 11th U.S. Circuit Court of Appeals are anti-Catholic bigots. A pro-Pryor group aired television ads showing a locked courthouse with a sign reading ''No Catholics Need Apply.'' On the committee, Republican Sen. Jeff Sessions referred to his fellow Alabaman as ''this solid Catholic individual'' and offered a convoluted argument for the bigotry charge.

According to Sen. Sessions, Mr. Pryor's veiws on abortion—he called the Roe vs. Wade ruling an ''abomination''—are rooted in his church's teaching. Therefore senators who oppose Mr. Pryor because of his denunciation of Roe vs. Wade are really subjecting him to an unconstitutional ''religious test'' for office.

Well, not really. The concern isn't that any Catholic judge will repudiate Roe vs. Wade—Justice Anthony Kennedy, a Catholic, voted to reaffirm Roe in a 1992 ruling—but that Mr. Pryor's vehement denunciations of Roe as bad law indicate that he is a man on a mission, despite his protestations that he would apply the law judiciously. The problem with Mr. Pryor isn't his religion; it's the fact that he is what we have called a ''walking stereotype'' of right-wing legal extremism.

(We wonder, by the way, if Sen. Sessions would rush to the defense of a liberal Catholic nominee who, citing pronouncements by the pope and America's Catholic bishops, denounced Supreme Court decisions upholding the constitutionality of capital punishment.)

Some Democrats on the Judiciary Committee who are themselves Roman Catholics objected to the Republicans' decision to play the Catholic card. Sen. Richard Durbin facetiously thanked Sen. Sessions, a Methodist, and Judiciary Committee Chairman Orrin Hatch, a Mormon, for elucidating his own church's doctrine for him.

The ''anti-Catholic'' discussion was an unseemly sideshow to the committee's decision, on partisan lines, to approve the Pryor nomination and send it to the floor. To his discredit, Sen. Specter, who faces a conservative challenger in next year's Republican primary, joined in that vote—while suggesting that he might vote against the nomination on the floor. That straddle is the opposite of a profile in courage. If Sen. Specter thinks Mr. Pryor unsuitable for the court, he should have voted no.

Mr. LEAHY. Mr. President, this has begun because the President renominated a divisive and controversial activist to another circuit court. That is regrettable. The Republican leadership in the Senate is forcing a confrontation at this time that is neither necessary nor constructive. I am sorry the White House has chosen to make these matters into partisan political fights rather than to work with Senate Democrats to fill judicial vacancies with qualified consensus nominees. There are thousands of qualified Republicans who would be endorsed by both Republicans and Democrats in this Senate. That would allow the American people to say we are not politicizing the courts. There would be a sigh of relief.

But we do not see that. We have a historic low level of cooperation from the White House. In fact, in the 29 years I have been here, through both Republican and Democratic administrations, I have never seen such a low level of cooperation.

Notwithstanding that, we have already confirmed 140 of President Bush's judicial nominees, including some of the most divisive and controversial sent by any President, Republican or Democrat. In fact, this year the Senate debated and voted on the nominations of three circuit court nominees who received far more than 40 negative votes.

If it were simply a case of filibustering judges, they would not have been confirmed. For example, Jeffrey Sutton's nomination to the Sixth Circuit received the fewest number of favorable votes of any confirmation in almost 20 years. He got only 52 votes.

When you have somebody who gets through the Senate with only 52 votes, you have to ask what kind of a signal that sends to the people of that circuit. Does it send a signal to the people of that circuit that we sent somebody

there who is representing all the people within that circuit, Republicans, Democrats, independents? Or are we sending somebody who is intended to be a partisan ideologue representing only one party on a court that is supposed to be independent of party politics?

In fact, the administration is seeking to force through the confirmation process more and more extreme nominees in its effort to pack the courts and tilt them sharply in a narrow ideological direction. Instead of uniting the American people, too many of this administration's nominations divide the American people and divide the Senate. How much greater service could be done to the country and to the courts if the President sought to unite us and not divide us?

In fact, the unprecedented level of assertiveness by the administration has led to more and more confrontation with the Senate. As Republicans in the Senate abandon any effort to provide a check or balance in the process, it falls to Senate Democrats to seek to protect the independence of the Federal courts and the rights of all Americans.

Our Democratic leadership in the Senate worked hard earlier this year to correct some of the problems that arose from some of the earlier actions of the Judiciary Committee. But, once again, just last week, Republican members of the Judiciary Committee decided to override the rights of the minority and violate longstanding committee precedent and actually violated—imagine this, the Judiciary Committee violating its own rules, the Judiciary Committee of all committees, the committee that should set the standards for everybody else—violated these rules and precedents in order to rush to judgment even more quickly this President's most controversial nominees.

It was a sad day in committee, but it was a devastating day in the Senate. Yet my friends on the other side of the aisle persist in their obstinate and single-minded crusade to pack the Federal bench with right-wing ideologues, regardless of what rules, what longstanding practices, what personal assurances, what relationships, or what Senators' words are broken or ruined in the process.

Republican partisans fail to recognize that Democrats worked diligently and fairly to consider President Bush's nominees, including nominees to the same court as that to which Justice Owen has been nominated. Two months ago, on May 1, the Senate confirmed Judge Edward Prado to the U.S. Court of Appeals for the Fifth Circuit. Senate Democrats cleared the nomination of Judge Edward Prado to the United States Court of Appeals for the Fifth Circuit without delay.

The irony is, we cleared Judge Prado immediately, but he was held up by one anonymous hold—and it came from the Republican side. At the same time the White House is excoriating Democrats for holding up their nominees, we had a nominee of President Bush to the Fifth Circuit and for a month, while we are trying to have him confirmed, he is being held up by an anonymous hold, not even a hold somebody is willing to state for the record but an anonymous hold on the Republican side. Talk about rope-a-dope—if we clear the nominees, they hold them up and we get the blame. Interesting.

All Democratic Senators serving on the Judiciary Committee voted to report his nomination favorably. All Democratic Senators indicated they were prepared to proceed with the nomination. When Republicans finally lifted their hold on Judge Prado, he was confirmed unanimously.

When Democrats assumed Senate leadership in the summer of 2001, there had not been a Fifth Circuit nominee confirmed for 7 years. There had been a lot of nominees, but they were blocked by the Republicans. Indeed, Republicans blocked consideration of three qualified nominees to the Fifth Circuit in the years 1995 to 2001, along with 60 other judicial nominees of President Clinton.

In 2001, Democrats worked hard on the nomination of Judge Edith Brown Clement, a conservative judge nominated by President Bush, and with the efforts of Democrats she was confirmed. Thus, unlike the years 1995 to 2001 when Republicans were preventing action on every single one of President Clinton's nominees to the Fifth Circuit, Democrats have already cooperated in the confirmation of two of President Bush's nominees to that circuit, including one while we were in the majority.

In spite of the treatment by the Republicans of so many moderate nominees in the previous administration, we proceeded last July to the hearing on Justice Owen and we proceed to debate and vote on all three of President Bush's Fifth Circuit nominees, despite the treatment of President Clinton's nominees by the Republican majority.

The nomination of Priscilla Owen was rejected by the Senate Judiciary Committee. She was rejected as a judicial activist with extreme views. That is where it should have ended. Never, ever in our Nation's history has a President renominated somebody to the same judicial vacancy after rejection by the Judiciary Committee—never. In this case, of course, they did, to create a political point.

We tried very hard to work with the administration to fill judicial vacancies, in great contrast to the fate of many of President Clinton's nominees from Texas who were blocked and delayed by Republicans, including Enrique Moreno, nominated to the Fifth Circuit Court of Appeals, who never got a hearing or a vote; Judge Jorge Rangel, nominated to the Fifth Circuit Court of Appeals, who never got a hearing and never got a vote; and Judge Hilda Tagle, whose nomination was delayed nearly 2 years for no good reason.

All we are saying is let's have judges who are there for all the people. It is one thing for Republicans to control the White House. The President was inaugurated. He has that right. Republicans control both Houses. But the courts are supposed to be nonpartisan.

We have worked hard to try to balance the need to have enough judges to handle cases with the imperative that they be fair judges for all people, poor or rich, Republican or Democrat, of any race or religion. This has been especially difficult because a number of this President's judicial nominees have records that do not demonstrate that they will be fair and impartial.

The White House's allies have bombarded us with all sorts of misleading information to try to bully us into rolling over and rubber-stamping these nominees. They are playing politics with the judicial branch and using it for partisan political purposes. That is most regrettable. Their charges of prejudice are simply appalling and should be rejected by all Americans as the crass and base partisan politics that they are.

The plain fact is that this Senate has confirmed more judges at a faster pace than in any of the past six and one half years under Republican control with a Democratic President. With Democrat cooperation, this Senate has doubled the number of judicial confirmations and more than doubled the number of circuit court confirmations of President Bush's nominees compared to how the Republican-controlled Senate treated President Clinton's. The Senate has confirmed 40 judges already this year. That exceeds the number of judges during all of 2000, 1999, and 1997, and is more than twice as many judges as were confirmed during the entire 1996 session. It is more than the average annual confirmations for the 6½ years the Republican majority controlled the pace of confirmations from 1995 through the first half of 2001. Thus, in the first 7 months of this year, we have already exceeded the year totals for 4 of the 6 years the Republican majority controlled the pace of President Clinton's judicial nominees and the Republican majority's yearly average. One hundred and forty lifetime confirmations in 2 years is better than in any 3-year period from 1995 though 2000, when a Republican majority controlled the fate of President Clinton's judicial nominations.

We have already this year confirmed 10 judges to the Courts of Appeals. This is more than were confirmed in all of 4 of the past 6 years when the Republicans were in the majority—in 1996, 1997, 1999, and 2000. And in the 2 other years, the 10th circuit nominee was not confirmed until much later in the year. We have now confirmed 27 circuit court judges nominated by President Bush. This is more circuit court judges confirmed at this point in his presidency than for his father, President Clinton, or President Reagan at the same point. We have made tremendous progress and

I want to thank, in particular, the Democratic members of the Judiciary Committee for their hard work in this regard. These achievements have not been easy. The Senate is making some progress. More has been achieved than Republicans are willing to acknowledge.

So, as we repeat our vote on this nomination today and Republicans continue their drumbeat of unfair political recriminations, we should all acknowledge how far we have come from the 110 vacancies that Democrats inherited from the Republican majority in the summer of 2001. In addition to more confirmations and fewer vacancies, we have more Federal judges serving than ever before.

Under a Republican majority, circuit vacancies more than doubled and overall vacancies increased dramatically. Despite the fact that close to 90 additional vacancies have arisen since the summer of 2001, we have worked hard and cut those vacancies from 110 to less than 60. Earlier this year, until new judgeships were authorized, the vacancy rate on the Federal courts was at the lowest number in 13 years. Even with the 15 new judgeships effective this month, the vacancy rate is now well-below where Senator HATCH inherited it, and well-below the rate Senator HATCH called ''full-employment.'' There are more full-time Federal judges on the bench today than at any time in U.S. history, in the last 214 years. And, if you add in the senior judges, there are more than 1,000 Federal judges sitting on the Federal courts.

With a modicum of cooperation from the other end of Pennsylvania Avenue and the other side of the aisle we could achieve so much more. As it is, we have worked hard to repair the damage to the confirmation process and achieved significant results. Republicans seem intent on inflicting more damage, to the process, to the Senate, and to the independence of the Federal courts.

Unfortunately, the nomination of Justice Owen is a nomination that should never have been remade. It was rejected by the Judiciary Committee last year after a fair hearing and extensive and thoughtful substantive consideration. The White House would rather play politics with judicial nominations than solve problems. This unprecedented renomination of a person voted down by the Senate Judiciary Committee is proof of that. That Senate Republicans are continuing to press this matter knowing the outcome of this vote shows what a charade this has become.

This nomination is extreme. This nominee has shown herself to be a judicial activist and an extremist even on the very conservative Texas Supreme Court where her conservative colleagues have criticized her judging as activist again and again.

The nomination process starts with the President. It is high time for the White House to stop the partisanship and campaign rhetoric and work with us to ensure the independence and impartiality of the Federal judiciary so that the American people, all of the American people, can go into every Federal courtroom across the country and know that they will receive a fair hearing and justice under the law. It is time for Senate Republicans to stand up for the Senate's role as a check on the unfettered power of the President to pack the courts and for fairness.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion.

The clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 86, the nomination of Priscilla R. Owen of Texas to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, John Cornyn, Michael B. Enzi, Jim Talent, Judd Gregg, Jeff Sessions, Ben Nighthorse Campbell, Craig Thomas, Chuck Grassley, Chuck Hagel, Thad Cochran, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, and Larry E. Craig.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived. The question is, Is it the sense of the Senate that debate on the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM) the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 308 Ex.]

YEAS—53

Alexander	Crapo	Lott
Allard	DeWine	Lugar
Allen	Dole	McCain
Bennett	Domenici	McConnell
Bond	Ensign	Miller
Brownback	Enzi	Murkowski
Bunning	Fitzgerald	Nelson (NE)
Burns	Frist	Nickles
Campbell	Graham (SC)	Roberts
Chafee	Grassley	Santorum
Chambliss	Gregg	Sessions
Cochran	Hagel	Shelby
Coleman	Hatch	Smith
Collins	Hutchison	Snowe
Cornyn	Inhofe	Specter
Craig	Kyl	Stevens
Sununu	Talent	Voinovich
	Thomas	Warner

NAYS—43

Akaka	Dodd	Levin
Baucus	Dorgan	Lincoln
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Harkin	Pryor
Breaux	Hollings	Reed
Byrd	Inouye	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Conrad	Kohl	Stabenow
Corzine	Landrieu	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NOT VOTING—4

Edwards	Kerry
Graham (FL)	Lieberman

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:15 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:52 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

ENERGY POLICY ACT OF 2003—Continued

Mr. CRAIG. 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. FEINGOLD. 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. FEINGOLD. Mr. President, I ask unanimous consent to speak as if in morning business.

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

The Senator from Wisconsin is recognized.

Mr. FEINGOLD. I thank the Chair.

(The remarks of Mr. FEINGOLD pertaining to the introduction of S. 1480 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. FEINGOLD. 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 the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, there is an order floating around here on the floor that sets forth about 7 hours of debate on these two trade agreements, the

Singapore and Chilean trade agreements. Is that true?

The PRESIDING OFFICER. The order has been obtained.

Mr. REID. It has been obtained?

The PRESIDING OFFICER. That is correct.

Mr. REID. It is my understanding the Senator from California, Senator FEINSTEIN, has an hour under that agreement. Is that true?

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask unanimous consent that Senator FEINSTEIN be allowed to use her hour on the trade agreements at this time.

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

The Senator from California.

THE CHILEAN AND SINGAPOREAN FREE TRADE AGREEMENTS

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Nevada for the courtesy of allowing me to move ahead with some additional remarks on the Chilean and Singaporean free-trade agreements and on the immigration policy that is attached to those agreements. I have expressed my deep concern about the temporary entry provisions of the free-trade agreements on which we are about to vote. I was prepared to support the trade agreements. However, I believe the USTR has made a terrible mistake in negotiating immigration provisions in these trade agreements, and, thus, delving into areas of authority that should have been left to the Congress.

I spoke to this to some extent on Friday, and I would like to speak again today because I think this is like peeling an onion. The more you look at it, if you look at immigration law, the more you see the major loophole this agreement is creating.

This agreement would create new categories for nonimmigrant visas for free-trade professionals. It would permit the admission, on its face, of up to 5,400 professionals from Singapore and up to 1,400 from Chile each year. That is on its face.

It would require the entry for their spouses and children, so they could join foreign workers in the United States. That, of course, makes it less of a temporary visa program. Those visas can be extended indefinitely. They can be renewed year after year after year ad infinitum. The bill would require without a numerical limit the entry of business persons under categories that parallel three other current visa categories: The B–1 visitor visa, the E–1 trader or investor visa, and the L–1 intercompany transfer visa.

In fiscal year 2002, the State Department issued more than a total of 5,232,492 visas to foreign nationals under the current temporary visa category that parallels those in the free-trade agreement—5.2 million individuals from foreign countries who come here each year and replace American workers in various pursuits.

How many more do we need? This legislation requires the entry of foreign workers in a new way on L–1 visas regardless of whether they are nationals of Singapore or Chile.

I don't think most Members realize that. You can get an L–1 visa now under this trade agreement just if you have been employed by a Chilean or Singaporian country. You don't have to be a citizen of that country. This is particularly egregious, and I will explain why a little later.

The bill would permit but not require the United States to deny the entry of a free-trade professional if his or her entry would adversely affect the settlement of a labor dispute. It would require the United States to submit the dispute about whether it should grant certain individuals entry to an international tribunal. An international tribunal for the first time that I can recall would determine now under this treaty a sovereign right which belongs to the United States of America.

In enacting the Trade Promotion Act, the Congress did not provide the USTR authority to negotiate new visa categories or immigration programs or to impose new requirements on the existing temporary entry system. In fact, the USTR has taken that upon itself.

In negotiating these agreements, the USTR has negotiated a perpetual visa category that we as Members will not be able to modify no matter what the circumstances or the economic consequences may be. Employers can renew these new employee visas each and every year under the agreement with no limit while also bringing in every year an additional crop of new entrants to fill up the annual numerical limits for new visas.

This makes it possible for foreign employees entering the country on a supposedly temporary basis at the age of 22 to remain until he or she is ready to retire at the age of 70.

That is not what temporary visas aim to do.

In effect, by voting for these provisions we are adding to the U.S. labor market a continuous supply of 6,800 guest workers a year in addition to the more than 40,000 from Chile and the 30,000 from Singapore who came in last year under the existing temporary work categories.

In other words, this is in addition to the 50,000 workers who have already come in from these two countries. I don't believe Members realize that.

These workers come in without taking into account the potential impact on U.S. workers.

By voting on this agreement, we as Members of Congress are effectively ceding our authority to limit the duration of these visas when it is in the national interest to do so because we can't change a thing. We can't change a comma. We can't dot an ''i''. We can't cross a ''t''. That is fast track.

Another problematic provision—and we should be very concerned about this—is that the unlimited L–1 visa category included in the Chile and Singapore agreement does not require that these workers be citizens of either Chile or Singapore. They can be from anywhere as long as they are working for a company right now located either in Chile or Singapore.

This means under the agreement, a Chinese or Indian or any other country's multinational corporation with offices in Singapore, for example, can transfer an unlimited number of Chinese or Indian employees to the United States.

What happens if the corporation also has offices in countries hostile to the United States or are state sponsors of terrorism?

Under these agreements, the corporation may send an unlimited number of such nationals to the United States under the E–1 trader visa and the L–1 intercompany transferee visa category.

In other words, these trade agreements create a major loophole through which thousands of foreign workers can come into the country with little scrutiny.

I don't believe there is anybody virtually in this Senate who understands that.

This is the problem of having the USTR negotiate an immigration agreement. They don't understand it either. And I don't think they really understand what has been accomplished here.

Effectively, these agreements permit unlimited entry through Singapore and Chile under the L–1 visa category for any worker anywhere.

In negotiating these agreements, the USTR has eviscerated existing requirements that U.S. corporations first demonstrate that there is a shortage of domestic workers in an industry seeking foreign workers. Every one of us knows that unemployment rates are on the rise. In professional and technical services, it is over 6 percent. In computer and mathematical occupations, it is 5 percent. In architecture and engineering occupations, it is 4 percent. In informational technology, it is 7 percent. In financial services, it is about 4 percent. In business and professional services, it is almost 9 percent.

When there are all of these vacancies, why are we allowing new sources of low-wage labor into this country when we are not facing a labor shortage in any of these industries today? There is no public interest in keeping Americans unemployed in order to accommodate new guest worker programs that would be established by these trade agreements. Quite the contrary. We face the highest unemployment rate in almost a decade, and I can tell you it is high among these worker categories as well.

I think these agreements are going to do no more than foster a race to the bottom where American workers are forced to compete with whatever foreign workers will accept in the lowest wage categories. That is wrong. This trend should be stopped, not exacerbated.

In negotiating these agreements, the USTR has expanded the types of occupations currently covered under the H–

1B visa to include management consultants, disaster relief claims adjusters, physical therapists, and agricultural managers—professions that do not require a bachelors degree. This a weakening of what are supposed to be highly qualified and highly skilled workers. Now they are amending this to permit a whole host of unskilled categories. You don't even have to have a higher education to qualify to come in as a skilled worker in a technical field.

These agreements lower the skill level in another way, too. In negotiating the agreements, the USTR has lowered the standards for which foreign professionals could enter the United States to work. Under current law, H–1B professionals must exhibit—and this is a term of art—highly specialized knowledge in the occupation for which he or she is seeking a visa. This agreement would require the applicant only to possess specialized knowledge. In other words, they are weakening the requirement. You don't need to be highly specialized, just specialized. And then for some, you don't even need to have a higher education.

This distinction is critical because the highly specialized knowledge criteria used under the H–1B program was designed to ensure that employers don't abuse the program to undercut American workers in occupations where there is no skill shortage. I assume that this is a crucial point.

To back that up, neither the trade agreement nor the implementing language would enable the Department of Labor to have the authority to investigate or conduct spot checks at worker sites, as they do now with H–1B visas, to uncover instances of U.S. worker displacement and other labor violations pertaining to the entry of foreign workers. So what this agreement is doing is handcuffing the Labor Department and removing from it specific authority that it has now to go out to investigate and to see whether the law is being abused and domestic workers are being replaced purposefully with foreign workers.

You would say: Well, is this really necessary for them to have this authority? The answer is absolutely. There have been labor violations involving H–1B visas, and not a few but a lot. These violations have jumped more than fivefold since 1998, according to the Labor Department. Back pay awards for such employees who have been replaced have soared by more than 10 times, jumping from about $365,000 in 1998 to over $4 million in 2002. So we know there is fraud going on. What this bill does is just simply eliminate the regulations to eliminate any investigation as to whether the fraud exists or not.

In response to what I have just said about the soaring awards because of fraudulent uses of visas, Labor Department officials have stepped up H–1B investigations. They say there really could be thousands of H–1B workers today who don't file complaints because they fear the loss of their visa.

In the last 5 years, Labor investigated 656 complaints involving H–1B visas. What did they find? They found that out of 308 cases that have become final, the Labor Department found 261 H–1B violations. That is almost a two-thirds rate of violation. Of that number, 227 employers owed 1,413 domestic workers who were replaced by foreign workers almost $8 million in back wages.

This temporary work visa system gives employers tremendous power over immigrants. More than 1 million people already are employed in the United States under visas for skilled workers. The growing trend in H–1B violations is proof that some companies will, in fact, violate and have violated the worker protection laws to protect their bottom line. This is happening now, and in a tough economy it is going to happen more often. Those of us who are elected by workers to protect them, if we vote for this agreement, fail to do our job because this agreement weakens protections. The most offensive aspect of these provisions is that the USTR has bargained away our sovereign right to set the criteria for admitting foreign visitors and workers to our country. Under the agreement, if Congress determines that the visa categories in this agreement should be subject to numerical limits or labor certification, we could well be subject to defending that decision before an international tribunal. So an international tribunal would decide the sovereignty of the United States of America to make these decisions.

During a time when our country is preoccupied with the threat of terrorism on our soil, what protection do we have to prevent individuals from purposely utilizing and abusing this visa process?

In essence, control over employment-based visas will effectively be taken out of the hands of Congress and placed in the hands of corporate executives, the USTR, and countries that are parties to these types of agreements. That is, frankly, unacceptable to me, and such proposals should be rejected by Congress.

I don't think this Congress should relinquish its plenary authority over immigration to any administration, whether it be Democratic or Republican, nor to any country that is party to a trade agreement. It is hard to imagine that against the backdrop of the highest unemployment rate in almost a decade, this administration has negotiated what, in essence, is a permanent guest worker program. That is the hard fact of what is in this bill.

Today in our Nation, 15 million people are unemployed, underemployed in part-time jobs out of economic necessity, or have given up looking for work altogether; 9.4 million are considered officially unemployed. In California, 1.1 million are out of jobs. The average person has been out of work for 20 weeks, a phenomenon this country has not seen since 1948, in over 50 years.

Yet while we are faced with unprecedented unemployment, we are negotiating and accepting a permanent guest worker program.

Beneath the aggregate unemployment numbers is an even more disturbing trend. Unlike past instances of high unemployment, the ranks of the jobless are increasingly populated by highly skilled, college-educated workers. Workers who typically had little difficulty finding a new job are becoming discouraged by their lengthy stay on the unemployment roll.

A recent CBS news segment on the Nation's unemployed captured so poignantly the lives behind the numbers. The Presiding Officer should know that this CBS clip was actually done in his State. The news footage shows a line of cars stretching out of sight down a flat two-lane road in Logan, OH, where the jobless and struggling families were waiting for the twice-a-month distribution of free food by the local office of America's Second Harvest. The head of the agency said: We are now seeing a new phenomenon. Last year's food bank donors are now this year's food bank clients.

CBS reporter Cynthia Bowers observed:

> You could call it a line of the times, because in a growing number of American communities these days, making ends meet means waiting for a handout.

There are many reasons for the persistent weakness in the labor market. But I think we are making the situation worse by agreeing to the immigration provisions set out in these trade agreements. Increasingly, American workers have expressed fears of losing their positions to foreign workers who are paid considerably less and whose ability to remain in the United States is often contingent upon their not making trouble from their employer. I must tell you, I didn't believe this 5 or 6 years ago because I was importuned by one CEO after another to vote to increase the quota on H–1B visas.

They all supported me, that there was no abuse. It was only when we began to look deeply into it that we found there was abuse.

Today, more and more out-of-work technology workers are filing complaints with the Government or going to court to protest perceived abuses of temporary visa programs. We cannot simply blame the foreign workers for causing Americans to lose their jobs. It is shortsighted, behind-the-scenes policies such as these visa provisions, negotiated in secret, without any meaningful public hearing, included in trade agreements in small print, that invite a dependence on cheaper, more pliable foreign labor, and thus threaten American jobs.

The scarcity of jobs has left many skilled immigrants more dependent on their employer and less willing to quit if trouble starts. The abuses have been particularly widespread in the high-tech industry, which used H–1B visas to

bring in tens of thousands of programmers and other professionals. Remember, it is not just these workers; there are another 5.2 million coming in each and every year. They come in and companies seize upon them.

Let me give you an example of testimony that is going on right now in the Judiciary Committee in the Immigration Subcommittee. A woman named Pat Fluno, a computer programmer and former Siemens employee, is testifying that she and 14 of her colleagues were required to train their foreign worker replacements before U.S. workers were laid off. Their replacements were foreign nationals on L–1 visas. That is exactly the visa program we are establishing in this trade agreement. They were paid one-third the salary the U.S. workers were making. There is no requirement that L–1 visa employers pay the prevailing wage. Ms. Fluno was making $98,000 a year. Her replacement is making $32,000 a year. This is Siemens, and that is what it did to 15 workers.

Unlike U.S. workers, foreign workers on L–1 visas don't pay income tax. Ms. Fluno, before the Immigration Subcommittee of Judiciary right now, estimates that the Federal Government and the State of Florida would lose over $1.1 million in income taxes as a result of layoffs of the 15 employees.

The international consulting firm that Siemens used to obtain the foreign workers knew that the U.S. workers would be laid off, so they did not use the H–1B visas to bring the workers in; they used the underregulated L–1 visa to get around the existing employer protection of the H–1B visa program. That is what we are creating more of in this bill.

This type of abuse really should stop because if we don't stop it, it is going to go on. Look, if you pay an American worker $98,000 and you can bring in a technical worker and pay them $32,000, and it is OK, how would any of our workers ever be able to own a home and raise their kids?

Temporary professional workers are often paid less than American workers despite requirements that they be paid prevailing wage rates. Employers seeking to hire H–1B workers can base their prevailing wage rates on third party salary surveys up to 2 years old. An H–1B worker in a job since the beginning of 2003 might still be getting the 2001 prevailing rate.

I only use this because H–1B is a much more regulated program than the L–1 visa program that is in this bill. You see how they can kind of gerrymander this program by using out-of-date prevailing wage rates.

In December of last year, a New Jersey-based company, Pegasus Consulting Group, was ordered to pay $231,279 in back wages to 19 former employees. Most of them were Indian nationals. The judge also required the company to pay $40,000 in civil money penalties for violating the prevailing wage provisions of the H–1B visa rules. The judge found that some of the employees had gone several months without being paid. So this is happening today.

Our Nation's growing dependence on foreign workers is not—and I originally thought it was—spurred by a lack of skills or education in the United States. In June of this year, an estimated 1.286 million bachelor's degrees were conferred all across the United States, along with 436,000 master's degrees, 80,400 professional degrees, and 46,700 doctoral degrees. In addition, an estimated 633,000 associate's degrees were awarded. We have told, and continue to tell, our young people to acquire more education, to get a skill, to remain competitive in the job market, and they are doing so.

If an advanced degree, years of experience, and a good work ethic are not enough to land a job and to keep a job, what does the future hold for the American worker? Now, for some, the answer to that question is really pretty tragic.

Just in April of this year, Kevin Flanagan, a 41-year-old software programmer, took his life in the parking lot of Bank of America's Concord Technology Center on the afternoon he was told he lost his job. His father said it was the ''straw that broke the camel's back.'' Flanagan knew that his employer, Bank of America Corporation, as other corporations weathering the economic storm, was cutting high-tech jobs and sending them overseas. He applied for other jobs at the bank but didn't receive responses. His father said: ''He felt like he was fighting a large corporation that pretty much didn't care.''

Kevin Flanagan's death, which is a suicide, underscores the anxiety that has swelled among technology workers throughout this land, at the Bank of America in particular, and elsewhere, as more businesses shift high-tech jobs to foreign workers, even as they cut those jobs in the United States. To add insult to injury, some employers are requiring U.S. workers to train their replacements before they are laid off, and then they see where their replacement worker earns one-third the salary.

So I don't think we should gamble with the lives and livelihoods of American workers with an agreement the consequences of which are so problematic. I really find expanding the least regulated of all the visa categories at a time of economic distress in the United States, at a time when we have so many of our own highly skilled domestic workers out of work and looking for a job, somewhat cynical.

To do this in secret, not do it by virtue of lawmakers who are elected, who know their States, who hold hearings, and then make adjustments to visas is really stealth and very ill advised.

We should never use immigration law as a bargaining chip to negotiate bad trade deals. We should never have offered visas to Chile and Singapore as part of these trade deals, and we should not trade American jobs as part of a free-trade agreement. That is what we are doing in this trade agreement.

Bear in mind, we already have tens of thousands of workers, highly skilled workers, coming in from Chile and Singapore every year under the H–1B visa. What is cynical here is that the L–1 visa does not have the protections the H–1B visa has, and the Labor Department cannot go out and do an investigation and, therefore, cannot certify that no American worker is being replaced in his or her job. So I have to accept that the reason they are doing the L–1 visa is because they want to do just that: replace American workers with foreign workers. Remember, you can have a Chilean-owned company or Singaporean-owned company, I believe, not necessarily in Singapore, that can qualify under this agreement.

The fast-track process should not undermine Congress's authority under the Constitution, and that is what this agreement does. This is a bad trade bill, a bad precedent, and if this Congress does not stand up for its right to protect the American people, who will?

We asked in the Judiciary Committee for more time. We were denied more time. We asked to send this bill back to the administration and ask them to sever the immigration provisions from the trade provisions, and we were refused in our request. I do not think because immigration law is complicated and every visa program has with it a different set of rules, regulations, procedures, and protocols and that creating more of one of the weakest, in terms of protecting American workers at a time when American workers need the most protection because of rampant unemployment—the highest unemployment in the 10 years I certainly have been in the Senate—seems to me it is not timely, it is not economically productive except for the bottom line of some companies.

I believe in these remarks I have shown where many of these visas are being misused. I have shown where there is fraud, where there have been back payments made. And I have shown where already without this program, year in, year out, 5.2 million technical foreign workers come into this country without this addition.

I conclude by saying that I think the real angst, if I may use that word, of this bill is for us to accept the abdication of our constitutional authority and power over immigration law. I cannot do that because I represent a very large State that is going to be affected by this trade agreement, and a State where we have 1,100,000 people out of work, a State where the unemployment insurance trust fund is going to be in deficit at the end of next year and workers will not get anything when unemployed.

I think it is not good public policy at a time of economic deprivation for millions of Americans to be bringing in workers who will take a third of the

salary of their American counterpart, displace that counterpart, not complain and to, by law, say to the Department of Labor of the United States of America: You cannot investigate any one of these complaints, and you cannot make a determination whether, in fact, an American worker has been replaced unfairly by a foreign worker. We should not do that.

I thank the Chair. I yield the floor.

AMENDMENT NO. 1386, AS MODIFIED

Mr. ALLEN. Mr. President, I ask unanimous consent to speak for 5 minutes in support of the Bond-Levin amendment.

Mr. REID. Mr. President, under the order now in effect, we have to take somebody's time.

The PRESIDING OFFICER. The Senator is asking consent.

Mr. REID. To take whose time?

The PRESIDING OFFICER. To have his own time.

Mr. REID. I have no objection.

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

Mr. ALLEN. Mr. President, I thank the Senator from Nevada.

I rise today to join my colleagues in support of the Bond-Levin fuel economy amendment that reasonably improves safety, fuel economy, and environmental conservation as mutual goals. I am pleased to join with a bipartisan list of Senators as a sponsor of this amendment that will ensure that our public policy in America does not compromise common sense, the free market, consumer choice, safety, or American workers. I wish to touch on some of these key issues.

Insofar as safety is concerned, estimates from the Harvard Center for Risk Analysis, Journal of Law and Economics, and Regulation Magazine have shown that between 2,000 and 4,500 deaths occur each year as a result of our current CAFE standards.

The reality is very logical: With smaller, lighter cars there is a higher risk of injury when an accident occurs. The issue of vehicle cost also affects consumers. The National Academy of Sciences concluded that CAFE standards have raised prices by as much as $2,500 for cars and $2,750 for pickup trucks and SUVs.

Clearly, if the opposition's amendments are adopted rather than the commonsense, reasonable approach that is proposed by Senator BOND and Senator LEVIN, we would have higher prices. With higher prices, what do we get? Obviously, if fewer people can afford to purchase new vehicles, sales are reduced, which translates into fewer jobs in the automobile industry.

The job loss issue is not theoretical. I have met with United Auto Workers in Virginia and learned that even a 1-mile-per-gallon increase in CAFE standards would result in the loss of approximately 10 percent of auto manufacturing jobs. The last thing I want to do is go down to the Ford F–150 assembly plant in Norfolk, Virginia and have the 2,000-plus employees line up and say to them: One out of every 10 of you is going to lose a job because of what some officious people in Congress want to impose on America's auto industry and consumers.

I do not want to do the same thing with the GM Powertrain facility in Fredericksburg-Spotsylvania County and tell those employees: One out of 10 of you will lose your job because certain elected officials in Washington are taking away your ability to put food on the table for your families.

The employment of over 116,000 Virginians is dependent on the automobile industry, and congressionally mandated unreasonable increases in CAFE standards will put these jobs in jeopardy.

The great success of America as a world economic leader is based on freedom and the ability of the free market and consumer choice to prevail in the marketplace.

Recently, my friend and fellow colleague from Missouri, Senator BOND, used a clever reference to a recent movie to describe the other side's approach to CAFE mandates, calling the approach ''too fast, too furious.''

I also want to draw on Hollywood and the recent success of Arnold Schwarzenegger's latest ''Terminator'' movie and point out that the other side's unreasonable and unscientific approach terminates jobs, terminates safety, terminates consumer choice and terminates common sense.

American's already have the choice of what vehicles they wish to drive. There are already vehicles available that get 40, 45, 50-plus miles a gallon. If Americans want smaller, lighter vehicles, they are available. It is important that we use sound science and common sense and trust free people to make the right choices for themselves, their families, and the environment.

The Bond-Levin amendment states that auto experts at the National Highway Transportation Safety Administration and the auto and safety industry ought to have the ability to determine the best methods of achieving these goals. The CAFE numbers used by the other side, in our view, are arbitrary and truly based on political science as opposed to sound science.

The Bond-Levin amendment increases the use of incentives to industry and consumers alike rather than punitive market distorting mandates that would decimate an industry responsible for approximately 3 percent of our gross domestic product and employs about 2½ percent of all Americans.

Also, it is a very forward looking approach in that it provides tax incentives for research and development of advanced technological innovation in fuel cells, hybrids, and electric vehicles.

It is my view that Congress should be in the business of providing incentives to people and manufacturers for innovation that do not compromise safety, do not cause the loss of American jobs, and do not preclude individual choice in the marketplace so that people can make their own decisions for themselves and their families.

I ask my colleagues to support the Bond-Levin amendment. We should trust free people to make decisions for the health, safety, comfort, and well-being of their families. Most importantly, we ought to make sure that America stays strong and competitive.

When we look at our auto industry, our strongest market base is in SUVs, minivans, and pickup trucks, which would be harmed by the opposition's amendments. So let us stand strong for American workers, as well as our families and free market, and support the Bond-Levin amendment.

I ask unanimous consent that the text of a letter from the American International Automobile Dealers Association in support of the Bond-Levin amendment be printed in the RECORD.

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

AMERICAN INTERNATIONAL
AUTOMOBILE DEALERS ASSOCIATION,
Alexandria, VA, July 25, 2003.

Hon. GEORGE ALLEN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR ALLEN: On behalf of the American International Automobile Dealers Association (AIADA), I am writing to urge your support of the proposed amendment by Senators BOND (R–MO) and LEVIN (D–MI) to allow a regulatory approach to the raising of CAFE standards. AIADA is the national trade association representing over 10,000 American international nameplate automobile dealers and the 500,000 American workers who sell and service some of the finest automobiles and trucks available in the world.

The National Highway Traffic Administration (NHTSA) recently issued a final rule on April 1, 2003 aggressively increasing CAFE standards for light-duty trucks. NHTSA increased the light-truck CAFE standard from the current standard of 20.7 mpg to 21.0 mpg in model year (MY) 2005, 21.6 mpg for MY 2006, and 22.2 for MY 2007, the biggest increase in over twenty years. The standard applies to pickup trucks, mini-vans, and sport utility vehicles. NHTSA's charge was to set the light-truck CAFE standard at the ''maximum technologically feasible level'' while weighing the impact of increasing CAFE standards against a host of criteria, including vehicle safety, employment, and consumer choice, among other factors. NHTSA allows a process to increase CAFE standards that is based on sound science.

AIADA believes the regulatory process is the best way to increase standards in light of changing technology and market conditions. The Bond-Levin amendment establishes new standards through the regulatory process therefore ensuring the consideration of key factors when increasing CAFE standards.

Lastly, consumer choice should not be jeopardized to meet new federal standards. Consumer demand drives the automobile retailing market. A dramatic increase in CAFE standards could eliminate some of the most popular vehicles from the marketplace.

AIADA believes the Bond-Levin amendment is the best solution to achieving increased fuel economy without jeopardizing consumer choice and safety. AIADA opposes any other CAFE amendments that propose to legislatively increase current CAFE

standards. We ask you to support the Bond-Levin amendment as part of a national comprehensive energy policy.

Sincerely,

MARIANNE MCINERNEY,
President.

Mr. ALLEN. I yield the floor.

Mr. VOINOVICH. Mr. President, as cochairman of the Senate Auto Caucus, I am pleased to join with my colleagues, Senator BOND and Senator LEVIN, as a cosponsor of this CAFE standards amendment to the energy bill. This is truly an important issue; one that impacts upon our Nation's economy, our environment, and the safety of the traveling public.

There is no doubt that each of us wants the automobile industry to make cars, trucks, SUVs, and minivans that are as energy efficient as possible. Not only is it good for the environment, it also means more money in the pocket of the American consumer because they will spend less at the gas pump.

However, I am deeply concerned that the extreme Corporate Average Fuel Economy standard supported by some of my colleagues will have a devastating effect on public safety, as well as put a severe crimp in the manufacturing base of my State of Ohio which is already under duress because of high natural gas costs, litigation, health care costs, and competition from overseas.

Two years ago, new vehicle sales of trucks, SUVs and minivans outpaced the sale of automobiles for the first time in American history. This remarkable result can be attributed to a number of factors, but one reason that is often cited is the fact that these vehicles are seen as safer.

Another concern is that an arbitrary standard would have a devastating effect on jobs. Ohio is the No. two automotive manufacturing State in America, employing more than 630,000 people either directly or indirectly. I have heard from a number of these men and women whose livelihood depends on the auto industry and who are frankly very worried about their future.

There is genuine concern that a provision mandating an arbitrary standard could cause a serious disruption and shifting in the auto industry resulting in the loss of tens of thousands of jobs across the Nation.

For example, DaimlerChrysler's fleet of light trucks makes up more than 50 percent of their entire fleet. The company manufactures the Jeep Liberty and the Jeep Wrangler in Toledo, OH and employs approximately 5,200 workers at this plant. If an arbitrary CAFE provision is mandated that requires a shifting of vehicles manufactured, this plant could close because Chrysler would be forced to redistribute their manufacturing base to build more small, high-mileage cars.

The Bond-Levin amendment is a rational proposal that will keep workers both in Ohio and nationwide working, allowing these men and women to continue to take care of their families and educate their children while also encouraging greater fuel efficiency and safer vehicles.

This amendment calls for the Department of Transportation to increase fuel economy standards based on several factors including the following: technological feasibility; economic practicability; the need to conserve energy; the desirability of reducing U.S. dependence on foreign oil; the effect on motor vehicle safety; the effects of increased fuel economy on air quality; and the effect on U.S. employment.

I believe this is a much more responsible approach that will improve the fuel efficiency of our Nation's vehicles while also protecting public safety and our nation's economic security.

This amendment also requires that the Department of Transportation complete the rulemaking process that would increase fuel efficiency standards within 2½ years. If the administration doesn't act within the required timeframe, Congress will act, under expedited procedures, to pass legislation mandating an increase in fuel economy standards consistent with the same criteria that the administration must consider.

The amendment will also increase the market for alternative powered and hybrid vehicles by mandating that the Federal Government, where feasible, purchase alternative powered and hybrid vehicles.

I believe that this guaranteed market will encourage the auto industry to continue to increase their investment in research and development with an eye towards making alternative fuel and hybrid vehicles more affordable, available and commercially appealing to the average consumer.

As a matter of fact, I have ridden in a hybrid manufactured by DaimlerChrysler, and I have driven a fuel cell automobile manufactured by General Motors. I firmly believe that my children and grandchildren will one day be driving automobiles that run on hydrogen and give off only water. However, it will take time for the technology that makes these vehicles possible to be cost-effective and for these vehicles to be marketable.

Until then, truck, SUV, and minivan demand is not expected to decrease anytime soon. Automakers that are meeting this demand will have to manufacture and sell a high-gas mileage vehicle that likely does not exist now. This will only increase prices for the safe vehicles America wants.

I urge my colleagues to support the Bond-Levin amendment. It meets our environmental, safety and economic needs in a balanced and responsible way, contributing to the continued and needed harmonization of our energy and environmental policies.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, pending are the Durbin amendment, the Levin amendment, another Durbin amendment, and the Campbell amendment. I ask unanimous consent that the Feinstein CAFE amendment be the next Democratic amendment in order. I recognize that the right of first recognition comes on the other side. I want there to be an agreement though that the next amendment we would offer would be that of Senator FEINSTEIN dealing with CAFE.

The PRESIDING OFFICER. Is there objection?

Mr. LEVIN. Reserving the right to object.

Mr. ALLEN. Objection.

Mr. LEVIN. We object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Michigan.

Mr. LEVIN. Mr. President, I rise in support of the Bond-Levin amendment. I ask that Senator MIKULSKI be added as a cosponsor to my amendment.

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

Mr. LEVIN. Mr. President, I rise in support of the Bond-Levin amendment and in opposition to the Durbin amendment. I will take about 8 or 9 minutes to lay out some of the differences between the two amendments. There are some very key differences.

First, our amendment, the Bond-Levin amendment, employs positive incentives to promote the leap-ahead technologies which are so critical if we are going to make significant improvements in fuel economy. We do this in a number of ways right in this amendment, including the research and development part of this amendment where we authorize a significant increase in the funds for the Department of Energy to develop advanced hybrid vehicles, where we provide significant funds for the Department of Energy to work collaboratively with industry to research and develop clean diesel technologies, and a number of other ways.

In a separate amendment, dealing with the tax side, there will be an effort made to provide some additional incentives in that area as well.

In the body of the Bond-Levin amendment, we will be promoting the leap-ahead technology development by using the purchasing power of the Government to buy the hybrids which are going to be made available in the next few years. Since Government purchases a significant number of vehicles, it is essential that we use that purchasing power to acquire those new vehicles which will create a demand for those vehicles and help to commercialize them as well.

We require the Government purchase of hybrid trucks for our fleet of light trucks that are not covered by the Energy Policy Act. So there is no conflict between what we do in this bill and the Energy Policy Act itself.

There is another major difference between our approach and the approach in the Durbin amendment. What we do is we direct NHTSA, the Department of Transportation, to raise the fuel economy standards but we do not pick an

arbitrary number to be reached. Instead, we set forth a series of factors which we want NHTSA, the Department of Transportation, the agency that has the expertise to do this and has done this and has been given that responsibility historically to set these standards, we lay out a number of criteria which we want them to consider, including what technologies might be available, which are emerging, what will be the cost of those technologies, what are the safety considerations, what are the job considerations, what are the air quality considerations, what will be the savings in terms of fuel, including imported oil. A whole host of criteria are set out which they should consider but which are not at all considered by selecting an arbitrary number and simply plugging that into a law.

To pick one factor which is real, and that is the safety factor, the National Academy of Sciences, in its report, found that in just the 1-year study, which was 1993, the effect of CAFE, which was already in law, was the death of between 1,300 and 2,600 people. They also found that between 13,000 and 26,000 additional moderate to critical injuries occurred because the CAFE standard which had been put in law resulted in down weighting and downsizing of vehicles.

Should we consider safety? Should someone consider safety? I would hope so. Should that be a factor which should be looked at in the rulemaking process? I would hope so, among all the other factors.

Saving fuel is important, and our amendment does that. It will lead to fuel savings but we do it in a very different way. Instead of selecting an arbitrary number, a very high number in the Durbin amendment, 40 miles per gallon, we direct NHTSA to use the various relevant factors to reach a conclusion, not just what is technologically achievable regardless of cost but what is the cost, what is the cost benefit, and all the other factors, including safety and impact on jobs.

There is another major difference between our approach and the Durbin amendment. It is not just that the Durbin amendment picks a number, a very high number, for this new CAFE standard, but in doing so, it uses the current structure. That so-called CAFE structure limits the production and sale of domestic SUVs of the same efficiency as imported SUVs, on which it has far less impact.

This is a critical issue. It is an issue which is not adequately understood by colleagues because it is very complicated. The very fundamental CAFE structure, because it was designed to look at the entire fleet instead of dividing the fleet into different classifications by weight, has an inherently discriminatory impact on those companies which have traditionally produced the larger vehicle. It has favored the imports because those companies have tended to produce the lighter weight vehicles, the vehicles at the lighter end of the continuum.

I quote the National Academy of Sciences because they have made a statement which I hope all of our colleagues would pause to consider before voting for the Durbin amendment. This is what they said in a January 2002 report:

> . . . one concept of equity among manufacturers requires equal treatment of equivalent vehicles made by different manufacturers.

Now the key words:

> The current CAFE standards fail this test.

This is something which is so fundamental to American jobs that it is critical all of us take some time to read that portion of the National Academy of Sciences study and to fully soak in its impact as to what it is saying. Equal treatment of equivalent vehicles made by different manufacturers is not achieved by CAFE.

By piling an arbitrary number on that CAFE structure, as the Durbin amendment does, it worsens the situation. The equivalent vehicles of equal efficiency are treated differently depending on the manufacturer, and the difference works against the domestic manufacturer; that is, jobs which are lost with no benefit to the air at all.

There is no reason I can conceive as to why we would want to say it is OK to drive a 17-miles-per-gallon imported SUV, but it is not OK to drive a 17-miles-per-gallon domestic SUV. It does nothing for the air to reach that result. Yet that is what the current CAFE structure leads to.

I have one other quote from the National Academy of Sciences report.

> A policy decision to simply increase the standard for light-duty trucks to the same level as for passenger cars would operate in this inequitable manner. Some manufacturers have concentrated their production in light-duty trucks while others have concentrated production in passenger cars. But since trucks tend to be heavier than cars and are more likely to have attributes, such as four-wheel drive, that reduce fuel economy, those manufacturers whose production was concentrated in light-duty trucks would be financially penalized relative to those manufacturers whose production was concentrated in cars. Such a policy decision would impose unequal costs on otherwise similarly situated manufacturers.

I don't understand why we would even think about treating similar vehicles of similar fuel efficiency in a different way, particularly when that works against the domestic manufacturers.

The Durbin amendment compounds this problem by raising the SUV level, at least in the case of the minivans and SUVs themselves, to the same requirement as standard vehicles. In doing so, it compounds the problem, the discriminatory effect, of the CAFE structure. I hope for that reason and the other reasons I have mentioned that we will defeat the Durbin amendment and adopt an alternative approach which focuses more on positive incentives to achieve fuel economy, which is what the Bond-Levin approach does and which also focuses more on the rulemaking authority, the efficiency, the experience, and the fairness of the Department of Transportation that would look at all of the factors which should go into the rulemaking rather than picking an arbitrary number.

I yield the floor.

Mr. BOND. Mr. President, I have conferred with the minority whip. Some of our colleagues are in a meeting of the Energy and Natural Resources Committee. I urge those who have time who are not on the Energy and Natural Resources Committee to follow the distinguished Senators from Michigan and take their time and express their views so we may get on with this debate. We hope to have votes on these very important amendments.

Mr. REID. Mr. President, I will yield in a brief minute to the junior Senator from Michigan. While the acting leader is here, I want the record to reflect we are doing everything we can to cooperate in the consideration of this Energy bill. There was an hour we could have done nothing because there was no one here to do anything because they are meeting at the White House. In an effort to expedite matters, there was an order pending on the Singapore and Chile trade agreements. There are 7 hours of debate in an order here before we vote on that; we used an hour of that time even though that was not anything we had to do.

If we were trying to ''slow walk,'' as was said here today, that would have been an easy way to slow walk. The Senator from California came to the floor and used her hour.

The record should reflect this Energy bill is a very complex bill. People in good faith have different views on the legislation. As I said this morning, there is not a single Democratic Senator who does not want an Energy bill.

Mr. BOND. I thank the minority whip for his words. Obviously, there are times when other discussions have to go forward on the floor, and it was clear that the Senator from California had time. There will be many other areas of accommodation, setting aside amendments, to move on to the electricity amendment, for example.

We appreciate the cooperation of both sides of the aisle. I simply urge those who are not committed to the energy meeting to bring their positions to the floor and let us hear them.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise today to support the Bond-Levin amendment and I am very pleased to be a cosponsor. I commend both my colleague from Missouri and my senior Senator from Michigan for their work on this issue, and I certainly commend the Senator from Michigan for his statement. He presented the argument very well.

I also rise to oppose the Durbin amendment. I begin by saying this debate is not about whether we should increase vehicle fuel efficiency. That is

not what this is about. I agree with Senator DURBIN about the importance of creating more fuel-efficient cars and SUVs, not only because it decreases our consumption of oil and our dependence on foreign oil but because of the important benefits it has to our environment.

This debate is about what is the best way to increase fuel efficiency without punishing U.S. manufacturers and American jobs. We have made significant progress since last year's debate. NHTSA is moving forward with increasing CAFE standards. This past April, it announced its final rulemaking for light trucks for model years 2005 through 2007. This will be the largest CAFE increase in 20 years and

NHTSA has already announced plans to continue with rulemaking for the 2008 model year and beyond, later this year.

While this progress is extremely important, there are significant problems with the current CAFE standards and the way they are calculated. For example, the regulations continue to ignore such basic factors as the adverse competitive impacts of CAFE on our U.S. automakers, impacts on U.S. employment, and technology costs and necessary lead-time—which is very important.

The Bond-Levin amendment addresses these problems and builds on Senator LANDRIEU's amendment to reduce our dependence on foreign oil by 1 million barrels a day, an amendment I supported.

However, the Durbin amendment not only fails to fix the problems with the current CAFE system, but it makes them significantly worse.

Despite producing vehicles that are as fuel efficient, and often more fuel efficient than their foreign counterparts, our U.S. automakers continue to have a lower CAFE average then their foreign competitors. Why? That doesn't make any sense. Because the CAFE system does not reflect the real fuel economy of the cars and trucks in an automaker's fleet; instead it really reflects what vehicles consumers buy.

Therefore, an automaker can increase the fuel efficiency of all of its vehicles but still have a decline CAFE average depending on what models sell the most.

For example, over the past 4 years, GM has introduced new car and light truck models that are more fuel efficient than the models that they replaced, but GM's light truck CAFE has actually gone down.

In model year 2001, GM's combined car and truck CAFE average was 24.2 miles per gallon. For model year 2002, GM made fuel economy improvements to 18 different vehicles in its fleet, including SUVs and pickup trucks.

Some of these vehicles had 18 percent, 17 percent, 10 percent improvements in fuel economy over the previous year's models. The Chevrolet Silverado, a full size pickup truck, had over a 7 percent improvement on fuel economy.

But do you know what GM's combined car and truck CAFE average was for model year 2002? It was 23.4 miles per gallon, a 0.8 mile per gallon decrease from 2001. GM improved the fuel economy of 18 vehicles and their CAFE actually went down.

How does a system that does not reflect actual improvements in vehicle fuel economy and penalizes automakers for doing the right thing make sense? That is what this debate is about.

During last year's debate on this issue, we discussed in great depth the need for building a real federal partnership with our automakers to develop cleaner, advanced technologies, over arbitrarily picking higher CAFE numbers. The Senate resoundingly supported the first approach with a vote of 62–38 for last year's Levin-Bond amendment which I was pleased to cosponsor.

The Durbin amendment, however, would increase the CAFE standard for passenger cars from 27.5 miles per gallon to 40 miles per gallon—a 45 percent increase—in only 10 years. Incidentally, excluding hybrid and diesel vehicles, there are no cars on the market today that would meet this requirement.

It would also shift SUVs into the passenger car category, requiring SUVs that currently have a 20.7 mile per gallon CAFE standard, to double their fuel efficiency and meet a 40 mile per gallon standard. That would require an almost 100 percent CAFE increase for SUVs in just 10 years.

This amendment will have a disproportionately negative impact on our Big Three automakers, since they make a higher proportion of SUVs and pick up trucks than passenger cars. Furthermore, this CAFE proposal will not guarantee a more fuel efficient SUV, but it will guarantee that the SUV will not be made by an American auto company. How does that make sense?

It is also important to remember that the 40 miles per gallon number in this amendment is not anywhere in the National Academy of Science's 2001 report on CAFE.

Even under the most optimistic scenarios in the NAS report, which assume that consumers are willing to recover the higher costs of the technology over a 14 year period instead of a 3 year period and assume ''low'' technology costs, the highest projected level for any car within the 10–15 year timeframe, is 38.9 miles per gallon and that is for subcompact passenger cars.

And that is less than 40.

So if you assume that everyone gives up the SUV, gives up the truck, gives up the midsize car even, and goes to a subcompact passenger car, even if we all did that, we would not be able to reach the number in the Durbin amendment.

This amendment sets a CAFE number that according to the experts at NAS, not even the smallest passenger car could meet today.

The Bond-Levin amendment increases vehicle fuel efficiency without placing anticompetitive restrictions on our U.S. automakers. The amendment looks to the future, and provides the market incentives and investment in developing technologies that will really revolutionize the automobile industry.

The amendment directs the NHTSA to complete a rulemaking to increase fuel efficiency for passenger cars within the next 30 months, and standards for model year 2008 and beyond for light trucks within the next 32 months, but it also requires NHTSA to consider the flaws in the current CAFE system for this rulemaking.

We need to let the experts at NHTSA continue to do their job. And NHTSA has already moved forward by announcing the recent regulations for light trucks, the largest CAFE increase in 20 years.

Congress also needs to help automakers move in the right direction, instead of pulling them in the wrong one. Our automakers have already invested millions of dollars in developing cleaner, better technologies, and these investments are starting to pay off for the American consumer.

For example, a hybrid electric version of the GM Sierra full size pickup truck is going into production next year. Ford is currently developing a hybrid Ford Escape SUV which will be capable of being driven more than 500 miles on a single tank of gasoline.

In addition to these great technological developments, automakers have been working on fuel cell vehicles which could revolutionize the automobile sector within the next 15 years.

The Durbin amendment will force automakers to divert funding and research away from these important technological advancements and make meeting these incremental CAFE increases a funding and research priority. The Durbin amendment also locks the automakers into a rigid fuel efficiency plan for the next 10 years, setting back the progress they should be making on these important technologies.

Instead of placing restrictions on what our automakers produce, we should be looking for ways to help them introduce these better, cleaner technologies.

The Bond-Levin amendment includes incentives such as federal fleet purchase and alternative fuels requirements and a real federal investment in hybrid and clean diesel research and development.

These incentives will help create and build market demand for the more fuel efficient hybrid, electric or fuel cell vehicles, instead of locking automakers into costly incremental CAFE increases.

I urge my colleagues to vote for Bond-Levin-Domenici-Stabenow amendment and support increased fuel efficiency and a vibrant, economically healthy U.S. auto industry.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I rise to support the Durbin amendment to raise the fuel economy standard and close the SUV loophole. I consider this truly bipartisan because I disagree with Democrats as well as our Republican friends. But I feel compelled to bring a problem to the public with which we have to deal.

I think it is fair to say that this amendment strikes a reasonable note in what is too often a contentious debate.

Today, 18 years after the first Corporate Average Fuel Economy standards were implemented, the standards for cars, trucks, and SUVs remain unchanged.

We are running in place and a major reason is that when CAFE standards were first required in 1975, light trucks made up just 20 percent of the market and were used mostly for work, not for negotiating congested urban streets.

But that was a quarter century ago. Today, light trucks—a category that includes SUVs and minivans—represent half of all vehicles sold.

SUVs produce 48 percent more smogforming exhaust and 44 percent more greenhouse gases than cars.

Today's SUVs are not light trucks. They are passenger vehicles and we should regulate them as such.

The impact of regulating SUVs as passenger vehicles, instead of trucks, would be impressive: we would save more than 40 billion gallons of gasoline by 2010—an average of 6 to 7 billion gallons a year.

By updating our regulations to reflect today's driving realities consumers would also save $7 billion at the pump during that same period, according to the Union of Concerned Scientists.

Another reason to raise CAFE standards is global warming.

The U.S. transportation sector is responsible for nearly one-third of all U.S. greenhouse gas emissions.

Since 1975, the miles traveled by vehicles have skyrocketed by 150 percent.

Higher CAFE standards are essential to cleaning up the air of our Nation's metropolitan areas and in protecting the health of Americans—especially the health of our young and our elderly who are most vulnerable.

The Durbin amendment provides until 2015 to set the CAFE standard to 40 miles per gallon.

So this amendment is reasonable, it is doable, and it is the right step toward reducing our dependence on foreign oil.

But there are a few standard myths invoked by opponents of better fuel economy standards that could prevent some of our colleagues from supporting this amendment. I would like to try to straighten that out.

For example, we usually hear that jobs will be lost. Detroit worries that requiring better mileage standards will hurt car sales and lead to job losses.

But I submit that by their insistence on maintaining a decades-old status quo, American car manufacturers are stuck in reverse.

Instead of improving fuel economy, we have just hit a 22-year low.

The Big Three have demonstrated considerable skill in improving everything about American vehicles—except for their fuel economy.

It is that backward thinking that will actually hurt their businesses and lead to job losses.

EPA's Green Vehicle Guide for 2003 models revealed that out of the top 75 most fuel efficient vehicles, there were only four American models—only four! We can do better than that!

Another claim often heard is that lighter cars will lead to more highway deaths.

I submit this is a disingenuous and specious scare tactic.

In fact, a University of Michigan study found that based on deaths per million vehicles sold, SUVs are more dangerous than most types of cars on the road.

Contrary to conventional wisdom, the study went on to say that many small cars have lower total mortality rates than SUVs.

In other words, vehicle weight does not necessarily determine a vehicle's overall safety performance.

The Big Three insist that they are victims of ''consumer choice,'' that they only give American car buyers what they demand.

But while Americans like the convenience of an SUV, they certainly don't like to spend $45 or $50 filling the tank once or twice a week.

Americans want fuel-efficient automobiles which save them money at the pump.

The facts are clear. For the health of Americans, for environmental protection, for our energy security and for our pocketbooks, I urge my colleagues to close the SUV loophole and raise the bar for CAFE standards by voting for the Durbin amendment.

I also not once again the fact that there is a sufficient period of time put out there for these standards to be met.

I yield the floor.

Mr. FEINGOLD. Mr. President, I am voting in favor of the Bond-Levin Amendment, and I want to explain my views in detail. Fuel efficiency is a critically important issue for our country, for my home State of Wisconsin, and for our future. I remain committed to the goal that significant improvements in automobile and light truck fuel efficiency can be achieved over an appropriate time frame. Some will argue that my vote for Levin-Bond is a vote against increasing Corporate Average Fuel Economy, CAFE, standards; I do not share that view. The Bond-Levin amendment seeks to renew the Department of Transportation's role in setting CAFE standards acting through the National Highway Traffic Safety Administration, NHTSA. It requires NHTSA to set new standards by a time certain. If Congress does not act today to try to restore normalcy to the NHTSA process, Congress will always either block or act to set CAFE standards, every 20 years or so, when the political will is sufficient to do so. It will never become part of the normal process of reviewing and incrementally improving fuel efficiency for automobiles, as Congress originally intended when it passed the CAFE law in the 1970s.

As I did in the debate on last year's energy bill, I am committing myself to a consistent position on CAFE. Other interests have not done so. With my vote, I am affirming my past position, and I want to explain the evolution of that position.

Months prior to the midterm elections in 1994, NHTSA published a notice of possible adjustment to the fuel economy standards for trucks before the end of the decade. The following year, however, the House-passed version of the fiscal year 1996 Department of Transportation Appropriations bill prohibited the use of authorized funds to promulgate any CAFE rules. The Senate version did not include the language, but it was restored in conference. Much the same scenario occurred in the second session of the 104th and the first session of the 105th Congresses. In both those sessions, a similar rider was passed by the House and not by the Senate, but included by the conferees and enacted. However, the growth in gasoline consumption and the size of the light-duty truck fleet were concerns cited behind introduction in the Senate of an amendment to the bill expressing the Sense of the Senate that the conferees should not agree to the House-passed rider for fiscal year 2000. The amendment, sponsored by the former Senator from Washington, Mr. Gorton, and the Senator from California, Mrs. FEINSTEIN, was defeated in the Senate on September 15, 1999 by a vote of 55–40 and the rider was once again enacted into law.

As I stated on the Senate floor in the debates on the CAFE rider on June 15, 2000, my vote was about ''Congress getting out of the way and letting a federal agency meet the requirements of federal law originally imposed by Congress.'' I supported removing the rider because I was concerned that Congress had blocked NHTSA from meeting its legal duty to evaluate whether there is a need to modify fuel economy standards by legislative rider.

As I made clear then, I have made no determination about what fuel economy standards should be, though I do think that additional increases are possible, and that the recent rulemaking affirms that view. NHTSA has the authority to set new standards for a given model year taking into account several factors: technological feasibility, economic practicability, other vehicle standards such as those for safety and environmental performance, the need

to conserve energy, and the recommendations of the National Academy of Sciences. I want NHTSA to fully and fairly evaluate all the criteria, and then make an objective recommendation on the basis of those facts. I expect NHTSA to consult with all interested parties—unions, environmental interests, auto manufacturers, and interested citizens—in developing this rule. And, I expect NHTSA to act, and if it does not, this amendment requires Congress to act on a standard.

Voting against the Bond-Levin amendment would mean that I subscribe to the view that the rulemaking process cannot work. I do not support that view, just as I could not support retaining the CAFE rider in law.

The NHTSA should be allowed to set this standard. Congress is not the best forum for understanding whether or not improvements in fuel economy can and should be made using existing technologies or whether emerging technologies may have the potential to improve fuel economy. Changes in fuel economy standards could have a variety of consequences. I seek to understand those consequences and to balance the concerns of those interested in seeing improvements to fuel economy as a means of reducing gasoline consumption, dependence upon foreign oil, and associated pollution.

In the end, I would like to see that Wisconsin consumers, indeed all consumers, have a wide range of new automobiles, SUVs, and trucks available to them that are as fuel efficient as can be achieved while balancing energy concerns with technological and economic impacts. That balancing is required by the law. I fully expect NHTSA to proceed expeditiously with the intent to fully consider all those factors, and this amendment ensures they do so.

In supporting this amendment, I maintain the position that it is my job to ensure that the agency responsible for setting fuel economy be allowed to do its job. I expect them to be fair and neutral in that process and I will work with interested Wisconsinites to ensure that their views are represented and the regulatory process proceeds in a fair and reasonable manner toward whatever conclusions the merits will support.

Ms. MIKULSKI. Mr. President, I rise as a cosponsor of the Bond-Levin amendment to provide a reasonable compromise on CAFE standards. Our amendment provides a strategy for energy conservation while safeguarding American jobs. I strongly believe in energy conservation, and I support the effort to build more fuel efficient cars. Yet I also believe in job conservation. I believe we can improve the fuel efficiency of our cars without making it even harder for American workers to compete.

In considering any fuel efficiency standard proposal, I apply four criteria. Any proposal must achieve real savings in oil consumption. Secondly, it must preserve U.S. jobs. The goals for increased CAFE standards must be realizable and achievable by giving companies a reasonable lead time to adjust their production. And finally, it must create incentives to enable companies to achieve these goals. The Bond-Levin amendment meets this criteria.

I strongly agree with the underlying goals of greater fuel efficiency and energy conservation associated with increases in CAFE standards. We desperately need to reduce our dependence on foreign oil. We use about 20 million barrels of oil a day. About 40 percent of that goes to fuel cars and light trucks. Half of our oil is imported, a quarter of which from the Persian Gulf. It is imported from countries like Saudi Arabia, which sits on roughly two-thirds of all the oil reserves in the world. A reduction in our dependency on foreign oil would also greatly increase our flexibility in the war against terrorism. That's why I supported the Landrieu amendment. This amendment requires the President to submit to Congress a yearly report on the progress made toward reducing our dependency on foreign petroleum imports by 2013. This amendment also requires the Administration to develop and implement strategies to reduce our dependency by 1 million barrels of oil per day by 2015.

I support the key provisions in the energy bill that will help us conserve fuel. We need to build on these innovative provisions that encourage better fuel economy. And we must do it in a way that doesn't cost American jobs. That's why I oppose legislating arbitrary increases on CAFE.

Arbitrary Increases in CAFE would be counterproductive. Any increase should be a question of science, not the result of legislative compromise. The NAS study said the most efficient small car could achieve 35.1 mpg within 15 years and the most efficient small truck could achieve 30 mpg within 15 years. One standard for small cars, one for small trucks. The study said nothing about a combined calculation for cars and trucks. There was no recommendation for an entire vehicle fleet.

Other proposals which call for an arbitrary increase in CAFE would have a devastating effect on our Nation's biggest industry—the automobile industry. It is unfair to the American auto worker. In my State of Maryland, 1,500 people work at the GM plant at Broening Highway in Baltimore building mini-vans. The workforce at the Broening Highway plant is down from 2,700 workers in the mid 1980's. Arbitrary increases would give an unfair advantage to foreign car manufactures and penalize U.S. automakers and auto workers, like the hard-working men and women at the Broening Highway plant, for selling vehicles that Americans are actually buying.

Large vehicles represent a small portion of the total fleet of European and Japanese auto companies. These companies produce so many smaller cars because that's what their customers buy. Most of their markets are in Europe and Asia where the landscape is much different. Consumers pay as much as $4 or $5 per gallon of gas. They have narrower roads and a limited highway infrastructure. Bringing a small fleet into the U.S. allows them to easily comply with our fuel economy standards. Even when you include their SUV's and light trucks, the average fuel efficiency standard for their fleet is still low.

When a foreign auto maker exceeds our fuel efficiency standards they also earn CAFE ''credits'' to buffer them in future years. These credits can be shifted to offset shortfalls for up to three model years. This means that if companies have a banner year selling smaller, more efficient vehicles, they can buffer future sales of larger trucks and SUVs. But this does not mean that foreign manufacturers sell more fuel efficient trucks and SUVs. In fact, the difference is usually 3–4 mpg. Their dependence on a smaller fleet allows them to enter the truck and SUV market without worrying about the CAFE standards of the larger vehicles.

Over the past decade, U.S. manufacturers struggled to meet CAFE requirements across a full-line of vehicles—both cars and trucks. Because a higher proportion of the U.S. automakers' fleets are trucks, raising CAFE standards will have more severe adverse effects on GM, Ford, and DaimlerChrysler than on other manufacturers.

Proposals to increase CAFE standards are also unattainable. They set aggressive standards on too short a timeline. This is in direct contrast to the NAS panel, which states ''Technology changes require very long times to be introduced into the manufacturers' product lines.''

Within any argument on CAFE, we must not forget to take into account the demands of consumers. A drastic increase in fuel efficiency standards causes a drastic change in the types of cars, which causes a limited choice of available cars and trucks for consumers. Alternate proposals set a default level for light trucks that is not achieved by ANY light truck on the road today. This would effectively cap the sales of light trucks—it would curb consumer choice.

I believe we can find other ways to achieve fuel conservation that won't cost American jobs. Our domestic automakers have already been weakened by the current recession, and we can't rely on foreign manufacturers to provide American jobs.

The numbers don't lie. The NAS reports that the United Auto Workers has seen its membership drop from 1.4 million members to 670,000 from 1980 through 2000. This loss was countered by the creation of only 35,000 jobs in assembly plants built in the U.S. by foreign automakers although imports have risen by 9 percent over the past 8 years. Our domestic auto share is falling. Only 64 percent of cars bought in

America today are built in America compared to 73.9 percent in 1994. 1,000 workers were recently laid off at the GM plant in Baltimore, and the plant went through another shutdown after slow sales. In fact, GM shut down 14 of its 29 North American assembly plants for at least a week last year.

Today, all manufacturers have advanced technology programs to improve vehicle fuel efficiency, lower emissions and increase occupant protection. A return to a flawed regulatory program of higher CAFE standards would divert resources from these efforts. Raising CAFE standards to levels that effectively squash the American auto industry is not the only solution. Senators BOND and LEVIN have an alternative that is reasonable and fair. It brings together two common goals of Increasing fuel efficiency and protecting jobs and the American economy.

The Bond-Levin amendment directs the Department of Transportation to increase CAFE standards for cars and light duty trucks based on several factors. These include the desirability of reducing our dependence on foreign oil; the effect on U.S. employment; impacts on motor vehicle safety; cost and lead time required for introduction of new technologies; and the effects of increased fuel economy on air quality.

It also directs the Department of Transportation to complete two rulemakings. First, they must complete a rulemaking within 30 months to increase standards for passenger cars. Second, they must complete a rulemaking to increase standards for light trucks no later than April 2006. This will go into effect for model year 2008. Each rulemaking is to be given on a muliti-year basis, but cannot exceed 15 model years. This amendment also directs Congress to take action on CAFE should the DOT not take action in the required timeframe.

This bi-partisan amendment also includes expanded research and development into the production of hybrid electric vehicles and to improve diesel combustion. It authorizes $50 million per year over the next three years to conduct the hybrid electric technology research, and $75 million per year over the next three years for advanced combustion engine research and development.

Finally, the Bond-Levin amendment requires the Federal Government to purchase advanced technology vehicles, beginning in 2005. Hybrid vehicles must be purchased or leased for light duty truck fleets and alternative fuel vehicles must be purchased or leased for passenger car fleets.

We can have both energy conservation and job conservation. But it cannot be done by changing a number. It will take innovative solutions, improved technology, and the setting of realistic, achievable goals. The Bond-Levin amendment accomplishes these goals.

I urge my colleagues to join me in supporting the Bond-Levin amendment.

Thank you.

Mr. DOMENICI. Mr. President, parliamentary inquiry: I just returned, and I apologize. Where are we now? As I understand it, some time was used on a matter other than this bill charged to other matters. How much time is left now, and who has the time?

The PRESIDING OFFICER. The Senator from New Jersey has 4 minutes remaining. The Senator from Illinois has 15 minutes. The junior Senator from New Mexico has 5 minutes. The senior Senator has 5 minutes. The Senator from Mississippi has 1½ minutes.

Mr. DOMENICI. I note the distinguished minority whip is here.

The PRESIDING OFFICER. Does the Senator from New Jersey yield his time?

Mr. REID. No. He is not yielding back his time.

Mr. DOMENICI. He did. Yes.

Mr. LAUTENBERG. I am reserving the rest of my time.

Mr. REID. Mr. President, now that the manager of the bill is here, I renew a unanimous consent request that I made a short time ago. I ask unanimous consent that the Feinstein CAFE amendment be the next Democratic amendment in order. In addition to the unanimous consent request, I know the Republican manager has first right of recognition, but there is going to come a time when we offer our next amendment. I am alerting everyone that it will be the Feinstein CAFE amendment.

Mr. DOMENICI. We object to granting you that privilege at this point. We understand the time will come, but it isn't certain that she will have the next amendment. That is the point.

Mr. REID. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator does not have time under the agreement.

Mr. REID. I ask unanimous consent to have the Lautenberg time.

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

Mr. REID. Mr. President, all day we have heard that we are slow-walking this bill. In an effort to help manage what goes on here, we have asked the Senator from California who has a CAFE amendment to be the next in order. We have 382 amendments. We have about half of them over here. Any one of the Senators can call up any one of their amendments. I think it would be in the best interest of the Senate if we have an orderly process for offering these amendments. This does not disadvantage the majority in any way. We have done what we can to help move this bill forward. Senator FEINSTEIN spoke. She came over to offer this amendment and couldn't do it.

Mr. DOMENICI. We have no objection. I misunderstood. I apologize. If you want the RECORD to reflect that the next Democratic amendment will be Senator FEINSTEIN's amendment on CAFE, we have no objection.

Mr. REID. Mr. President, so there is no misunderstanding. I ask unanimous consent—this is for the Democratic Senators—that next Democratic amendment that we offer, whenever that might be, will be the Feinstein CAFE amendment.

Mr. DOMENICI. That is correct; whenever you do.

Mr. REID. That is right.

Mr. DOMENICI. So you don't have any misunderstanding either, we will be finished with the debate and, as we understand it, we will then vote.

Mr. REID. We will vote. Following that vote we have two amendments to dispose of—another Durbin amendment which may work out very easily, and the second is the Campbell amendment. Following that, we have been advised on several occasions that the majority who has first right of recognition wants to offer the new electricity section.

Mr. DOMENICI. That is correct.

Mr. REID. That is fine. Whenever we offer our next amendment, Senator FEINSTEIN will offer her amendment on CAFE.

Mr. DOMENICI. We want to accommodate. If there was any misunderstanding, it perhaps was on my part. I have no objection.

I yield the floor and suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally to the remaining three Senators.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BINGAMAN. Mr. President, how much time remains for me to discuss the Levin-Bond amendment and the Durbin amendment under the unanimous consent agreement?

The PRESIDING OFFICER. The Senator has 4 minutes remaining.

Mr. BINGAMAN. Mr. President, let me speak for that 4 minutes to indicate my opposition to the Levin-Bond amendment. As I see that amendment, by adopting it, we would do two things. First, we would be erecting new barriers to the development of meaningful fuel economy standards. Secondly, we would be effectively walking away from an opportunity to do something right about decreasing our growing oil consumption. In both cases, we would be making a mistake.

The Bond-Levin amendment establishes additional criteria that would impose unnecessary hurdles to any significant increase in fuel efficiency standards. There are multiple new factors such as the effect of CAFE standards on the relative competitiveness of manufacturers and levels of U.S. employment. Those kinds of criteria are

being added to the current rulemaking process. In my view, adding those kinds of criteria will only cause the courts to revisit the careful balance that is already struck in the present statute.

NHTSA already considers in-depth evaluations of the impact of a standard on safety, on the environment, and on American jobs. And the Levin-Bond amendment complicates the agency's task by providing a lengthy list of 13 items which, in my view, are unnecessary and deliberately vague new statutory provisions that have to be considered.

This is not progress. We need to be honest with the American people and ourselves and recognize that if Alan Greenspan cannot even tell us the effect of a small drop in interest rates on the economy in the near future—as it is clear that he cannot and has not been able to, and he readily admits has not been able to—how can we expect the National Highway Transportation Safety Administration to possibly determine with accuracy the effect of any change in CAFE standards on employment levels or on relative competitiveness?

Passenger vehicles today already use more petroleum than is currently produced in the United States. The Energy Information Agency projects consumption to increase an additional 2 million barrels per day before the end of this decade. Consumer preference has switched to light trucks and sport utility vehicles in recent years, and this has caused the average fuel economy in the U.S. passenger fleet to actually drop rather than improve. We are going backward with regard to fuel efficiency in vehicles.

Today, we have the lowest fuel efficiency we have had since the early 1980s in our entire fleet of vehicles. A decision not to increase CAFE standards significantly is a decision to become more and more dependent on foreign energy sources.

I just returned from a meeting in the White House, where the President met with many of us, including my colleague from New Mexico, myself, the majority leader, the Democratic leader, and all of us were talking about how important it is that we move ahead with progressive energy legislation, and that we do so in order to reduce our dependence on foreign oil. The biggest factor causing an increased dependence on foreign oil is the increase in the use of oil and gasoline in motor vehicles. Instead of increasing the efficiency with which we reduce the efficiency of our motor vehicles, we are moving in just the opposite direction.

Despite what automakers are saying, new engines, transmission, and hybrid technologies are now available to give automakers the means to increase gas mileage over the next 10 years without reducing either vehicle size or weight. Mr. President, we drove to the White House a few minutes ago in a new Honda Civic that is a hybrid. The average miles per gallon of that vehicle is between 45 and 50 miles.

It is very unfortunate, in my view, that the only hybrid vehicles available to a U.S. consumer today are Japanese vehicles. They are the hybrid that is produced by Honda and the hybrid produced by Toyota.

I see that my time is up. I urge my colleagues to oppose the Levin-Bond amendment. I do support Senator DURBIN's amendment. I hope we can adopt that amendment and make some significant progress toward increasing vehicle fuel efficiency.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, would you tell me how much time there is before the votes on the Durbin and Bond-Levin amendments?

The PRESIDING OFFICER. The Senator from Illinois has 12 minutes; the Senator from New Jersey has 1 minute 40 seconds; the Senator from New Mexico has 3 minutes 45 seconds; the Senator from Mississippi has 1 minute 8 seconds.

Mr. REID. Will the Senator yield?

Mr. DURBIN. Not on my time.

Mr. REID. This will be off of Senator LAUTENBERG's time. The Senator from Missouri, Mr. BOND, has asked that the proponents of these amendments have some time to speak before the votes take place. Senator DURBIN should be able to speak last, which is normal; it is his amendment. I want to make sure everybody has ample time to speak. The Senator from Missouri said he wants 2 or 3 minutes. Is that OK if Senator BOND has 2 minutes?

Mr. DOMENICI. That is fine. I was going to make sure he got it by giving him some of mine. I appreciate that very much. It is hard to say who should speak last because the first amendment to be voted on is Senator BOND's amendment. Maybe he should be speaking last. If that is the way we are going to do it——

Mr. BOND. Mr. President, to clarify, is there time after the vote on the Durbin amendment for debate on the Bond-Levin amendment?

Mr. REID. The Senator said you are going to be first.

Mr. BOND. Is there time for debate after that on the Bond-Levin amendment?

Mr. REID. Mr. President, I ask unanimous consent that there be 4 minutes equally divided.

Mr. DURBIN. Mr. President, what is the regular order of the votes on the amendments?

The PRESIDING OFFICER. The vote will occur first on the Durbin amendment, followed by the Bond amendment.

Mr. DURBIN. If I understand the unanimous consent request by the Senator from Nevada, there will be 4 minutes before the vote on the amendment of the Senator from Missouri.

Mr. REID. I modify my request to that effect.

Mr. BOND. There will be time allotted for those of us on the other side prior to the Durbin amendment—who has the last minutes on that, I ask the managers?

Mr. DOMENICI. Well, look, Senator DURBIN has 15 minutes. We don't need to give him any more time. He can save 2 of that for just before the vote. We need to save Senator BOND 2 minutes. We need to give Senator BOND 2 minutes to speak in opposition. Senator DURBIN doesn't need any additional minutes beyond the 15.

Mr. DURBIN. I probably have all I need.

Mr. DOMENICI. I thought you had been speaking all afternoon—but it is eloquent.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, please alert me when I have 3 minutes remaining.

The PRESIDING OFFICER. The Chair will do so.

Mr. DURBIN. Mr. President, before us is the most important single amendment on the question of energy security of the United States. That is quite a bold assertion but I stand by that because we understand how dependent we are on foreign oil. We understand that as long as the cars and trucks that we use in America are not fuel efficient, we will continue to have this dependence on foreign oil. So if we want to secure the Nation from an energy point of view, we have to show leadership on the floor of the Senate. We did that in 1975; 28 years ago, we established standards that said to those producing cars for sale in America: You are not doing a good enough job. Fourteen miles a gallon is unacceptable. You have to do better and we will give you 10 years to improve that. And they did.

At the end of 10 years, 27 and a half miles per gallon was the average fleet economy average across America. It was done because this Congress had the will. This Congress stood up to the special interest groups and said it is more important for the energy future of America and for families and businesses for us to have fuel efficiency. Look what we got for it: safe, fuel-efficient vehicles by 1985—double the fuel efficiency of just 10 years before.

Now I come to the floor and say, why haven't we done anything since 1985? Eighteen years of inaction. Isn't it time for us to show leadership again? You would think I was proposing the end of the automobile industry in America. Listen to the arguments we hear from the other side. A Senator came on the floor today and said: If DURBIN has his way, we are all going to be driving golf carts.

Get real. The technology is there. Don't take my word for it. I am a liberal arts lawyer. What do I know about engineering?

In 2001, the National Research Council came out with a report specifying all the technologies currently available that could increase fuel efficiency in cars and trucks. Why aren't they being

put on those vehicles? Because Detroit doesn't have the will to do it. And because they don't, we continue to be sold heavier, more cumbersome, and, in many respects, more dangerous vehicles, with even worse fuel economy; we continue to import oil from overseas and be dependent on the Middle East; we continue to burn that oil, polluting the environment, creating greenhouse gases, resulting in public health problems and a degradation of the environment and, frankly, endangering species on Earth that could live, because they are God's creation, but will be destroyed because we are ignoring our responsibility today.

There are those who said: We cannot do this. We must understand that when it comes to this technology war between the United States and other countries, those who oppose this amendment say: Don't you understand, Senator DURBIN, we are not up to this fight; we cannot win this fight; we have to find a way to avoid this battle. And I will say to them: That is not my point of view. I believe America can compete. We have proven it in the past. We proved it in 1975.

These people who are so afraid that we will be forced to put a more fuel efficient car on the road that is also safe have told us it is impossible, and leading that chorus is none other than the big three in Detroit, once again falling behind when it comes to a global challenge to do the right thing. That is sad.

For those of us who want to encourage American automobile manufacture, for those of us who want to stand behind those workers, I ask them the simple question: Why are they afraid to lead? Why are they afraid of a challenge to their creativity, to their innovation, to their leadership? Why must we always take second place when it comes to automobile technology? I think America is capable of much more. But those doubters, those who do not believe America is up to the challenge, say: Defeat the Durbin amendment. If you establish a standard of 40 miles a gallon, America is throwing in the towel; we are giving up; no way we can compete on that kind of a standard.

They also say—and this is the saddest part of their argument—we also know foreign countries can compete and will compete successfully against us. What a sad commentary on American industry for the critics of this amendment to come up with that argument. I do not stand by it. I think if we show our leadership, they will show theirs. They did it in 1975; they can do it again today.

There is an old story—and it is probably anecdotal—that after we passed the CAFE standards in 1975 and said we wanted better fuel efficiency in our cars, in Japan they got the message of the passage of this new law and they said: Go out and hire an army of engineers; we have to be ready to compete. When they got the news of the passage of this new law in Detroit, they called all their leaders together and said: Go out and hire an army of lawyers to fight this law. That is sadly reflective of the mentality that comes to the floor today.

Instead of saying American industry can do better, that American families can expect more, that the next generation will have more safe and fuel-efficient cars, the opponents of this amendment say it is impossible, it cannot be done, and it can only be achieved at the expense of the American automobile industry.

That is a sad commentary. Frankly, it is one we should reject. I say to my colleagues in the Senate: If this Energy bill that involves so much work by so many people, S. 14, is to have any value, aren't we going to address the most important single use of energy by American families and businesses today—our transportation sector and its utilization of the imports of oil? If we do not do that, this bill is just window dressing. It is nice.

There are some aspects of the bill I actually like, but it does not get to the heart of the issue. It fears the heart of the issue because there are people who are afraid of it, and I think they are just plain wrong.

Let me mention a couple of other arguments brought up by my opponents. They said the Durbin amendment achieving 40 miles a gallon by 2015 is too fast and too furious. I remind them, the Durbin amendment is an increase of less than 1 mile per gallon per year for the first 6 years. That is hardly fast and furious.

They say my amendment is going to terminate jobs, safety, and consumer choice. The same weak arguments were made in 1975, and they should be rejected today as they were in 1975.

They say my CAFE levels are arbitrary. Listen, we use a standard, not political argument. The National Academy of Sciences already identified the technologies that can be put in cars and trucks effectively. They also say the Bond-Levin amendment is a great leap forward, but it is a great leap forward for litigation.

The Bond-Levin amendment is not an invitation to innovation; it is an invitation to litigation. Let me tell my colleagues why I say that. They establish the standards by which we can improve fuel efficiency in America through the National Highway Traffic Safety Administration. On one side of this chart are the existing standards. There are a handful of them. The opponents of my amendment decided to add all of these items to the standards that have to be followed by NHTSA before they can improve fuel economy.

What does this mean? It means that if they ever muster the courage to say we can have more fuel efficient vehicles, they will be challenged in court on each and every one of these elements. They will be tied up in court for years. That is exactly what the opponents of the Durbin amendment want. They do not want to see more fuel efficiency. They want this delayed indefinitely. And that delay means more dependence on foreign oil. It means more pollution. It means less energy security for America.

To come up with all of these new categories that have to be met is just a guarantee that, in our lifetime, we will never see a change. For 18 years we have not. NHTSA, left on its own for the last 18 years, has nominally improved MPG, miles per gallon, in America by 1.5 miles per gallon—in 18 years. How long will it take us to reach 32 miles a gallon by that standard? We would not see it this century. That is how slow they are today.

In comes the Bond-Levin amendment and it says: Let's throw some other categories in here and obstacles to increasing fuel efficiency.

The American people get this. American businesses do, too. They understand that more fuel efficient vehicles are going to make a more productive economy, make certain that America is more competitive, make certain there are more and good paying jobs. We are not going to throw in the towel. With the Durbin amendment, we accept the challenge that we can keep our love affair with the automobile alive but do it in a responsible way. It is the kind of situation our Nation has responded to time and again, and I think we should today.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

The Senator from Missouri.

Mr. BOND. Mr. President, obviously, I do not have the time the Senator from Illinois has, but I do want to point out that the National Academy of Sciences says:

> The committee cannot emphasize strongly enough that cost efficient fuel economy levels are not recommended CAFE goals.

The National Academy of Sciences also said that when the politically driven fuel economy numbers were imposed in the seventies and eighties, somewhere roughly approximating 2,000 deaths a year occurred on the highways due to smaller cars. Talk about the production of automobiles in auto-related industries in Missouri and Illinois, even in New Mexico: 21,000 in New Mexico; 16,000 in Rhode Island; 221,000 in Missouri; 331,000 jobs in Illinois.

I previously submitted for the RECORD a letter from the United Auto Workers saying it would endanger the jobs of their members.

Furthermore, we also know it does not relate to consumer choice. Thirty cars on the road today get more than 30 miles per gallon, and they represent only 2 percent of the sales. Consumers do not want them. Unless we have to tell people what they have to drive, we are not going to get them to drive around in these cars unless and until we get the technology to produce more fuel efficient cars.

We have seen NHTSA, the National Highway Traffic Safety Administration, make the most significant increase in fuel economy with their light

truck standards which are going into effect. We mandate in the Bond-Levin amendment that the maximum feasible technology be utilized to increase standards in the future.

Let's get real. Let's talk about what is technologically feasible, what will continue jobs, get better fuel economy, not risk the lives of the drivers on the road and their families, and also not throw out of work the very wonderful American men and women who are making these automobiles in my State and others.

I urge my colleagues to reject the Durbin amendment and support the Bond-Levin amendment.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have how many minutes?

The PRESIDING OFFICER. Two minutes 53 seconds.

Mr. DOMENICI. Mr. President, I will try to do it in that period of time. I ask unanimous consent for 3 minutes instead of the 2 minutes and something.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, the Senator from New Mexico, the manager of this bill, can have whatever time he wants.

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

Mr. DOMENICI. Mr. President, I think I am going to do it in 2 minutes and whatever few seconds.

First, I have been looking forward to this debate all day because it is a very mature debate. The Senate spent a good deal of time last year discussing these two amendments, as well as others. The Feinstein amendment we agreed to and that we will be talking about, I think we discussed it heretofore also, but in any event, a lot of time has been spent discussing these amendments.

In addition to these amendments, I remind Senators that we have already adopted an amendment, that came as quite a surprise, by Senator LANDRIEU that would require the President to develop a plan to reduce domestic petroleum consumption by 1 million barrels a day by 2013. Since major reductions in oil consumption are most likely going to be achieved through reductions in the use of transport fuels, the President, as a result of the Landrieu amendment, will probably have to focus on measures to increase fuel economy.

I suggest to Senators that the Landrieu amendment may obviate the need for further debate. Nonetheless, we are debating and we will continue to debate. It seems to me the Landrieu amendment gives the President the kind of authority and flexibility needed in this country if, in fact, this issue is as important as it is being alluded to.

Keeping that in mind, if the Senate must choose among the offered CAFE amendments, I must lend my support to the amendment offered by Senator BOND and Senator LEVIN. Under Bond-Levin, standards will be based upon sound science and solid technical advice. Their amendment mandates that NHTSA experts set a new CAFE number considering jobs, safety, technology, and other key factors.

The Bond-Levin amendment passed overwhelmingly last year. I do not think much has changed. As a matter of fact, we are a little bit more secure in terms of energy now. We are still using a lot, maybe more, but the world is a little more secure in terms of oil dependence. The amendment they have offered is what I would call a commonsense amendment. It would not adversely affect employment, safety, or consumer choice, but it would do the job.

Incidentally, the amendment is supported by the United Auto Workers, the National Chamber of Commerce, the AFL–CIO, the Association of Manufacturers, the Farm Bureau of America, and over 30 additional associations.

When combined with the considerable tax incentives for advanced vehicle technology in the Finance Committee package, the Bond-Levin amendment offers a sensible way to achieve fuel efficiency gains and to reduce our dependence on foreign oil. It does so in a way that would not hurt the United States economy, increase vehicle cost to consumers, and cost American jobs or endanger lives.

I understand the distinguished Senator from Illinois has about 3 minutes, after which time we will start a vote.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Illinois.

Mr. DURBIN. Mr. President, I understand I have 3 minutes to close the debate, is that right?

The PRESIDING OFFICER. Two minutes and 45 seconds.

Mr. DURBIN. I ask unanimous consent that a list of organizations supporting the Durbin amendment, as well as a letter from Mr. Chuck Frank of Z. Frank, the world's largest Chevrolet dealer, who supports my amendment, be printed in the RECORD.

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

NATIONAL SUPPORT FOR THE DURBIN CAFE AMENDMENT

Cosponsors: Nelson (FL), Jeffords, Reed (RI), Reid (NV), Kennedy, Boxer, Lautenberg.

Supporting Organizations: Sierra Club, Union of Concerned Scientists, Natural Resources Defense Council, U.S. PIRG, National Environmental Trust, Friends of the Earth, Public Citizen, The Wilderness Society, Citizen Action Illinois.

Coalition on the Environment and Jewish Life, National Council of Churches, Hadassah, the Women's Zionist Organization of America, American Jewish Committee, Jewish Council for Public Affairs, Union of American Hebrew Congregations, Central Conference of American Rabbis, MoveOn, Chesapeake Climate Action Network.

JULY 24, 2003.

Hon. RICHARD DURBIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR DURBIN: I am writing in support of raising fuel economy standards. I am the President of ''Z'' Frank Chevrolet. I've sold well over 1,000,000 vehicles. My family has been selling and leasing cars and trucks in Chicago since 1936. Before entering the family business in 1976, I graduated from George Washington University and then the University of Chicago Graduate School of Business. I have been a Chevrolet dealer since 1982 and since then have also held franchises from Oldsmobile, Hyundai, Mazda, Subaru and Volkswagen.

I know the car business, and I know that car companies can, and must, do better for the sake of our country.

I call on you to support the three CAFE related amendments that are expected to be offered—the Durbin amendment, the Kerry/McCain amendment and the Feinstein/Snowe amendment.

I support these amendments because I know that cars, SUVs and other light trucks consume 8 million barrels of oil every day and account for 20 percent of U.S. global warming emissions. At a time when energy security is a national priority, raising fuel economy standards will cut the country's dangerous dependence on oil, curb global warming, and save consumers money at the gas pump. Raising fuel economy standards is the best way to manage our energy future and encourage automakers to implement technologies that already exist.

How do I know that the auto companies can make vehicles that go further on a gallon of gas? Because they're already doing it with a small number of vehicles!

Existing fuel-saving technologies like more efficient engines, smarter transmissions, and sleeker aerodynamics are being put in some vehicles, but they could be in all. Already this year, we have seen a host of announcements showing that all kinds of vehicles can get better fuel economy using existing technology. For instance:

General Motors announced that it will be putting Displacement on Demand technology in 100,000 Chevy Trailblazers and GMC Envoys, helping improve the fuel economy of these large SUVs. Continuously Variable Transmissions are also gaining in popularity.

Hybrid-electric drivetrains are also becoming available in a range of vehicles. At this year's Detroit Auto Show, Ford, General Motors, and Toyota all announced that they will have hybrid gasoline-electric SUVs on the road within two years that will get close to 40 miles per gallon.

Toyota already has a hybrid gasoline-electric car on the road, the Prius, and plans on having SUVs and more hybrid cars as well. The Chevrolet Malibu will have a hybrid version by 2005.

J.D. Power and Associates has forecasted that sales of hybrid-electric vehicles will reach 500,000 within five years.

It is not easy for me to be at odds with the manufacturer I represent. Selling Chevrolets has been very financially beneficial for me and my family. But the fact is, they can and must do better. They can build cars, trucks and SUVs that are safe, affordable, and exciting to drive, while still going further on a gallon of gas. It's in the best interest of our country to raise the fuel economy standards of our cars and light trucks. Please feel free to share this letter with others. I hope it helps.

Sincerely,

CHARLES E. FRANK,
President, ''Z'' Frank Chevrolet.

Mr. DURBIN. Mr. President, when one lists all of the groups that oppose

this, on business and labor, frankly, we would have found the same opposition in 1975. Those are the same groups that were arguing it is physically impossible for us to have more fuel-efficient cars. If they would have had their way, we would still all be driving cars at 14 miles a gallon or worse.

This Congress rejected those same groups and their positions 28 years ago, but we have not done a thing since. As a result, the fuel efficiency of our cars and trucks has gone down. Is that in the best interest of America? Is that as good as Congress can do, to abdicate our leadership and responsibility on something this essential?

I look at these automobile manufacturers—many of them are my friends and I have worked with them. Certainly, United Auto Workers has been one of my strongest supporting organizations since I have been involved in politics, but I just disagree with them. I believe America can do better. I think if we challenge American business and labor to work together for more fuel-efficient vehicles, they can rise to the challenge. But if we throw in the towel, as the Bond-Levin amendment does, then we know what is going to happen. We are going to continue to see this situation get worse.

The Senator from New Mexico talks about the Landrieu amendment, and I voted for it because it was a wonderful little message to include in this bill, but it does not have any teeth. It has no enforcement. What it basically says to the President is we hope he will see the light, we hope he will lead the way, and if he does, we would sure like to help him.

If that is the case, if that is all Congress is about, why do we have this bill? Why do we not say to the President of the United States, why doesn't he take care of the energy needs of America, and if he needs us, call us? Well, we do not say that. We say we accept our part of the responsibility to pass reasonable laws based on sound science to make America more energy secure.

I say to my colleagues, if we have an energy bill that does not address the fuel efficiency of vehicles, we have ignored the most important energy and environmental issue that should be debated under this bill. The special interests will have won the day again, as they failed in 1975, and as a result we will continue to see dependence on foreign oil, more air pollution, and less energy security for America.

That is not what we should promise to further generations, and I urge my colleagues to support my amendment.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to amendment No. 1384.

The Senator from New Mexico.

Mr. DOMENICI. Have the yeas and nays been ordered?

The PRESIDING OFFICER. They have not.

Mr. DOMENICI. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we are going to vote on this amendment, and then immediately following that, the next amendment will be the Bond-Levin amendment, which will be preceded by 2 minutes of debate on the part of Senator DURBIN in opposition and Senator BOND in favor. So Senators should know we have one vote, with 4 minutes of debate followed by another vote. I ask unanimous consent that the second vote be a 10-minute vote.

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

The question is on agreeing to amendment No. 1384.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

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

The result was announced—yeas 32, nays 65, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—32

Akaka	Dodd	Leahy
Bingaman	Durbin	Murray
Boxer	Edwards	Nelson (FL)
Cantwell	Feinstein	Reed
Carper	Gregg	Reid
Chafee	Harkin	Rockefeller
Clinton	Hollings	Sarbanes
Collins	Inouye	Schumer
Corzine	Jeffords	Snowe
Daschle	Kennedy	Wyden
Dayton	Lautenberg	

NAYS—65

Alexander	Dole	McCain
Allard	Domenici	McConnell
Allen	Dorgan	Mikulski
Baucus	Ensign	Miller
Bayh	Enzi	Murkowski
Bennett	Feingold	Nelson (NE)
Biden	Fitzgerald	Nickles
Bond	Frist	Pryor
Breaux	Graham (SC)	Roberts
Brownback	Grassley	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Byrd	Hutchison	Smith
Campbell	Inhofe	Specter
Chambliss	Johnson	Stabenow
Cochran	Kohl	Stevens
Coleman	Kyl	Sununu
Conrad	Landrieu	Talent
Cornyn	Levin	Thomas
Craig	Lincoln	Voinovich
Crapo	Lott	Warner
DeWine	Lugar	

NOT VOTING—3

Graham (FL)	Kerry	Lieberman

The amendment (No. 1384) was rejected.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1386 AS AMENDED AND MODIFIED

Mr. DOMENICI. Madam President, fellow Senators, if you will not leave, we will vote again very shortly. There are 4 minutes with 2 minutes on each side, and then we will vote on the Bond-Levin amendment. The Senator from Illinois has the first 2 minutes and Senator BOND wraps it up. Then we will vote.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN. Madam President, under the unanimous consent agreement, I have 2 minutes to speak in opposition to this amendment.

I understand some of my colleagues have offered this amendment in good faith in an effort to address the issue. The amendment which was just defeated addressed the issue. It would have increased fuel efficiency of cars. This Bond-Levin amendment establishes additional criteria for the National Highway Traffic Safety Administration to meet before they recommend and implement any increase in fuel efficiency.

What does this mean? Here are the existing standards that have to be met with the passage of this amendment. We add all of these new standards that have to be met. There are more hurdles to be cleared. It is an invitation for litigation because as the rules are announced those who oppose them will be able to step forward and say: you didn't meet this Bond-Levin criteria or you didn't meet this one. It just means further delay.

We know what NHTSA has done on its own. It has increased fuel efficiency by 1.5 miles per gallon in a span of 18 years. This is false hope. This is a figleaf for those who just voted no and say they want to vote yes. I encourage my colleagues to oppose this amendment.

Mr. BOND. Madam President, I yield to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Madam President, our amendment will increase full efficiency but in positive ways by giving incentives to purchase vehicles, by having the Government buy the vehicles which are leaps ahead in technology, and by having the Government be more involved in joint research and development. By the way, we don't add criteria which must be met. We add criteria which we want the Department of Transportation to consider.

Is there anyone who doesn't want the Department of Transportation to consider—consider—technological feasibility or safety or economic practicability or the effect on jobs?

These are not hurdles which must be jumped. These are simply relevant facts which we want NHTSA to consider. For the life of me, I cannot understand why all of us would not want NHTSA to consider those relevant facts.

Mr. BOND. Madam President, I ask unanimous consent that Senators

BUNNING, VOINOVICH, and NICKLES be added as cosponsors.

I thank my colleagues for a very strong vote. With the Senator from Michigan and other cosponsors, we ask for your support of this measure.

As I indicated in my earlier remarks, there is strong support by the United Auto Workers which believes, as I do, and which I hope a vast majority of this body does, that we can move forward to make progress that is economically feasible to assure better fuel economy while not sacrificing safety and not sacrificing jobs but making it clear that we are going to use the technology to build on the most significant advance in fuel economy in 20 years that the National Highway Traffic Safety Administration has just promulgated for light trucks.

Let us continue to move forward with CAFE based on sound science and not political numbers. I urge my colleagues to support the Bond-Levin amendment.

The PRESIDING OFFICER. The time of the Senator from Missouri has expired.

Mr. DOMENICI. 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 amendment. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay''.

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

The result was announced—yeas 66, nays 30, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—66

Alexander	Dayton	Lott
Allard	DeWine	Lugar
Allen	Dodd	McConnell
Baucus	Dole	Mikulski
Bayh	Domenici	Miller
Bennett	Dorgan	Murkowski
Bond	Ensign	Nelson (NE)
Breaux	Enzi	Nickles
Brownback	Feingold	Pryor
Bunning	Fitzgerald	Roberts
Burns	Frist	Santorum
Byrd	Graham (SC)	Sessions
Campbell	Grassley	Shelby
Carper	Hagel	Smith
Chambliss	Hatch	Specter
Clinton	Hutchison	Stabenow
Cochran	Inhofe	Stevens
Coleman	Johnson	Sununu
Conrad	Kohl	Talent
Cornyn	Landrieu	Thomas
Craig	Levin	Voinovich
Crapo	Lincoln	Warner

NAYS—30

Akaka	Bingaman	Cantwell
Biden	Boxer	Chafee
Collins	Inouye	Nelson (FL)
Corzine	Jeffords	Reed
Daschle	Kennedy	Reid
Durbin	Kyl	Rockefeller
Feinstein	Lautenberg	Sarbanes
Gregg	Leahy	Schumer
Harkin	McCain	Snowe
Hollings	Murray	Wyden

NOT VOTING—4

Edwards	Kerry
Graham (FL)	Lieberman

The amendment (No. 1386), as modified and amended, was agreed to.

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

Mr. CRAIG. 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 is recognized.

Mr. DOMENICI. Madam President, if I may have the attention of Senators, please, there are two amendments. One is a Durbin amendment, which Senator DURBIN indicated when he sent it to the desk was sent up by mistake. It is a so-called Durbin No. 2 tax amendment. He said, then, that he would like to withdraw it.

I ask unanimous consent that he be permitted to withdraw that amendment.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Objection. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from New Mexico retains the floor.

Mr. DOMENICI. Madam President, I move to table the Durbin amendment.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

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

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

The motion to table has been made.

Mr. DOMENICI. Parliamentary inquiry: Is a motion to set aside the Durbin tax amendment the pending business?

The PRESIDING OFFICER. The Senator has made a motion to table the Durbin amendment.

Mr. DOMENICI. A motion to table.

The PRESIDING OFFICER. That motion is not debatable.

Mr. DOMENICI. Let's go.

Mr. DASCHLE. Madam President, I ask unanimous consent that the motion be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. That having been done, I move to set the amendment aside.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. The amendment is withdrawn?

The PRESIDING OFFICER. The motion to table has been withdrawn.

Mr. DOMENICI. The amendment is still pending. I move to set the amendment of Senator DURBIN aside.

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

The PRESIDING OFFICER. The Senator from New Mexico has the floor.

Mr. DOMENICI. I want to set both amendments aside so that I can proceed with another amendment. I ask unanimous consent that the Durbin amendment be set aside and that the Campbell amendment be set aside so that we may proceed with the electricity amendment.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Reserving the right to object, and I will not object, but I publicly express my appreciation to the Senator from Washington, Ms. CANTWELL, who has some very strong concerns that she hopes to express once we get on the electricity title. She has several amendments. I have asked the distinguished manager if it would be his intention to allow the Senator from Washington to offer some of these amendments tonight. It is my understanding—and he can confirm this—that he is prepared to allow the Senator from Washington to offer these amendments tonight. I know that the distinguished ranking member, the Senator from New Mexico, also has an amendment he is prepared to offer. So it is with that understanding that the ranking member and the Senator from Washington will have amendments, and that the Senator from Washington will be recognized to offer those amendments. We do not object now to moving to the electricity title and setting aside the amendments that have been pending.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. I thank Senator CANTWELL for her cooperation. First, I assure her that what we have just done in no way jeopardizes her rights to offer amendments. She has not only one but maybe a number of amendments she wants to offer to the so-called electricity provisions. That will be offered next, and clearly we are going to be on it until Senators have no more amendments. So we are going to be here long enough for the amendments of Senator CANTWELL to be offered, whatever they are and however many there are.

AMENDMENT NO. 1412

Mr. DOMENICI. I send the electricity amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN, proposes an amendment numbered 1412.

Mr. DOMENICI. 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 text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. DOMENICI. The electricity amendment pending at the desk has 13 cosponsors. I thank the cosponsors, Senator LANDRIEU, Senator THOMAS, Senator MURKOWSKI, Senator CAMPBELL, Senator SMITH, Senator ALEXANDER, Senator KYL, Senator NELSON of Nebraska, Senator HAGEL, Senator TALENT, Senator BUNNING, and Senator COLEMAN.

I have a very brief statement, and I trust Senators will listen. It is to the point. We will be on this until there are no more amendments to offer to this title.

Mr. DORGAN. Will the Senator from New Mexico yield for a question?

Mr. DOMENICI. I will be pleased to yield.

Mr. DORGAN. Madam President, I wanted to make the point and ask the question on the electricity title. The Senator from New Mexico indicated that all amendments would be available to be offered, and I appreciate that. This title, of course, is somewhat controversial.

Mr. DOMENICI. Yes.

Mr. DORGAN. The question of protection for consumers is very important. It is a very complicated title. I hope everyone in the Senate wants to plug the holes that existed with respect to some of the previous price manipulations that went on, on the west coast. My hope is that it is not just a case of allowing people to offer amendments but to have the staffs on both sides to actively work together so that we understand these provisions and actually plug the holes that exist that failed to protect consumers on the west coast in the last couple of years.

I know that is what the Senator would like to have happen. I know we have people on this side who want that to happen. I hope we can work together to make sure we understand it and then fix it.

Mr. DOMENICI. Madam President, I can guarantee Senators that the Senator from New Mexico has worked for the last 7 months on this bill. The electricity amendment is a compromise supported by a broad array of stakeholders, much broader than I ever would have thought when I assumed the chairmanship of this committee. I believe that, per se, assumes that this amendment plugs all the so-called loopholes so there will not be any Enron end runs.

I repledge that I will work with any Senator who has an amendment that they think improves upon this bill. That does not mean, however, that every amendment that comes along, that says it makes this bill better, is going to be one that this Senator accepts. I do not want to return to the regulation of PUHCA as a way of protecting the consumers. Quite to the contrary. I believe its day has come. It has served its purpose.

There are a number of letters of support for this electricity amendment which I am offering. Let me start with the administration. They say they support the substitute electricity amendment and believe it will effectively modernize our Nation's antiquated electricity laws.

The National Rural Electric Cooperative Association:

Supports passage of the carefully crafted Domenici amendment without modification.

The American Public Power Association:

Strongly supports the compromise in its totality without modification.

The Large Public Power Council:

Supports the electricity substitute without modification.

Electric utility companies such as Mid-America, Allegheny, and Xcel, have offered their support for the Domenici electricity amendment, and I have now told my colleagues that it is supported by 13 Senators.

Because it is bipartisan, we might call it the Domenici-Landrieu amendment. For those who claim we need a balanced energy policy, here is a balanced electric title with wide support that needs to be included in our final bill. Some would add changes to it, and we are willing to look at them, but those who understand the complexities of the issues known as the Domenici electricity amendment know it represents a fair common ground. That is why there is support for this amendment without modification.

I know there will be a number of second-degree amendments, and I am willing to look at them. I have already said I am willing to look specifically at amendments from the distinguished Senator from Washington, Ms. CANTWELL. I will look at them carefully. I understand the significance of the problem she confronts. I do not support any amendments yet, and obviously if they disturb the delicate and sometimes gentle balance in this bill, I will have to oppose them. I will look with genuine interest, with the best talent I have, at amendments that Senators have if they think they really address the issues that have beset this country over the past 25, 26 months in terms of natural gas, utility prices, and utility companies and their shenanigans, such as at Enron.

The amendment is now pending. I am very proud of it, and I am pleased to be at this point. I thank the Chair for recognition, and I thank the Senate for paying attention. We are going to be open to amendments, and I understand my friend and colleague from New Mexico, Senator BINGAMAN, will probably have an amendment shortly.

I yield the floor.

The PRESIDING OFFICER. The junior Senator from New Mexico.

AMENDMENT NO. 1413 TO AMENDMENT NO. 1412

Mr. BINGAMAN. Madam President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 1413.

Mr. BINGAMAN. 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 strengthen the Federal Energy Regulatory Commission's authority to review public utility mergers)

On page 41, after line 17, strike all that follows through page 43 line 10, and insert the following:

SEC. . ELECTRIC UTILITY MERGERS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value excess of $10,000,000,

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with the facilities of any other person, by any means whatsoever,

''(C) purchase, acquire, or take any security of any other public utility, or

''(D) purchase, lease, or otherwise acquire existing facilities for the generation of electric energy unless such facilities will be used exclusively for the sale of electric energy at retail.

''(2) No holding company in a holding company system that includes a transmitting utility or an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with a transmitting utility, an electric utility company, a gas utility company, or a holding company in a holding company system that includes a transmitting utility, an electric utility company, or a gas utility company, without first having secured an order of the Commission authorizing it to do so.

''(3) Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, 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 interests of consumers of electric energy of any public utility that is a party to the transaction or is an associate company of any party to the transaction;

''(C) will not impair the ability of the Commission or any State commission having jurisdiction over any public utility that is a party to the transaction or an associate company of any party to the transaction to protect the interests of consumers or the public; and

''(D) will not lead to cross-subsidization of associate companies or encumber any utility assets for the benefit of an associate company.

''(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4), and shall require the Commission to grant or deny an application for approval of a transaction of such type within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the Commission does not act within 90 days, such application shall be deemed granted unless the Commission finds that the proposed transaction does not meet the standards of paragraph (4) and issues one or more orders tolling the time for acting on the application for an additional 90 days.

''(6) For purposes of this subsection, the terms 'associate company', 'electric utility company', 'gas utility company', 'holding company', and 'holding company system' have the meaning given those terms in section 1151 of the Energy Policy Act of 2003.''.

Mr. BINGAMAN. The amendment Senator DOMENICI has now offered is a substitute for the entire electricity title of the Energy bill. It purports to contain consumer protections in order to compensate for the fact that in this bill we are also proposing to repeal PUHCA. What is PUHCA? That is the Public Utility Holding Company Act.

I have to agree the substitute amendment Senator DOMENICI has provided does contain some increase in the authority the Federal Energy Regulatory Commission will have to review mergers and dispositions; that is, some increase in the authority of FERC to review mergers and acquisitions compared to the previous bill. I also concluded the substitute does not do enough to solve the problem.

The amendment I am offering contains the language we passed in last year's Senate Energy bill, language we believe fills this inadequacy, solves this problem in the underlying provision. Not only did the amendment pass the Senate last year, there was an amendment that would have removed this language. That amendment lost in the Senate by a vote of 67–29. Forty Senators voted for much stronger merger review authority than the provision contains.

FERC's merger review authority is essential in this industry which has been based on a system of local and regional monopolies. It is essential that authority be vested in FERC. The industry we are talking about historically has been based on local and regional monopolies and is moving toward depending much more on a competitive wholesale market for electricity generation. The industry is highly concentrated. Consolidation of generation and distribution transmission can prevent the development of a genuinely competitive market.

There are two big problems in the substitute provision Senator DOMENICI has provided with relation to merger and acquisition authority. Let me try to explain those.

First, this proposal does not cover the generation of energy. Everyone understands there are various parts to the energy industry. There are generation companies involved in generation, there are those involved in transmission, those that are involved in distribution, and some that are involved in all. However, generation is not covered under this language.

The second big problem is there are no real protections against cross-subsidies or encumbrance of assets owned by utilities. That raises a real prospect that people who pay utility bills will wind up subsidizing nonprofitable, unprofitable ventures that companies get into, particularly in the case where there are holding companies involved.

Let me talk about each of these issues. The first key failure I have talked about in the Domenici substitute is it does not make generation acquisitions or dispositions jurisdictional under the law. That means it does not give FERC authority over those. There is no requirement anyone oversee it at the Federal level and sign off on it.

For generation mergers, while it is true most activities in this area are divestiture of generation by vertically integrated utilities at this time, that may not always be the case. Utilities getting rid of generation do tend toward deconcentration of the market but not if they sell to large and growing generation companies. Instead of leading to less concentration, it can lead to more concentration, depending upon who is buying these generation facilities.

Without the authority provided in my amendment, FERC, which is charged with making sure the competitive market produces just and reasonable rates, would have to stand by and watch while the industry reconcentrates rather than deconcentrates. A single company could acquire every generator in this country and FERC could do nothing about it under the Domenici substitute. This is not compatible with the development of a competitive market. Even when the transaction is only the sale of generation facilities, there are serious issues at stake.

Many of the utilities in the headlines lately because they are either facing bankruptcy or have deep financial troubles have come as a result of the utility spinning off its generation to an affiliate who then gets into the unregulated electricity market. As a result, there are companies such as Xcel and Allegany that are experiencing serious financial distress because of the activities of their generation and marketing affiliates, but these affiliates are not under the jurisdiction of the FERC, so there will be no Federal oversight.

The second failure in the Domenici substitute is it does not require the FERC to create real protection against cross-subsidy or against encumbrance of assets in the new merged company. My amendment strengthens the standards under which FERC reviews mergers. Our provision requires the transactions can be shown to do no harm, either to competition, to consumers, or to the capacity of regulators to regulate. Further, it requires that FERC determine there will not be any cross-subsidy of affiliate companies and there will not be any encumbrance of assets for the benefits of the affiliate. This is essential if we are going to protect ratepayers. We did not allow that cross-subsidy to exist. The underlying Domenici amendment does not require that of the Federal Regulatory Commission.

Essentially, our provision requires that FERC create some way to determine the goals of the requirement be met. Perhaps the only way to accomplish this is to create real corporate insulation between the utility affiliate of a holding company and its unregulated affiliates. That could be done by creating firewalls around the utility affiliate, by enacting rules about transactions between affiliates or in a combination of the two.

The purposes behind the Public Utility Holding Company Act which we are ready to repeal as part of this overall Energy bill are to ensure consumers are not harmed by the complexity of corporate structure, that regulation not be made too difficult by that complexity, and that utility affiliates not be allowed to benefit from cross-subsidization or to cross-subsidize nonutility affiliates so that resources of the utility wind up being drained away from service to the customers. This is exactly what the bill requires FERC to do before approving a merger. That is what our amendment requires FERC to ensure before approving a merger.

I have three charts that will try to make this clearer. This is complex. Frankly, one of the difficulties of trying to begin in the evening at 6 p.m. with this very difficult, complex subject, there is an awful lot of knowledge Senators need to have in order to vote intelligently on these issues. Let me try to go through it with the charts.

The first chart is FERC jurisdiction at the present time. The Federal Energy Regulatory Commission, FERC, has jurisdiction over mergers of two different utilities. We are talking about, under the Federal Power Act, utilities that are vertically integrated. That is the traditional utility, the utility that provides electricity to my home in New Mexico, provides electricity to my home in Washington, DC, and to homes all around this country. Utilities own the generation capacity, own the transmission, and own the distribution. If two utilities want to merge, they have to present their proposal to merge to the Federal Energy Regulatory Commission, and the Federal Energy Regulatory Commission looks at that and says this is OK or this is not OK because we have determined it is not going to adversely affect the ratepayers. The people at home who are being served by one or the other of these utilities will not have to pay more if we approve this

merger. That is what FERC has to determine at this point.

In the past, all generation was owned by jurisdictional utility companies. This is the way the system was operated. If you had a plant to generate power, almost certainly that plant was owned by a utility company. There were no independent companies out there saying all we want to do is generate power and then we will sell it to utilities. It was all owned by utilities. If a utility merged with another utility, the merger was jurisdictional at FERC under the Federal Power Act. That means that FERC had to sign off on the deal, essentially, and that was the protection that was built into the law for consumers.

Since all generation except for small renewable generators and cogenerators under the Public Utility Regulatory Policy Act was owned by utilities that were, in fact, under FERC jurisdiction, all mergers involving generation came under the jurisdiction of FERC.

That was a good system as far as it went, but that was the system which made sense when the Federal Power Act was enacted because then we were dealing with vertically integrated utilities.

The world has changed, so let me go to chart No. 2.

Before I talk about the changed world, let me describe this second chart. The title of this chart is ''PUHCA Jurisdiction.'' I said before, PUHCA is the Public Utility Holding Company Act, and the Public Utility Holding Company Act provides essentially a set of restrictions on what holding companies are able to do, and particularly what holding companies are able to do with regard to purchase or acquisition of utilities. If a holding company acquired a utility company, then the Securities and Exchange Commission under PUHCA, the Public Utility Holding Company Act, had jurisdiction and authority to review that acquisition. The relationships between the utility and all of its new affiliates were governed by the Public Utility Holding Company Act.

The proposal we have here before us in the Senate is let's repeal this entire thing. All of the restrictions under which holding companies operate today would no longer apply. The question is, If we do that, what are we going to substitute for that jurisdiction or for that oversight to ensure that consumers are not adversely affected? This shows the holding company over here on the right, and under it you see it owns a utility, it owns other affiliates, it owns perhaps another utility, generation and marketing affiliate—it has a variety of companies it holds as a holding company. The question is, Who is going to have the responsibility to be sure there will not be cross-subsidy so that ratepayers of utilities are not adversely affected if we eliminate the Public Utility Holding Company Act?

Let me move to the third chart to try to explain this. In the new world in which we now find ourselves, we no longer have as many vertically integrated utility companies. More and more we are seeing generation of electric power done by other companies which are not vertically integrated utilities. In this new world, generation is separated from the utility company, and it is either sold to a stand-alone generation company or spun off as an affiliate of a holding company that owns a utility. The sales or the spinoff would not be under FERC jurisdiction under the Federal Power Act, since generation facilities were not specifically put under FERC's authority. Generation facilities wound up under FERC's authority because they were part of integrated utilities. Now we are saying: OK, what do we put in place to live with this new world?

We are saying we need to specify that generation facilities are under FERC authority. They clearly would not be covered—there is no jurisdiction under FERC for the generation affiliate down below, or the generation affiliate of this utility. If those generation affiliates decide to merge, there is no prohibition against that. There is no requirement that any Federal agency review that to see whether it helps or hurts utility payers, ratepayers.

We get back to the point I was trying to make at the very beginning of my comments, which is you could see a company come along and buy up this generation affiliate, that generation affiliate, buy up all the generation affiliates in a region of the country, and do whatever it wished with regard to their rates for electricity, and nobody at the Federal level has oversight to review that.

I do not think that is in the best interests of consumers. I do not think that is in the best interests of ratepayers. Accordingly, I think we should fix it.

There are some horror stories that should make the point that what I am talking about is not just academic. This isn't something we dreamed up in some ivory tower somewhere. These are horror stories that can be read about in the mainstream press, in the trade press; in fact, it is hard to pick up a news publication that does not tell a new story about how some utility or other is in trouble because of its investments in and involvement in nonutility businesses. That is a very common problem that has arisen.

This is a quote from the December Wall Street Journal.

> Energy companies burned by disastrous forays into commodities trading and other unregulated businesses are increasingly seeking to pass some of the financial burden onto their utility units. This could lead to higher electricity rates for consumers in coming years.

That is the Wall Street Journal, which is not a left-wing publication. According to the Journal:

> Utilities are being nudged to buy assets from affiliates, to make loans to down-at-the-heels siblings, or to pass more money to their parent companies.

Then the story goes on to say:

> In many cases, regulators can do little to prevent energy holding companies from milking their utility units.

What my amendment is trying to do is put in place some protections against this milking of utility units. When you talk about milking a utility unit, that is easily translated into raising electricity rates, raising the rates of the ratepayers in order to compensate for bad business judgments, unprofitable investments in other areas.

It is not enough for us to have in place some vague idea that we want to be helpful to consumers. What we want to say is the Federal Energy Regulatory Commission needs to make a finding when it approves one of these acquisitions or mergers. It needs to make a finding that there is not going to be a cross-subsidy, that we are not going to see the assets of the utility encumbered in order to help some other part of this business, some other part of this holding company. That is what we are saying.

All of these stories result in negative effects on ratepayers and consumers.

When the utility is downgraded, its consumers pay increased costs of capital. Where the utility itself is facing bankruptcy, the effects on consumers can be even worse than that.

Wesstar is one example. Wesstar's regulators have been left with the unpleasant alternative of saddling the utility's ratepayers with $100 million per year, which is the cost that is required to pay down the debt the company caused by its investment in unregulated ventures.

It is clear that utility customers need to be protected against these excesses; that firewalls need to be built between the utility affiliates of a holding company and its unregulated affiliates.

These are not stories from the distant past. These are stories from today's headlines. Let me go into a little more detail on a few of them. Let me mention Wesstar. Wesstar I just mentioned. Let me go into a little more detail about the problem.

Wesstar is the largest utility in the State of Kansas. It is owned by a holding company, WRI, that also owns KP&L, the other large utility in the State. It owns a variety of nonutility companies and holdings. All of these together used to be the Kansas City Power and Light and Kansas Gas and Electric.

Wesstar came under scrutiny last year because of its problems caused by nonutility affiliates. Wesstar had invested in a number of unregulated ventures, including a home security company. That investment did not turn out well. The holding company shifted $1.5 billion of debt from the unregulated companies to the utility.

The Kansas Corporation Commission began an investigation. The Justice Department began an investigation last summer. The Federal investigation

resulted in the indictment of the CEO of the company for bank fraud. The Kansas Corporation Commission investigation resulted in a dramatic restructuring of the company to separate the utility from the unregulated companies of the holding company.

The utility customers, in spite of all that has since happened—these investigations occurred after the fact—are still left with an obligation to reduce the debt of the utility by $100 million a year because of the activities of the unregulated affiliates. Ratings agencies have reduced the debt rating of the company to below investment grade at this time. That is one example.

Let me mention another. AES is a holding company that owns generation assets and marketing assets around the world. In 2000, AES acquired Indiana Power and Light, which is a regulated utility in Indiana. Because of the difficulties in wholesale electricity markets, the utility has been propping up the debt of the parent company over the last 2 years. For the 2 years of 2000 and 2001, the utility's dividend payments to the parent exceeded its earnings by over $100 million. The parent company's rating has dropped from AA minus to double B since 2001. The utility's IPL is at the lowest investment grade. The Indiana Utility Regulatory Commission had no jurisdiction to review the acquisition of the utility by the holding company.

Let me give one more example. That is Portland General Electric. Portland General Electric is a regulated utility in Oregon. PG&E in the late 1990s was acquired by Enron Corporation. The Oregon Public Utility Commission required a number of conditions before it agreed to approve that acquisition. As a result of the corporate separation required by the public utility commission, the effect of Enron's bankruptcy has been less than other similar acquisitions in other States. But even so, PG&E is now a parentless company. It is in danger of being taken over by another company. The fate of the parent company has also had an effect on the ability of the company to gain access to capital markets.

I think the Senators from Oregon are probably better qualified than I to talk in detail about the frustration and dissatisfaction that utility ratepayers in Oregon have felt as a result of their unfortunate circumstance after being purchased by Enron.

The amendment I have offered is straightforward. In my view, it closes a very significant loophole that still exists in the electricity title and substitute electricity title Senator DOMENICI has presented to the Senate. It will help us head off the kinds of crises and the kinds of inflation or dramatic increase in utility rates that unfortunately have been seen in some parts of the country.

This is one of these issues where I think 2, 3, or 5 years from now people may look back and say, I wonder why I didn't vote for that amendment when we had a chance to plug that loophole. Those of us on the Energy Committee, quite frankly, will be saying, OK, who do we call before the Senate Energy Committee to hold accountable when these problems arise? The reality is it is going to be very hard to call anyone before the Senate Energy Committee unless we strengthen this legislation and put in there some very clear, bright-line tests that ensure we don't have crossover, to ensure the Federal Energy Regulatory Commission is held responsible for overseeing the acquisition, sale, or purchase of generation facilities. If we make a decision here to not vest that responsibility somewhere in the Federal Government—and obviously the place to do it would be the Federal Energy Regulatory Commission—then I think we will rue the day we stopped short of doing that.

I hope my colleagues will support this amendment. It goes to the very heart of the electricity title of this bill. It would correct a very major deficiency in the electricity title of the bill as it now comes before the Senate.

I yield the floor. I urge my colleagues to support the amendment.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, let me say, first of all, I am happy we are moving forward with this amendment. This, of course, is a total effort to take last year's activities with relation to the electric title in the Energy bill and to redo it. Actually, we have been through this same argument before and we came up with a different recommendation.

What we are seeking to do is cause our electric industry to be in a more modern status; to make changes in law and policy that reflect changes that have taken place and are taking place now in the energy industry.

What we are trying to do here is deal with the Public Utility Regulatory Policy Act of 1935. We have, of course, a Federal policy that has been in place for almost 65 years. The Public Utility Regulatory Policy Act is an outdated statute that imposes barriers to competition and discourages investment in transmission.

This is key. What we are seeking to do here is to modernize this system so that because of the changes that have already taken place, for instance, 30 percent now the power being generated by merchant generators who do not do their distribution, then there has to be an opportunity to have transmission lines. The investment in those is very high, and we have to make some changes in terms of how capital is created to be able to do that.

PUHCA limits geographic and product diversification and imposes many burdensome filing requirements. We are seeking, again, to see if we can't make these rules and these laws more simplified without having the expense of going through all these things. PUHCA is also a barrier to the formation of regional energy markets because arguably it could apply to the RTOs, the regional transmission organizations. This is again where we are moving. This is where we need to be.

What we are seeking to do with this amendment is have the rules that applied since 1935 to an electric industry that is here in 2005, almost. So we are moving backward in a situation which we are seeking to modernize. That is really what it is all about. Repealing PUHCA would not preclude State and Federal regulators from protecting ratepayers. We have an apparatus in place in Government to do that.

Access to books and records as well as rules regarding debt acquisition and accounting will protect investments on behalf of ratepayers. Also the Department of Justice and the Federal Trade Commission will continue to protect against antitrust violations.

The Securities and Exchange Commission, which currently overseas PUHCA, has recommended on a number of occasions that PUHCA be repealed with certain consumer protections transferred to FERC and State regulatory commissions, as noted.

Certainly there will be market transparency. There will be antimanipulation and enforcement in place. There will be rules issued to establish a system to do that. It prohibits the filing of false information regarding the price of wholesale electricity and availability of transmission capacity. It prohibits round-trip trading which was mentioned as the reason for making this change. It prohibits round-trip trading. It expands who can file complaints and who is subject to FERC investigation. It increases the penalties.

I guess the point is that there is substantial consumer protection in place. That is basically what we are seeking to do.

I rise in opposition to the pending amendment which proposes to expand the FERC's merger review authority to include acquisition of generating facilities. Under the current law, electric utility mergers are already heavily regulated. In addition, FERC, the Department of Justice, and the Federal Trade Commission must review proposed mergers for their impact on competition. State regulators in affected States also review proposed mergers. Expanding FERC's authority to cover acquisition of generation facilities is unnecessary. Furthermore, this amendment preempts the States' ability to protect consumers.

The Bingaman amendment requires FERC to review and approve any utility acquisition of a generation asset in excess of $10 million. Every time a utility wants to replace a major boil or steam turbine or install a new switchyard, they have to get approval. What does that have to do with protecting competition which is the reason why FERC needs the authority? Absolutely nothing.

Let me explain why this amendment is unnecessary to protect consumers.

Under existing law, FERC has jurisdiction over wholesale power rates and States have jurisdiction over retail electric rates. That means that an electric utility cannot pass through to consumers, either in wholesale electric rates or in retail electric rates, any cost without first having obtained FERC or other State public utility commission authorization to do so. So a utility that purchases a new boiler—whether it is $1 million or $100 million—cannot pass through these costs without having to prove to the relevant regulator that the expenditure was prudent.

If the regulator decides the expenditure is not prudent, then the utility cannot pass through the costs, and they are borne by the utility's stockholders and not its customers. That is good consumer protection practice.

Let me explain why the pending amendment would actually interfere with State protection of consumers. Under existing Supreme Court doctrine, States may not deny the pass through of federally approved costs. The Supreme Court recently reiterated this principle just this summer in a June 2, 2003, decision, Entergy Louisiana versus Louisiana Public Service Commission. The Supreme Court held that FERC approved rates could not be second-guessed by State regulators. Accordingly, if, as the pending amendment proposes, we require FERC to approve and review utility acquisitions of powerplant utilities used for system supply to make retail sales, we are preempting the ability of a State public utility commission to review and approve—or deny—the utility's incurrence of those costs.

I ask, why should we deny the State public utility commissions the ability to review utility costs that are being passed through in retail rates? How does that protect consumers? Will the FERC do a better job than our State commissions?

This amendment is both unnecessary and unproductive. FERC will continue to review utility mergers to ensure that it is consistent with the public interest and will review proposed rates for the merged companies to ensure they are just and reasonable. That is FERC's appropriate role and we do not need to change it.

Increasing FERC's merger authority to include generation-only facilities will only serve to impede efficient transactions without gaining consumer benefits.

For these reasons, I think we should oppose the amendment, and I urge that we oppose the amendment.

Again, in general terms, what we have done is packaged in this whole title, this electric title, the idea of what is happening in the electric system, where we want to be over time, a policy that will work in what is currently going on and what we hope to have happen in the future. To maintain and continue to go backward does not seem what we are appropriately here to do.

We have gone through this whole thing. We have gone through witnesses in our committee. It has been approved. Certainly we ought to move forward with this package as it is conceived and dedicated, and we can improve the way we provide electric energy to everyone. But we have to continue to look forward and do things differently than we have done them in the past.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me make a few comments in response to my colleague, my good friend from Wyoming. I do think that he is in an awkward position because he was cosponsor with me of this exact language in the consideration of the Energy bill in the last Congress—the exact language that I am now proposing by way of amendment. I thought it was the right policy then. I still think it is the right policy. I hope very much we can persuade Senators to adopt it as part of this bill.

His statement was that we are preempting State authority if we adopt the language that I have offered by way of amendment. The National Association of Regulatory Utility Commissioners—those are the State commissioners—characterized the bill we had last year that had this provision in it, the provision I am now offering, as ''an admirable compromise between Federal and State jurisdictional issues.''

That does not sound like the words of an entity that believes it has been preempted to the point that it is unable to do its job. While it is true that States have some ability to deal with some of these problems, it is almost always the case that their statutes do not reflect the degree of protection that is currently in the law in the Public Utility Holding Company Act. They have not needed to have laws to provide those protections because PUHCA was in place. It has been Federal law for many years.

It is also true that many States that have found their customers to be victims of such abuse have not had the ability to deal with the problems. I gave you a couple of examples before where the States came along after the fact and tried to investigate, tried to find some way to make their consumers or their ratepayers whole, and found that they are not really able to do that. Some are trying. Some are trying in the face of tremendous opposition from their utilities to get the necessary authority from their State legislatures.

Do we have to wait for every State in the country to realize that their protections are inadequate once we repeal the Public Utility Holding Company Act or should we not here in the Congress provide at least some minimum protection at the Federal level to replace the protections we are eliminating as we repeal the Public Utility Holding Company Act?

I think we owe it to those who sent us here to provide this minimal protection. PUHCA broke up the industry into manageable chunks and focused on its core business—that is, the provision of a monopoly electric provision service by requiring that utilities either operate primarily in a single State or be regulated stringently at the Federal level by the Securities and Exchange Commission.

Utilities were also forbidden to engage in businesses that were not directly related to their monopoly electric service without explicit approval from the SEC. Large utilities were forbidden from such activities completely. A holding could not acquire more than one utility company in more than one State without coming under these very severe bans.

So the sprawling empires of interconnected corporations owning electricity utilities were broken up. Companies were required to choose between their other businesses—staying in those other businesses or staying in the electric industry.

If we are going to repeal the Public Utility Holding Company Act, as we are proposing to do in this bill, then it is essential that we lodge the consumer protections that are so important to all Americans in a meaningful place. We have seen, over the last few years, how far astray from the goals of providing electricity to consumers at affordable prices our industry can wander. As we move forward, we must be sure that consumers are protected.

Let me make a comparison between the language that I proposed by way of amendment and the underlying language. The reason I am offering my amendment is that the Domenici substitute has in it, in my view, very inadequate language to ensure that consumers are protected. It says:

> After notice and opportunity for a hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change of control—

That is any merger or acquisition anyone proposes and brings before the commission—

> if it finds that the proposed transaction will be consistent with the public interest.

Well, that is fine. I certainly want everything to be consistent with the public interest. But that is somewhat in the eye of the beholder as to what is meant by that phrase. It goes on to say:

> In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction will adequately protect consumers, will be consistent with the competitive wholesale markets, will not impair the ability of the Commission or State commission from having jurisdiction following the completion of their transaction over any public utility, and will not impair the financial integrity of any public utility that is a party to the transaction, or an associate company or any part of the transaction, and satisfies such other criteria as they think is consistent with the public interest.

Essentially, it is going back and saying the Commission has tremendous

authority to decide what is consistent with the public interest and what is not consistent with public interest. Whatever they decide pretty much controls.

What I have proposed in the amendment that I have sent to the desk, and what we had in our bill last year, which my good friend from Wyoming supported last year, was much more specific. It said:

> After notice and opportunity for a hearing, the Commission shall approve the disposition, or consolidation, or acquisition of control if it finds that the proposed transaction, No. 1, will be consistent with the public interest; second, will not adversely affect interests of consumers of electric energy; third, will not impair the ability of the Commission or the State Commission; and, finally, will not lead to cross subsidization of associate companies or encumber any utility assets for the benefit of an associate company.

It seems clear to me that we should want to be sure that cross-subsidy will not occur. That is a bedrock requirement, as I see it, if FERC is going to sign off on these acquisitions and mergers. That is why we proposed this amendment.

The other thing we propose in this amendment, which I think is also bedrock, is that companies involved with generation—the purchase and sale of those companies should also be under the jurisdiction of the Federal Energy Regulatory Commission. The FERC has not had to have that authority up until now because we have had the Public Utility Holding Company Act, which ensured there was oversight. There was regulation of those generation companies. That will no longer be the case once the Public Utility Holding Company Act is repealed.

The question is, Who is going to oversee the purchase and sale of generation companies? Who is going to try to ensure that electric utility rates in a region, in a State, in a particular area do not go up because of the noncompetitive merger, or acquisition, or purchase of various generation facilities?

So, clearly, our amendment tries to plug some major loopholes. It is exactly the language we offered in the debate last year. It was adopted at that time by a substantial majority of Senators. It was supported by my good friend from Wyoming last year. It is good policy. It was good policy then, it is good policy now, and it is the kind of test which, if we don't adopt it, we will regret that we did not. It is another one of these circumstances where at some future date we will be giving speeches on the Senate floor saying let's tighten up the regulation, strengthen the regulation; we don't want to see somewhere around the country any more of those problems like we just saw.

I think the opportunity is here today. We know enough about the problem of cross-subsidization. We know enough about the economic difficulties, the financial difficulties that lead to cross-subsidization to anticipate this problem and to get ahead of it and deal with it. That is what my amendment does. I urge adoption of my amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico, Mr. DOMENICI, is recognized.

Mr. DOMENICI. Mr. President, first, I congratulate my colleague from New Mexico on his superb argument and presentation. I regret that I have to disagree. But before I state a few remarks, because I believe my friend from Wyoming has done a very good job of telling the Senate why we don't need this amendment, I would like to ask the Senate and all the Senators and their staffs, who were paying attention on their behalf, to remember now that we are on that very important part of this legislation—the electricity section—which we understood many Senators were worried about, and we understood a number of Senators had amendments.

I have known from the beginning that my friend, Senator BINGAMAN, had one or two amendments. But I heard other people saying: We don't want to hurry along here because this is a very important piece of legislation and we want to have a chance to offer amendments.

Well, the time is now. I am very hopeful, and the majority leader has told me it is up to me. I look at my distinguished friend, who is very much on top of things in the Senate, the Senator from Nevada, and say that he told me and our leader to stay here as late as we can tonight to get all the amendments we possibly can on this subject.

We know a lot of Senators are busy, but we know they were told we were going to be in session every day this week. We are going to work day and evening. Every evening we work, it takes away an extra day at the end of the week that will detract from our recess. So if Senators have amendments, get them ready. We want them after this amendment.

When I am finished, and after my friend from Wyoming has another chance to speak, if he wishes, I am going to ask the minority side what they would like to do next.

Mr. President, I say to Senator REID, my desire is that we not vote immediately on the Bingaman amendment, although I am perfectly willing. It is 20 minutes of 7. There is nobody on our side saying we should not. Maybe Senator REID knows some reasons. I much prefer Senators keep doing what they are doing but that somebody come down and offer another amendment. Then I prefer not to vote on that amendment. I prefer another amendment until we have as many amendments as we can get in by late tonight.

Why do I want to work late tonight? Besides it being Tuesday and we want to finish this bill by Friday, it is the unspoken word that the other side of the aisle, more so than we do, wants to offer some clean-air type amendments that really do not belong on this bill but have historically or traditionally found their way on it because they do not have any other place to go. They want to offer some amendments.

There are apparently two amendments on that side, at least, plus a couple of other amendments in the same vein. They wanted to offer them tomorrow, which can be nicknamed ''environmental day.'' We want to cooperate. To the extent we have to use more of the day for electricity amendments, we use less time for other amendments.

I will in a very few words state my case. In 1935, I was 3 years old. I am not a student of what happened in the world during the Great Depression, but PUHCA was passed. It is funny sounding. It is terrible it had to have such an acronym, PUHCA, Public Utility Holding Company Act. It is almost one of those acronyms that cries out to never be called by an acronym, and it is better to be called the Public Utility Holding Company Act than PUHCA.

Over the years, I have heard that funny word, and I did not even want to find out what it meant, but Public Utility Holding Company was a protective mechanism to make sure that during an era of pyramiding, where big money would buy up utilities, there was somebody watching. As an example, if one very rich bank out of Chicago, IL, started buying up companies all over the country and became a holding company—thus the title.

Nobody is crying for the retention of PUHCA because there are so many other protections for that which it was invented. It is time for that funny name to disappear, and then it will not be used so much. We can then just say ''used to be PUHCA,'' and we will not have to talk about it.

The truth is, as Senator THOMAS said—and I agree—expanding FERC's authority to cover acquisition of generating facilities, which is part of Senator BINGAMAN's amendment, is unnecessary. Furthermore, this amendment preempts States' abilities to protect consumers. Repealing PUHCA will not preclude State and Federal regulators from protecting ratepayers. Access to books and records, as well as rules, regarding debt acquisition will protect investment made on behalf of ratepayers.

Also, the Department of Justice and the Federal Trade Commission will continue to protect against antitrust violations, and the Securities and Exchange Commission, which currently oversees PUHCA, has recommended on a number of occasions that it be repealed with certain consumer protections transferred to FERC and State regulatory commissions, as noted above.

What we are doing is getting rid of PUHCA, the 1935 antiquated law. In place of it, we clarify the jobs FERC does today and expand it only in a limited fashion. Our amendment let's PUHCA review utility transactions. The new authority is granted over gas

acquisitions of utility companies by an electric utility company. This protects consumers and promotes investment in that regard.

Clearly, if ever there was a case where we are overprotecting, it is the utility companies. I mentioned how many protections already exist. PUHCA started disappearing into the woodwork and became subservient and almost consumed by the SEC—they run it. SEC said they do not need PUHCA anymore.

Believe it or not, it is pretty certain, when we finally vote, we are going to get rid of PUHCA. It is like certain past Presidents recommended getting rid of PUHCA and 40 years later something happens. That reminds me of something interesting and funny. About 8 years ago, I was heralded as one who had passed the largest single sale of public property, and all I had done was to take the U.S. Government's ownership of converting highly enriched uranium for use by nuclear powerplants, which is owned by the public, which had been recommended 30 years before to be privatized, and I privatized it. I was heralded for having passed the first multibillion-dollar sale of property of the Federal Government. It is nothing new. It sure did not take any ingenuity, just like it takes no ingenuity to know that PUHCA ought to get out of here.

In getting rid of PUHCA, the test that FERC applies is:

Consistent with the public interest, we do not add new tests.

Senator BINGAMAN's amendment does. I do not think we need to add new tests. I believe what is in the bill is adequate for the governance of FERC in that regard.

When I introduced the bill, I told the Senate all the groups that liked this bill—the public-private ownership, all of them. And it is most interesting, they all think we adequately protect against whatever the evils might have been that PUHCA might have covered: Municipalities, the APRAs, the large public power companies. They think there is a pretty good balance just like it is.

At some point in time I hope when we vote on this that Senator BINGAMAN will understand there are those of us who think what we put in the bill is perfectly adequate and well balanced with reference to protection in this area.

I ask Senator BINGAMAN and Senator REID if they are finished? Are we ready for another amendment?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. If I could ask the Senator from New Mexico a question?

Mr. DOMENICI. Yes.

Mr. REID. As I understand it, the Senator indicated what he would like to do tonight on the electricity title is have people come and offer amendments on the electricity title.

Mr. DOMENICI. Yes.

Mr. REID. Senator BINGAMAN has an amendment. Senator CANTWELL perhaps has an amendment. There are a number of other Senators who wish to maybe offer amendments. The question I have to ask the Senator from New Mexico is, there are people who have amendments on other issues, separate and apart from the electricity title, and at least two Senators have asked if the Senator from New Mexico would allow the electricity title to be set aside and go to other areas.

Mr. DOMENICI. I say to the Senator truthfully, it is not understood how hard I worked and how much I worried and sweated to get to where we are, which is the pending matter. I want Senators to understand we have to get rid of it.

Mr. REID. I understand.

Mr. DOMENICI. So I do not want to do that. I want Senators to get their amendments, even if it takes us a little while longer. The Senator is implying there may be four, maybe five. I do not know.

Might I ask Senator BINGAMAN if he has another amendment?

Mr. REID. If I could respond, the manager of the bill on our side does have another amendment he could offer tonight. I would like to continue my colloquy with the Senator from New Mexico, through the Chair. We have people wondering, are we going to vote on the first Bingaman amendment now, the second Bingaman amendment; are we are going to have two votes? What is the pleasure of the Senator from New Mexico?

Mr. DOMENICI. My pleasure is that we have votes tonight, unless the Senate sends word, in its inimicable way, that we are going to get all the amendments on electricity in due course this evening, in which event I would say we will not have any votes.

Mr. REID. I respond to my friend from New Mexico, I do not think that is going to happen. Senator CANTWELL, for example, has amendments she wants to offer. She wants to take a little time on the first amendment. It is going to be more than a few minutes. She has asked for some time on that. If we cannot agree on a time, I assume she would talk for a little while and then offer the amendment.

Mr. DOMENICI. When does the Senator think she might know?

Mr. REID. Well, she is ready to offer her first amendment but that is going to take some time. I do not know if she is willing to finish the debate on it tonight. I could call and ask her.

Mr. DOMENICI. Could the Senator inquire? What we could do then, while the Senator is inquiring, we could go with the second Bingaman amendment and we will stack them with a clear understanding that when we are ready, we will proceed in the same order they have been offered to vote on them.

Mr. REID. I say to my friend from New Mexico, I think realistically if Senator CANTWELL's is going to be the next amendment, it will be very difficult to finish all of the electricity amendments tonight. There are other people who want to offer amendments.

Mr. DOMENICI. To the extent the Senator from Nevada desires and can be helpful—and that is strictly up to him—I would rather we get other Senators to offer amendments. Senator BINGAMAN has one. Are there any others?

We know Senator CANTWELL wants a lot of time and we would say to her she could be last tonight and take as long as she wants. We could then come in in the morning and take some more. I do not think we ought to have her come up and then say the only thing we did tonight was the Bingaman No. 1 and Cantwell all evening. I think we ought to be doing a little more than that.

Mr. REID. I say to my friend from New Mexico, as I said earlier today, I know how hard he has worked to get the bill here and how important this bill is to him personally, and how important he believes this is for the country, but I say as sincerely as I can we are not going to be able to offer all the amendments on electricity tonight. I just do not think it will happen. I will go to the cloakroom and make some calls while the second Bingaman amendment is offered, but I think if the Senator's statement is that we are going to have to vote on the two Bingaman amendments unless we finish offering amendments tonight, we are going to have to vote on the two Bingaman amendments because I do not think we can get through all the amendments tonight.

Mr. DOMENICI. Let's try to do this: Let us assume that we had Bingaman No. 2 and the Senator from Nevada went off and tried to discern how many other amendments on this subject we have, and that he return and say what they are. I am perfectly willing then to try to set in motion an agreement that some of them would be taken up in the morning.

Mr. REID. I will be happy to respond to the Senator in the next little bit.

Mr. DOMENICI. If we do not know, we are going to stay here and see how many we can flush out.

Does Senator BINGAMAN want to proceed?

Mr. BINGAMAN. Mr. President, I would like to say a few more things about the pending amendment.

Mr. DOMENICI. Sure.

Mr. BINGAMAN. Then I do have a second amendment which I am glad to offer this evening as well.

I indicated there are several organizations that have supported the amendment I have sent to the desk, the American Association for Retired Persons, AARP, the Air Conditioning Contractors of America, Consumers for Fair Competition, the Consumers Union, the National Association of State Utility Consumer Advocates, National Electrical Contractors Association, Plumbing, Heating and Cooling Contractors, National Association of Public Citizens, U.S. PIRG. All of those groups support the amendment I have offered.

In addition to that, we have a statement from the Bush administration

which was from last year supporting FERC review of transfers of generation assets, which is part of what the amendment does that I have sent to the desk. I ask unanimous consent that this letter be printed in the RECORD.

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

BUSH ADMINISTRATION SUPPORTS FERC REVIEW OF TRANSFERS OF GENERATION ASSETS

09/14/01 ADMINISTRATION INCLUDES LANGUAGE IN ITS DRAFT ''ELECTRIC RELIABILITY TRANSMISSION ACT''

''Clarify the commission's authority over holding company mergers and mergers and asset sales involving generation facilities.''

10/16/01 ADMINISTRATION COMMENTS ON DRAFT SENATE BILL ''ELECTRICITY RESTRUCTURING ACT'' (BINGAMAN BILL)

Mergers and Asset Dispositions. ''FERC has the authority to review mergers of 'public utilities' under section 203 of the Federal Power Act, and has asserted jurisdiction over mergers of public utility parent companies. This assertion has not been challenged, and holding companies have submitted their mergers to FERC for its review. This language also clarifies FERC authority over public utility mergers and asset dispositions involving generation facilities. Under current law, FERC has authority over only those generation facilities associated with a wholesale power contract. If it is going to prevent accumulation of market power, *it should have jurisdiction over generation facilities owned by public utilities*'' (emphasis added).

10/9/01 ''MAJOR PRINCIPLES IN ADMINISTRATION POSITION ON ELECTRICITY LEGISLATION'' (DEPARTMENT OF ENERGY)

Mergers and Asset Dispositions: ''Clarify FERC authority over holding company mergers and mergers and asset dispositions involving generation facilities.''

10/24/01 LETTER FROM FERC CHAIRMAN PAT WOOD TO REP. JOHN DINGELL (D–MI)

Review of Mergers: ''It may be a good idea to clarify the Commission's authority to review mergers involving only generation facilities and mergers of holding companies with electric utility subsidiaries. The increasing amount of competition in power generation markets makes this more than an academic question.''

Mr. BINGAMAN. The administration includes language in its draft Electric Reliability Transmission Act to clarify the commission's authority over holding company mergers, and mergers and asset sales involving generation facilities. In another place in the administration's statement it says they support clarifying FERC authority over holding company mergers and mergers and asset dispositions involving generation facilities.

What I am proposing is not a radical policy proposal. It is exactly what we adopted last Congress. It was adopted by a substantial majority of the Senate. It was supported by the Bush administration. Now we are backing away from that.

I am told the Senator from New Mexico, my good friend Mr. DOMENICI, says this is agreed to by the Public Power Association and by the Rural Electric Cooperative Association. That is fine. I can understand that there are other things in the bill, in the overall electricity title, which cause them to believe this is something they should be quiet about or be willing to support—swallow hard and support, I would add—but the reality is, it is not good policy for us to leave this issue unaddressed, this issue of adequate authority of the Federal Energy Regulatory Commission to oversee the acquisition or sale of generation facilities. That ought to be covered if we are going to pass an electricity title.

Clearly, there should be authority and an enforceable responsibility on the part of FERC to ensure cross-subsidy does not occur. Those are the two primary things my amendment tries to deal with. I think they are very important.

I have a letter from MBIA, Richard L. Weill, who is the vice chairman of MBIA Insurance Corporation. I will read portions of that for my colleagues, because I think it is instructive. He says:

I am writing on behalf of the MBIA Insurance Corporation in support of your proposed amendment to the Energy Policy Act of 2003 that would strengthen the regulatory framework of utility mergers.

MBIA Insurance Corporation is the largest financial guaranty insurance company in the world. We have guaranteed the timely payment of principal and interest on more than $14 billion of electric utility debt. Our guarantee is unconditional and irrevocable, even in the event of fraud. In that context, we are profoundly concerned about the strength and integrity of the regulatory scheme of electric utilities.

We are, in a sense, a gatekeeper to the capital markets for these utilities. We provide investors with our unconditional and irrevocable guarantee and, as a result, provide the utilities with the lowest possible cost of access to the capital markets. Our Triple-A rating by all major rating agencies enables the utilities to sell debt at the lowest interest rate. We can continue to serve these investors and this industry only if we can be assured of the probity, comprehensiveness and fairness of the regulatory framework.

Your amendment would require that proposed mergers promote the public interest that is defined as encompassing the effects on competition, economic efficiency and regulatory oversight. It would also close loopholes that enable certain corporate combinations to avoid being characterized as mergers.

We believe that this amendment will be viewed favorably by the capital markets.

We are trying to close loopholes that enable certain corporate combinations to avoid being characterized as mergers. That is exactly the problem with the substitute proposal Senator DOMENICI has laid before the Senate.

By adopting the language in my amendment—that was in the bill last year—we close those loopholes, we guarantee consumers will be protected, we guarantee these utilities will get the lowest possible interest rates and that this insurance arrangement can remain in effect.

This is a very good amendment. I hope my colleagues will support it. It will strengthen this bill. This is not an amendment offered with the intent of undermining the electricity title. This is an amendment offered with the intent of strengthening the electricity title. It is very well crafted, in my view, to accomplish that.

I yield the floor, and at the appropriate time I will offer another amendment on a different aspect of the electricity title.

Mr. REID. Mr. President, I need to confer with the Democratic leader about the question asked by the Senator from New Mexico. In the interim, I ask unanimous consent that the Senator from Illinois, Mr. DURBIN, be recognized to speak for up to 5 minutes as in morning business regarding an unfortunate death of one of his close friends.

Mr. THOMAS. Reserving the right to object, I would like to make some more comments on this particular amendment following the remarks of Senator DURBIN.

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

(The remarks of Mr. DURBIN are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I take a moment to comment again on the pending amendment. It has been mentioned several times this was in our bill last year; that is true. I supported it; that is true. But we have to understand how we got in that situation.

First of all, we had come to the floor without having the committee work on the bill at all last year. This is quite a different situation where we quietly and completely have gone through the bill.

I also have to say my friend from New Mexico had quite a stronger statement and I had a less strong statement than what is in here. We agreed to a compromise. So it is not the way I would have done it had I had my way, but we wanted to move something. In any event, that is the way we came to have that language.

We are talking about consumer protection. We get all tied up in some of these terms, but the fact is we are seeking to put authority there for someone to oversee. What we want to do, of course, is to have FERC do it without an expansion of authority.

So we are saying in the language of the bill, no public utility shall, without first securing the order of the commission authorizing it to do so, sell, lease, or otherwise dispose of facilities; to merge or consolidate, directly or indirectly, such facilities or any part thereof; purchase, acquire, take any security over $10 million.

It is very clear. That is what we do under the bill as it now is drafted.

Then we go on to say in evaluating the transaction on the applications and so on, the Commission will adequately protect consumer interests, will be consistent with competitive wholesale markets

. . . will not impair the ability of the Commission or the ability of a State commission

having jurisdiction following the completion of the transaction over any public utility that is a party to the transaction or an associate company of any party to the transaction . . .

That is what we say in the bill.

. . . will not impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction, and

Finally:

. . . satisfies such other criteria as the Commission considers consistent with the public interest.

So what we do is give the direction to the Commission to do the very thing that we are talking about, and that is to ensure that mergers are fair to consumers. That is what this whole area is about. It has been drafted carefully to be in that form.

I think it would be a mistake for us to adopt any changes in that when we have what we need for the protection of consumers, something we have agreed to, something that is part of a modernization effort. We should not change that by an amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I indicated to my friend, the distinguished senior Senator from New Mexico, and Senator BINGAMAN, the manager on our side, that I would check to find out what we have in the way of amendments.

This is certainly an incomplete list. We have not hot-lined this, but we have had people call the cloakroom. We have five Senators who wish to offer amendments at this stage. We have at least one of those Senators who is going to offer multiple amendments—multiple means maybe three, maybe four amendments.

To make a long story short and not take undue time, we would be agreeable to having the second Bingaman amendment debated tonight. We would lay down the first Cantwell amendment with the understanding that she will lay that amendment down tonight and debate it for an hour tonight. She wants 2 hours on it tomorrow.

If the Senator from New Mexico, the chairman of the committee, does not want to agree to this, then we should have the two votes on Bingaman, and likely we will not offer any more amendments tonight.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. First, I thank the Senator for the hard work he is doing, trying to ascertain from Senators at this hour—although we have all been telling them we are working, and this is the work part of the day, it is not hard to find out what they want to do. I thank you for the obviously successful effort you made so far.

Mr. REID. If my friend will yield for one other thing I should have said before?

Mr. DOMENICI. Yes.

Mr. REID. As the Senator from New Mexico knows, this electricity title is very important to some Members of the Senate. None of these amendments, I want the record to reflect, are done in any way to slow up, slow walk, or stop this bill. These amendments, as has been seen by the amendments of the Senator from New Mexico, are amendments offered in good faith to try to improve this bill.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Might I say to the distinguished Senator from Nevada, all I want to try to do is move this bill along, as you know, and to do that in a way that is consistent with Senators having ample time to prepare and to present their amendments properly. You indicated to me, without certainty but relatively close, that you probably—we are probably looking at eight amendments, five Senators, with one of them who has three.

I might ask, Is Senator BINGAMAN's No. 2 included in that?

Mr. REID. No.

Mr. DOMENICI. No. So it is the possibility of nine amendments. I want to tell the Senator from the start that, as far as the distinguished Senator MARIA CANTWELL, I certainly do not have any objection to 1 hour tonight and 2 hours tomorrow morning. We can start with that. But what I do have some concern about is trying to determine when we would be finished with amendments to the electricity title. I tell you that as much because I have been hearing from your side of the aisle of the great desire to take up two amendments that have to do with climate change. I have been told the only way that can be done, and done right, is tomorrow because everybody will be here. That is two.

I have been told that—and I know—Senator BINGAMAN wants to offer his amendment with reference to a 10 percent mandatory renewable portfolio, and that belongs in the same package.

I have been told the distinguished Senator has a new source performance review; is that correct? Is that what it is called?

Mr. REID. That is true. New source review.

Mr. DOMENICI. I remember that when I was on the committee—new source review. He had that up once. A couple of Senators came back who were not here then. That may well be why. But that is another one we have to look at.

I guess what I am wondering is, if it would be asking you too much to suggest the following; that Senator BINGAMAN offer his amendment—I am not suggesting, I am not proposing this officially—he offer his second amendment here, and that Senator CANTWELL offer her amendment tonight and debate it for an hour; that you try to find one more amendment to be offered tonight, and then that we reach agreement, come back tomorrow, reconvene at 9 o'clock in the morning, at which time Senator CANTWELL would have her time, and all the remaining amendments—that is 9, 10, 11—remaining amendments in this area would be finished by 1 o'clock in the afternoon.

Mr. REID. We couldn't agree to that.

Mr. DOMENICI. What time would you think?

Mr. REID. If Senator CANTWELL debates for 2 hours, that is 11 o'clock.

Mr. DOMENICI. Yes.

Mr. REID. And we have three votes, that takes us to about 12 or 12:15. That would be almost humanly impossible.

Mr. DOMENICI. What would you like, 2:30; 3?

Mr. REID. I say to my friend, I have no authority. I am dealing with five Senators who are all Senators in their own right. I am here just trying to help a little and take phone calls from them, things of that nature. Some of them, frankly, are out doing other things tonight. We could not agree to that.

The Democratic leader, with whom I spoke just a few minutes ago, indicates he thinks, and I would acknowledge he is probably right in this regard, about as far as we can go tonight is lay Cantwell down, get a time agreement on hers. Maybe during—not maybe, but during the morning hours when she is debating hers, we would be able to try to come up with a list of amendments.

But any one of these Senators can object to a finite list. I just don't see anything happening in the next few hours.

Mr. DOMENICI. I would like to do this, with your concurrence. Why don't we proceed with the Bingaman amendment, tell Senator MARIA CANTWELL she will be next for an hour tonight. In the meantime, would you let us work on the unanimous consent request proposal so your staff and ours——

Mr. REID. I say to my friend, I am very happy to do that. One thing that people on my side—and, frankly, I have gotten a call from somebody on your side. Are there going to be any votes tonight?

Mr. DOMENICI. Unless an agreement is worked out, Senator, we are going to have a vote tonight.

Mr. REID. Then there will be no Cantwell amendment offered tonight. As soon as Bingaman is offered, we can vote on that, and there will be no Cantwell amendments tonight.

Mr. DOMENICI. Would the Senator like to work on a unanimous consent request that includes Senator MARIA CANTWELL?

Mr. REID. I say, Senator BINGAMAN is going to take a little bit of time. He said he wouldn't take very long. But if he takes a half hour and there is response to that, we are not going to finish what we are doing now until 8:30, quarter to 9. Senator CANTWELL is not going to offer an amendment at that time.

If you want to finish Bingaman, have Cantwell laid down tonight, and have Cantwell come in in the morning, that is fine. Have votes whenever you want them, but if we are going to have votes on Bingaman, we are not going to offer any more amendments tonight.

Mr. DOMENICI. Let us make this effort: That Senator BINGAMAN would proceed for as long as it takes, Senator CANTWELL will offer her amendment and take an hour tonight, and that we work on a UC request together while that is occurring. She will get her 2 hours tomorrow, and we will try to get a consent as to when we might finish. If not, I will go along and say we won't have any votes tonight.

Mr. REID. I say through the Chair to my dear friend, the senior Senator from New Mexico, that I don't think it is possible to get an agreement locking in these amendments. I just do not think it is possible. I don't want to act in bad faith. I would like to do that. I believe in an orderly body. But I just don't think I can get that done. We have people off the Hill and people just automatically object to things at this time of night. I don't think we can get it done.

Mr. DOMENICI. I want to say now—and I will say it three more times tonight before we finish—to Senators wherever they are that we are not quitting tomorrow night at 7:20. If there are Senators who want to be off the Hill, they can be off. We are going to be here tomorrow night voting on amendments that your side wants. We are just about out of amendments on our side of the aisle. I am not sure of any really important ones left. Your side has been telling me they want these very important amendments that they claim are related to this bill. A whole bunch of amendments that are left don't even belong on this Energy bill and are not even within this committee's jurisdiction. This Senator stands up and argues against them but, as a matter of fact, they ought to be argued by another committee chairman. I am not even the one who takes care of them. But I will have to do that.

As long as everybody understands, Senator CANTWELL will be taking 2 hours tomorrow. We are going to start at 9 o'clock. We are still going to be on these amendments to this bill. We need Senators to get ready tomorrow morning with additional amendments in this arena. Then we will proceed quickly to the amendments such as the one Senator FEINSTEIN has and all the others. But we will be here tomorrow evening. We will be here plenty late as we take those amendments, as long as we understand we are ready to do what you recommend.

Mr. REID. If I could through the Chair, is the Senator from New Mexico saying that tomorrow we are going to move off of the electricity title into other areas?

Mr. DOMENICI. We will stay right on electricity in the morning and try to finish it as soon as we can. I am hoping that it doesn't take all day so we can go to the other issues. But at this point, could we just, so as to protect you, agree that if you will move as follows tonight, we will set aside the current Bingaman amendment so that the second Bingaman amendment can be taken up. Then it will be set aside so we can take up first the Cantwell. She will use 1 hour tonight. We will answer, if we see fit. If not, we will debate it tomorrow. Nonetheless, we will come in tomorrow at 9 o'clock, and when we get on this bill, Senator CANTWELL will be up and she will have an additional 2 hours on her amendment. I am merely adding as a matter of discussion that further amendments on this section of the bill will be in order at that time.

Mr. REID. I understand very clearly the chairman of the committee.

Mr. DOMENICI. Is that fair enough?

Mr. REID. Very fair.

Mr. DOMENICI. Senators understand that means we are not going to vote tonight. But you certainly can look to a late night tomorrow night with votes.

I yield the floor and thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent to set aside the amendment that I just sent to the desk.

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

AMENDMENT NO. 1418 TO AMENDMENT NO. 1412

(Purpose: To preserve the Federal Energy Regulatory Commission's authority to protect the public interest prior to July 1, 2005)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 1418 to amendment No. 1412:

On page 9, lines 23 through 24, strike ''including any rule or order of general applicability within the scope of the proposed rulemaking,'' and insert: ''nor any final rule or order of general applicability establishing a standard market design,''.

Mr. BINGAMAN. Mr. President, my colleague from Wyoming is here. I mentioned to him that this is an issue which I would like us to try to find some way to resolve. This is something that we may well be able to avoid having a vote on tomorrow, if we can find a way to resolve it.

The amendment I have sent to the desk tries to clarify something in the bill that I think is very important. Senator DOMENICI's substitute contains a delay in the issuance of the Federal Energy Regulatory Commission's standard market design rulemaking until July 2005. I understand that. That is fine. I am not trying to disturb that. I believe the rule goes too far and should be dramatically modified or completely abrogated.

I know there are Members of the Senate who think 2005 is the wrong date, that we ought to go to 2008 or some other date. Others believe FERC should be permitted to go ahead, and as quickly as they would like. I am not taking a position on that issue with my amendment. I, frankly, can see both sides of the argument.

My amendment leaves the delay of the standard market design rule that Senator DOMENICI has included in his substitute in place. However, in an effort to prevent the Federal Energy Regulatory Commission from renaming the rule and issuing it under a new title, the bill also goes on to prohibit ''any rule or order of general applicability on matters within the scope of the rule.''

That means the Federal Energy Regulatory Commission cannot issue a rule or order of general applicability on any issue that is dealt with in the proposed rule during the 2 years of the delay.

What kind of actions would this prevent? That is the obvious question.

I think it would prevent the Commission from doing its job. The Federal Energy Regulatory Commission currently has a rule in the process on interconnections to the transmission grid. No matter what that rule says, the Federal Energy Regulatory Commission would be prohibited from issuing it under this language that we have in the Domenici substitute.

Other matters dealt with in the rule that the Federal Energy Regulatory Commission would be prevented from dealing with in a generic manner are such issues as market oversight, market litigation, transmission pricing, the scope of regional transmission organizations—RTOs—the adequacy of rules or transactions across RTO boundaries, and, in short, just about anything that the Commission does about transmission or markets because the proposed rule touches on all of those issues.

There are even rules that the Commission is required to issue by other provisions in this Domenici substitute that they would be prohibited from issuing because of this provision that I am here trying to change. There are a number of rules necessary to get the reliability section to work. The bill requires rules on mergers, on transmission access by public power entities, on participant funding, and other matters.

The provision that I am here trying to modify or change would prohibit the issuance of those rules whereas in another place in the same title we are saying the Commission is directed to issue.

It would be ironic, indeed, if the rule's opponents who want stronger participant funding language in the rule were to have prevented the Federal Energy Regulatory Commission from issuing this rule related to participant funding that they want to see issued because of their zeal to prevent the standard market design from being issued.

I also believe that some of the orders that the Federal Energy Regulatory Commission issued in the Western market crises would be defined as orders of general applicability and would have been prohibited.

If we have another crisis which occurs during these upcoming 2 years,

would we not want the Federal Energy Regulatory Commission to bring order to those markets the way they finally did in the West 2 years ago in the summer?

Everybody, both the opponents and the supporters of the standard market design, should support the amendment I am offering. It is an amendment to clarify that the Federal Energy Regulatory Commission is not banned from issuing any orders or rules that deal with any matter in the proposed rule; that they should only, instead, be prohibited from issuing a standard market design rule by any other name.

So I believe what I am proposing is something that all colleagues who have looked at this issue would agree with. We are just trying to clarify the language so we do not wind up prohibiting the Federal Energy Regulatory Commission from doing the very things we are going to be calling upon them to get done, and that is the effect of the language that is in the Domenici substitute at this time.

So that is the thrust of my amendment. As I say, this is an issue which, frankly, we should not have to be dealing with by amendment on the Senate floor. I would hope we could just get this resolved at a staff level. We have not been able to. I hope that can still happen and that we can avoid having to go to a vote on this question because I think in the final analysis, if anybody will spend a little bit of time trying to understand this issue, they will agree with this change in language that I am proposing. And they will agree that is, in fact, what the Senate would like to see done.

So, Mr. President, with that, let me yield the floor. My colleague may want to speak on this same amendment.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I think the Senator raises an issue that we should discuss, but I have to tell you, it has been discussed, and there is a certain amount of balance that goes into this entire project. In other words, there are other parts of the bill which indicate that FERC should work with RTOs, for example, or should do some of the other things.

Market design is a rather broad concept, and I think this amendment is not necessary. It is illogical to read this SMD delay to tell FERC it cannot do its duty. So when you broaden the whole thing to say you can't do anything, as this amendment implies in establishing a general market design, I suppose you might pick up some things that might be a market design and say you can't do that, when in the bill that is what we are seeking to cause them to do.

I do agree perhaps there ought to be an effort made to clarify this language, as I think the Senator wants to do. And perhaps there is a way where we could do a colloquy, or do something to make it certain that it is not there to interfere with the other things we would want FERC to be doing; for instance, to issue rulemaking on market transparency or participant funding.

We have a balance. And it is a little difficult to achieve that balance if we go with this very broad change. So I think, as it stands, we would have to oppose the amendment. But we encourage the Senator—perhaps we could get together with our staffs and figure out a colloquy that would make it clear in some other fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I appreciate the comments of my friend from Wyoming. Now that we know the procedure—that this will not be voted on until tomorrow at some point—therefore, there will be an opportunity, perhaps this evening or early tomorrow, when our staffs can get together to see if there is any way to accommodate this concern I am trying to deal with in this amendment. As I say, it is a concern which I think many Senators will share if they will focus on what we are trying to deal with.

So the amendment is pending. If we have to, we can have a vote on it, but I would hope we could find another way to deal with this issue that will be acceptable to the chairman of the committee and to my colleague from Wyoming and to all Senators.

Mr. President, that is the only other amendment I intended to offer this evening.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I say to my friend, Senator BINGAMAN, perhaps, with a little bit of time, we can work on it and see if there is some way we can avoid an amendment. If not, clearly, you understand yours, and we understand our reasoning why we do not need it; that it should not be an amendment; that it should not be raised to that level; that it is not needed in terms of the full amendment. But we will work on it.

Now, I understand the time has arrived when I would make a request because I don't think I did the other in the form of a unanimous consent request.

I ask unanimous consent that the second Bingaman amendment be set aside so that the distinguished Senator, MARIA CANTWELL, can offer her amendment, and that she would use up to 1 hour tonight and have up to 2 hours tomorrow on that same amendment.

I ask Senator CANTWELL, that is correct, is it not, that you would like up to an hour tonight and up to 2 hours tomorrow on this amendment?

Ms. CANTWELL. That is correct.

My colleagues from throughout the West are very concerned that they have ample time to express their opinion about the electricity title and this particular amendment. So if you want to limit it to an hour tonight, we will use the 2 hours tomorrow to give my colleagues a chance to speak.

Mr. DOMENICI. I just wanted to make it clear we are not trying to deny you anything. We just have to have some idea what comes next so other people can be ready. And if it looks as if we come in at 9, you would still have up to 2 hours for further discussion by you and others regarding that amendment.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. REID. Mr. President, reserving the right to object, it is my understanding, then, that the request is that Senator CANTWELL would be able to lay down her amendment tonight, that she would have up to 1 hour tonight, 2 hours tomorrow, and there would be no tabling motion before that 2 hours is up in the morning.

Mr. DOMENICI. The Senator is correct, except, might I say, I think it is fair, just for the Senate's sake, that we say on both of those up to 2 hours. And I do not intend to amend. But we don't have to wait here if she is finished.

Mr. REID. No question about that.

Mr. DOMENICI. I yield the floor.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. CANTWELL. If I could clarify, I don't know whether we will actually physically lay down the amendment tonight or the first thing at 9 a.m., but we will talk about the amendment, use that 1 hour tonight, and use the 2 hours according to the agreement.

Mr. REID. Mr. President, if I could respond to the Senator from Washington, that is your choice. You have 3 hours on this amendment. You can either offer it tonight or in the morning. But if you offer it in the morning, the time you are taking tonight would run against your time. So if you take more than an hour tonight, you will lose it in the morning.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I don't have any objection, but we have been talking for about an hour about that amendment and you, I say to the distinguished minority whip, have been saying the important thing is that she would have an hour tonight on her amendment. But we are not going to have her amendment. We thought it was going to be laid down so we would know what it is about.

Mr. REID. Mr. President, I say to my friend from New Mexico, the Senator from Washington—as long as she knows she has a total of 3 hours on her amendment—would have no problem sharing that with you tonight.

Mr. DOMENICI. Can we have the amendment? That is all we want.

Ms. CANTWELL. Absolutely.

Mr. DOMENICI. Thank you.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Washington.

Ms. CANTWELL. Mr. President, I thank my colleagues for their cooperation. We want all Members to understand the amendment I will be offering

tomorrow, and we certainly want the American public to understand it. I have a few comments on the Domenici underlying amendment and on the Bingaman amendment as well. They are related to our overall effort.

Let me step back for a moment. The debate we have been having involves important issues about how America moves forward on an energy bill, how we diversify our energy away from foreign dependence, and how we make the right investments. I have a lot of concerns about this bill, that it is not on target making the right investments. I am sure I will have a chance to get to that point later as this bill continues to be debated. But what I feel is most important tonight is that my colleagues and the American people understand this bill has significant changes in it as it relates to consumer protections and the failure we have had as a government in protecting consumers from the energy crisis that has damaged the west coast economy.

When I think of this debate we have had for the last hour or two—actually for the last day or so—about how much time we should give to the Energy bill, I find it amazing. Because the west coast economy got hit basically to the tune of about $6 billion. That is the cost for manipulated contracts that we in the west paid for in our economies. So when you say, let's debate these amendments and let's get them off the table, let's give 6 hours to debating these amendments, we are basically saying to the west coast ratepayers: We are giving you 1 hour for every billion dollars you were gouged by Enron and market manipulators.

We can do better than that. We ought to be willing to give the American public at least an hour for every million dollars they paid in high energy costs that were part of manipulated contracts. I feel very fortunate that I have an hour tonight and that my colleagues from the west and I have 2 hours tomorrow to talk about this important issue. Frankly, the American people need to have their day in this body to debate fully whether we want to have changes to our consumer protection laws, whether this body, the Senate, is taking adequate measures to protect them from having another Enron crisis happen again, and whether our own regulators, the Federal Energy Regulatory Commission, are doing their job in protecting consumers.

This debate we just had about the underlying Domenici substitute and the Bingaman amendment is about that, about whether we should allow for more of the free market or whether we should have more controls.

My point to the American people is that we have a Federal Energy Regulatory Commission that has not done its job. The Federal Energy Regulatory Commission deserves an ''F'' when it comes to protecting consumers.

Let me show what has happened in my home State of Washington, how consumers have been gouged by high electricity prices. Yes, we were the unfortunate State that got caught with the second worst drought on record which meant our hydro system wasn't producing as much power as we needed it to produce. Consequently, what happened? Well, we had to go out on the spot market and buy electricity. When we went out to buy that electricity, we bought it at a time when California had gone through their deregulation and there were exorbitant prices, sometimes 300 times the price of electricity. Our utilities were forced to buy that power. Our consumers were forced to pay that price.

You say: Well, that is an unfortunate circumstance of that time period and the fact that your State had a drought. I can tell you it wasn't all related to our State having a drought. What we have found since this time is these contracts were manipulated. Enron has said they were manipulated. The Department of Justice has said they have been manipulated. We have a Federal Energy Regulatory Commission report—that report is so voluminous, many pages—that basically documents all the different ways in which these contracts were manipulated.

What is the result? The result of that has been in my home State of Washington we have had utilities that have ended up having increases in their rates. Down in southwest Washington, in the Vancouver area, there has been an 88 percent rate increase; in parts of King County, a 61 percent rate increase; in Snohomish County, a 54 percent rate increase; over in eastern Washington, in Okanogan, one of the areas that is most economically hard pressed in our State, a 71 percent rate increase; over on the Olympic peninsula, a 43 percent rate increase.

I ask my colleagues: Which States would be willing to put up with those kinds of rate increases, from an energy crisis where contracts have been manipulated, and say it is OK?

The kicker in this situation is these aren't just rates for 1999. Because of this crisis and the manipulated contracts Enron has put forth, we are stuck with those high energy costs for the length of those Enron contracts. In fact, even though this report from a Federal agency says these contracts have been manipulated, and unjustly so, these utilities, particularly the one here in Snohomish County, have to pay this 54 percent rate increase for another 5 years. They are stuck paying these Enron contracts for 5 years.

When the utility said: Why should we be paying this price? Why should we pay a contract that has been knowingly manipulated? Enron is suing them. Can you imagine that? Enron, who has admitted guilt in manipulating contracts, has the audacity to sue utilities in my State, forcing them to continue to pay these high rates.

This debate is about whether we are going to get some relief. Somehow people think maybe there is a way this rate increase of 54 percent doesn't really impact people. If you think somehow this really isn't causing harm, I want to submit for the RECORD a New York Times article from December of 2002, just last December, where it showed we had more than 14,000 customers from that local utility in Snohomish County basically disconnected from their energy source because they couldn't pay.

We saw a 44 percent increase in actual disconnections in Snohomish County because people could not afford to pay that 54 percent rate increase.

I ask unanimous consent to print the article I referred to in the RECORD.

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

[From the New York Times, Dec. 22, 2002]

LEGACY OF POWER COST MANIPULATION

(By Timothy Egan)

EVERETT, WA., Dec. 19.—Two years ago this month, a record was set at the height of the West Coast energy crunch: an hour of electric power was sold for $3,250—more than a hundred times what the same small block had cost a year earlier.

Now, power supplies are abundant and wholesale prices have plummeted. But the fallout from what state officials say was the largest manipulation of the energy market in modern times has continued to hit West Coast communities hard.

Here in Snohomish County, which has the highest energy rates in the state, more than 14,000 customers have had their electricity shut off for lack of payment this year—a 44 percent increase over 2001. They have seen electric rate increases of 50 percent, as the Snohomish County Public Utility District struggles to pay for long-term power contracts it signed with companies like Enron at the height of the price run-up.

Aided by charities, most customers have had their power returned within a day of being shut off, but others are forced to make choices about which necessities they can live without. ''It's a pretty tough thing trying to explain to your 5-year-old kid why the lights won't come on anymore,'' said Crystal Faye of Everett. ''I didn't pay much attention to all that stuff about California and Enron, but it's certainly come home to hurt us now.''

Ms. Faye and her husband, Rick, who are unemployed, have had their power shut off twice this year. Brianne Dorsey, a single mother, said she removed the baseboard heater in her home here and has had to rely on a small wood stove for heat, because she is $1,000 behind in paying her electric bills.

Faced with such tales tied to rate increases along the West Coast, states are trying to get back some of what they lost during 18 months when energy prices seemed to have no ceiling. The decision this month by a federal regulatory judge that California utilities had been overcharged by $1.8 billion bolstered the case of Northwest utilities seeking refunds, officials of those utilities said. It also angered California officials, who say they will continue to press for a total of nearly $9 billion in refunds. The Federal Energy Regulatory Commission is expected to decide on Northwest refunds in the spring.

No matter what the federal government decides, officials say their best hope for compensation is from a number of criminal investigations being pursued by Nevada and the three West Coast states—Washington, Oregon and California. They liken their cause to state lawsuits against tobacco companies, which started as long shots but resulted in enormous settlements.

Aided by a guilty plea in October from a former trader for Enron, and by newly discovered internal documents describing how companies manipulated the energy market in 2000 and 2001, the West Coast states are hoping to get settlement money from more than a dozen energy trading companies. The companies say they acted legally in taking advantage of a unique market condition, but state officials say the companies created a fake energy crisis.

At the height of the rise in energy costs in early 2001, the Bush administration said the West Coast's troubles were a precursor of what would happen if the nation did not build 1,900 power plants over the next 20 years. But state officials in the hardest-hit areas say the crisis was never about energy shortages so much as it was about an epic transfer of wealth. They want payback—in some cases for immediate relief to consumers who cannot pay their bills this winter.

Last month, the Williams Company, in Tulsa, Okla., agreed to a $417 million settlement with Washington, Oregon and California. While admitting no wrongdoing, Williams agreed to pay refunds and other restitution to the three states; in return, the states dropped an antitrust investigation. Among large energy companies, the states are seeking refunds from the Mirant Corporation, Reliant Resources Inc., Dynegy Inc., Duke Energy and Enron.

''All of us on the West Coast have been hard hit by these rate increases, but the poor in this county have just been hammered,'' said Bill Beuscher, who runs the energy assistance program in Snohomish County. Mr. Beuscher said that in the first two weeks the winter energy assistance program was open this year, requests for financial aid were up 55 percent from the same period last year.

The power trading companies named in criminal investigations and refund cases did not want to comment publicly while the cases were pending. But several of the companies that are fighting refunds have said in their public filings that the utilities, particularly in the Northwest, are trying to renege on legitimate long-term contracts. They said they did not act in collusion and explained that the highest prices were a result of severe market shifts brought in part by the Northwest drought.

In some cases, the power trading companies said, the utilities resisted buying shorter contracts, which would have cost them less. They also said that some Northwest utilities took advantage of the price spikes and sold power into the market themselves, only to come up short later. The companies said they expected to be vindicated when the government finishes its refund cases next spring.

Mr. Beuscher said he would like to see money from the Williams settlement be used to help people who cannot afford the rate increase. Consumers in Oregon and California have made similar pleas. But officials in all three states say that until there are larger settlements with the energy companies, consumers are unlikely to see relief.

''We hope that the Williams case serves as a template,'' said Tom Dresslar, a spokesman for the California attorney general's office, ''because California was monumentally ripped off by these energy traders.''

About seven million consumers in California, who were initially shielded from having to pay for runaway energy costs during the worst part of the state's deregulation debacle, are paying rate increases averaging 30 percent more than the pre-deregulation prices of 1996. The state has the highest energy rates in the nation, consumer advocates say, although the structure of the rate increase allows poor people and low energy users to escape the recent increases.

''I don't hold out a lot of hope that we will ever get significant refunds,'' said Doug Heller of the Foundation for Taxpayer and Consumer Rights, a nonprofit group based in Los Angeles. The group calculates that California power customers overpaid a total of $70 billion.

At the height of the energy troubles, the trading companies boasted of record profits in their quarterly reports. But many of those companies are now near bankruptcy as they cope with a downturn that has caused the energy trading sector to lose 80 percent of its value, according to Wall Street analysts. ''It's like the highwayman robbed us and then spent all the money on booze,'' Mr. Heller said.

The companies themselves blame the states. In one case that was heard this month, William A. Wise, chief executive of the El Paso Corporation, which is based in Houston, denied manipulating the market and blamed the officials who set up California's deregulated energy market for causing the price run-ups with ''one bad policy after another.''

Under a New Deal-era law, power companies can be forced to pay refunds if they have charged an ''unreasonable and unjust'' amount for electricity. The Federal Energy Regulatory Commission, which West Coast governors say did very little to restrain power traders during the height of the run-ups, will determine the exact refund amount, if any.

In the meantime, electric rates throughout the Pacific Northwest, once among the cheapest in the nation, have climbed as much as 50 percent.

California's problems stem from its chaotic attempt at energy deregulation, approved in 1996 and put in effect in 1998. The Northwest, with its tradition of publicly owned utilities, was drawn into the California crisis by a convergence of dry weather and freewheeling trading of its own.

Usually, the Northwest avoids price fluctuations by providing a steady stream of hydroelectric power, aided by abundant winter rainfall. But in late 2000, a drought in the Northwest forced utilities to buy power on the open market. Some utilities had also tried to sell power into the California market but were pinched by the drought.

At the same time, major energy traders were withholding blocks of power to create the appearance of further shortages, according to Enron memorandums discovered this year.

Refunds were once thought to be unlikely. But then came the memorandums—many of them detailing schemes to manipulate the market under names like Death Star—and the agreement in October by Timothy N. Belden, a former senior trader for Enron, to plead guilty to conspiring with others to manipulate the West Coast energy market.

Prosecutors say Mr. Belden is cooperating with investigations of the power trading companies.

''What really started the ball rolling were the smoking-gun memos, and then the guilty plea has helped as well,'' said Kevin Neely, a spokesman for the Oregon Department of Justice.

There is also continued bitterness among West Coast officials toward the Bush administration for waiting until June 2001 before putting price controls on the market, which immediately ended the large price spikes and rolling blackouts and brought stability.

Since then, power use has fallen and prices on the short-term market are about where they were before the energy run-up of 2000 and 2001.

''It was a fallacy to blame this crisis on a lack of new power plants,'' said Steven Klein, superintendent of Tacoma, Wash.'s public utility, Tacoma Power. ''But it's a shame what came of this. It put a dent in a lot of family budgets, and forced some businesses to close.''

Ms. CANTWELL. It is impacting people in my State. One of the largest employers in the State, the Boeing Company, has their major manufacturing base located in that particular county. In that county, they have made it clear they planned to build the next generation plane. They are not sure whether they are going to build that plane there or even in Washington State. What is on the list of issues about which they are concerned? The cost of energy, the high cost of energy. So again, individual ratepayers are suffering. Businesses are suffering. Businesses may decide the long-term investment in Washington State isn't worth it just because Enron manipulated contracts at a time my consumers and my businesses needed affordable electricity.

We are here tonight to talk about this situation and what the Senate is going to do about it. It is clear we are not doing enough.

I think there are newspapers all over the country who basically have said we are not doing enough about it. The New York Times said, ''This energy crisis dims small business hopes.'' This is an administration that wants to get the economy on the right track. How can you get the economy on the right track if you won't do anything about manipulated energy contracts? Basically, they say the ''perfect storm is creating a return of the energy crisis,'' and ''power cuts in the cold winter ahead for those struggling to pay for electricity.''

Just like I said, in Snohomish County, with a 44 percent increase in disconnect notices and an energy crunch, the Northwest might face another power crisis. ''Costs hit home for the energy crisis'' is in the San Francisco Chronicle. Believe me, we are going to hear from my colleagues from California tomorrow about how this crisis has impacted them.

Again, my colleagues on the other side of the aisle can spend as much time as they want talking about the need for future energy supply, which I am all for. About the fact that we should have been building more supply. That is fine. But you have to address the issue. The issue is these contracts were manipulated. They were schemed. The American people will come to know them by name—Get Shorty, Fat Boy, and a variety of others. That might seem humorous to some people, but it is not humorous when real people suffer the consequences. We are not doing enough about it.

So what else have newspapers said? The shocking thing is they basically are saying what I think some of my colleagues, particularly on the other side of the aisle, want to deny. I am not sure exactly why they don't want to address it. But they say, ''Enron met with energy regulators during the crisis.'' ''Enron monitor failed to do the

job.'' ''Federal energy regulators inept,'' this says. ''Enron execs often called the FERC brass during crisis.''

What is going on here is we have had this incredible lobbying effort by Enron in getting FERC commissioners and doing nothing about this crisis, and playing an overexcessive role. Now we have the choice as Members of the Senate as to whether we are going to stand up and do something about this.

I am outraged and I have been outraged about this issue for some time, because I go home almost every weekend and I see the real consequences of this problem. But even that pales in comparison to the steps I think this body is going to mistakenly take if it passes the Domenici electricity title as it is.

Mr. President, the Domenici electricity title as it is does nothing to protect consumers on power generation. The Domenici electricity title basically takes the only consumer protection law on the books—the Public Utility Holding Company Act—and repeals it. The good Senator from New Mexico, Senator BINGAMAN, tried to say: ''Are you sure we want to do that because I don't think we should?''

If you are going to change the oversight of these utilities, you ought to put some protections in place. When they do these mergers, maybe we ought to figure out a way that we have some oversight of this and protect it. We will have some other amendments—Senator DAYTON's and some of mine—that say, listen, we cannot go far enough in protecting consumers. How could you go too far in protecting consumers when we have had one of the biggest energy schemes in our country's history just unfold in the last couple of years?

I applaud this body for passing new accounting requirements. I applaud giving the SEC more to do on accountability, making sure that books are not cooked, that schemes are not put into place. I applaud the Attorney General from New York for his aggressive action in making sure that those who have been participating from the financial side in helping to portray to the American people that somehow these companies were healthy, when in fact all they were deploying were buying-and-selling schemes with inflated pricing. I applaud all of that. But what this bill fails to do is take a similar step. It fails to take a similar step because it is repealing the only consumer protection bill we have for electricity.

So how did we get there? Some of my colleagues mentioned the Federal Power Act and the Public Utility Holding Company Act of 1935. During the Roosevelt era, guess what? We saw the same thing. No surprise. A bunch of energy companies had total control of the market, created a pyramid scheme, jacked up the price on consumers. Guess what? The Roosevelt administration said: We cannot tolerate this. Consumers need to be protected.

So 1935 might seem like a long time ago to some of my colleagues, but I know one thing—too much concentration of power by a free market does not deliver affordable energy.

My State is a big believer in cost-based pricing. We have a lot of public power. That public power provides us with affordable energy. I am not opposed to market-based rates. I am not opposed to the free enterprise system. As a former businesswoman, I like the marketplace where businesses can compete and where competition exists, where anybody gets nervous when there is too much consolidation and when there is no oversight.

So, basically, what we have here in the last 2 years is more of a move toward market-based pricing, without the regulatory oversight. I would love to hear from my colleagues on the other side of the aisle who think State utility commissions don't have a responsible role in making sure that utility rates are not too high and too expensive. I would love to hear from my colleagues that somehow they don't think the Federal Government should play a role in wholesale rates and in assuring consumers that wholesale rates are just and reasonable. But I can tell you this. There is nothing just and reasonable about manipulating contracts. Even Patrick Wood, chairman of the Federal Energy Regulatory Commission, said so before the Energy Committee:

''Yes, that is right, Senator Cantwell, contracts that have been manipulated cannot be just and reasonable.''

So why don't we do something about taking the Federal Energy Regulatory Commission and strengthening it? Why don't we smack them on the hand and say actually you have not done your job, because if you want to go through the sequencing—the issue is that in this timeframe of the explosion of the California market and the crisis and the problem, what happened is prices rose to that exorbitant 300 percent increase. We all started saying we need to do something about this; we need to have some sort of price cap or price mitigation.

In fact, my predecessor, Slade Gorton, and several other Senators, actually wrote letters saying we need to do something about this energy crisis. The former Energy Secretary, now the Governor of New Mexico, also said we have to do something to stop this manipulation of pricing.

The prices actually started unfolding in May of 2000 even though a variety of people said there is important business to do here. Secretary Richardson, in December of 2000, 4 or 5 months later, said this is an emergency and we need to do something about it.

The next day FERC basically decides they are going to deny a request to do anything about capping the prices. They are not going to do anything! It took the outrage of many Members of Congress, and almost a year later when a bipartisan group of Senators introduced a bill to put on price caps that in April of 2001 the Federal Energy Regulatory Commission finally responded and said: Oh, yes, these prices are outrageous, and we should do something about them.

Mind you, all of us were saying during that time period that these contracts have been manipulated. They have been manipulated, and it is not fair. Our ratepayers should not have to pay these exorbitant prices. At that time, people were saying: This is just about supply, and if you guys built more supply, you would not have a problem. We have come to find out that it is not all about supply. It is about those manipulated contracts.

What happened is we finally heard from the source itself: Enron declaring bankruptcy, an investigation of potential energy market manipulations, and then finally, in March of 2003, FERC issuing this report saying the prices have been manipulated.

We had to drag that Federal entity kicking and screaming into the realization that, one, the prices were too high; two, that consumers in the West absolutely needed relief; and three, that these prices have been manipulated. Now we are trying to drag them into the realization that manipulated contracts that cost ratepayers 54-, 77-, 80-percent increases over the next 5 or 6 years are hardly just and reasonable or hardly in the public's interest.

The underlying Domenici amendment says: Go ahead and trust these FERC people; they are doing a good job; and let's take away any of those basic tools they have to regulate this industry.

I am surprised that some of my colleagues have not said: Let's just do away with FERC and deal with the Power Act. We would be better going to court and having the courts decide in our favor than having a regulatory entity that fails to do its job. But I know this: tonight and tomorrow we should not be talking about repealing the Public Utility Holding Company Act. We should not be doing that.

PUHCA really does hold companies accountable for their business service to retail customers. It gives the SEC the authority to review these mergers and put a prohibition on acquisitions if they do not think there is evidence that we are going to have efficient rates. It makes sure they review the complex corporate structures. It makes sure that these companies do not exploit the consumer. It really did give the SEC the ability to regulate pyramid schemes that were based on fictitious or unsound value assets that had no relationship to fair sums of what was being invested and how much the company was worth. It is amazing, that was a 1935 act. I guess history really does repeat itself because these are the same abuses we have seen in the Enron situation.

Remember the maze of affiliates and offshore partnerships that were part of the Enron scheme? Remember Enron's diversification into businesses as far afield as trading of weather derivatives

and water supply? Remember how Enron inflated their stock price and then it collapsed? It created such a gaping hole for individuals that they ended up losing their entire investment for retirement because of the collapse.

I can tell you this: We do not want to repeal PUHCA. What we want to do is have some further securities put in place. Some of those securities need to respond to these various schemes that have been perpetrated on the American consumer.

If we could see some of those schemes, I think the American public would be shocked to know that someone actually spent their time thinking up schemes in which the market could be manipulated.

I even have an article that Enron's Ken Lay admitted that he had gone to the then-current FERC Commissioner and said: If you continue to help us on this scheme, then we will continue to support you for the renomination of FERC. I guess Mr. Hebert was not quite so supportive because he was not renominated to that post. I ask unanimous consent that this article be printed in the RECORD.

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

[From the New York Times, May 25, 2001]

POWER TRADER TIED TO BUSH FINDS WASHINGTON ALL EARS

(By Lowell Bergman and Jeff Gerth)

Curtis Hebert Jr., Washington's top electricity regulator, said he had barely settled into his new job this year when he had an unsettling telephone conversion with Kenneth L. Lay, the head of the nation's largest electricity trader, the Enron Corporation.

Mr. Hebert, chairman of the Federal Energy Regulatory Commission, said that Mr. Lay, a close friend of President Bush's, offered him a deal: If he changed his views on electricity deregulation, Enron would continue to support him in his new job.

Mr. Hebert (pronounced A-bear) recalled that Mr. Lay prodded him to back a national push for retail competition in the energy business and a faster pace in opening up access to the electricity transmission grid to companies like Enron.

Mr. Hebert said he refused the offer. ''I was offended,'' he recalled, though he said he knew of Mr. Lay's influence in Washington and thought the refusal could put his job in jeopardy.

Asked about the conversation, Mr. Lay praised Mr. Hebert, but recalled it differently. ''I remember him requesting'' Enron's support at the White House, he said of Mr. Hebert. Mr. Lay said he had ''very possibly'' discussed issues relating to the commission's authority over access to the grid.

As to Mr. Hebert's job, Mr. Lay said he told the chairman that ''the final decision on this was going to be the president's, certainly not ours.''

Though the accounts of the discussion differ, that it took place at all illustrates Enron's considerable influence in Washington, especially at the commission, the agency authorized to ensure fair prices in the nation's wholesale electricity and natural gas markets, Enron's main business.

Mr. Lay has been one of Mr. Bush's largest campaign contributors, and no other energy company gave more money to Republican causes last year than Enron.

And it appears that Mr. Hebert may soon be replaced as the commission's chairman, according to Vice President Dick Cheney, the Bush administration's point man on energy policy.

Mr. Lay has weighed in on candidates for other commission posts, supplying President Bush's chief personnel adviser with a list of preferred candidates. One Florida utility regulator who hoped for but did not receive an appointment as a commissioner said he had been ''interviewed'' by Mr. Lay.

Mr. Lay also had access to the team writing the White House's energy report, which embraces several initiatives and issues dear to Enron.

The report's recommendations include finding ways to give the federal government more power over electricity transmission networks, a longtime goal of the company that was spelled out in a memorandum Mr. Lay discussed during a 30-minute meeting earlier this spring with Mr. Cheney.

Mr. Cheney's report includes much of what Mr. Lay advocated during their meeting, documents show. Both men deny discussing commission personnel issues during their talk. But Mr. Lay had an unusual opportunity to make his case about candidates in writing and in person to Mr. Bush's personnel adviser, Clay Johnson. And when Mr. Bush picked nominees to fill two vacant Republican slots on the five-member commission, they both had the backing of Enron, as well as other companies.

Mr. Lay is not shy about voicing his opinion or flexing his political muscle. He has transformed the Houston-based Enron from a sleepy natural-gas company into a $100 billion energy giant with global reach, trading electricity in all corners of the world and owning a multibillion-dollar power project in India. He has also led the push to deregulate the nation's electricity markets.

Senior Bush administration officials said they welcomed Mr. Lay's input but did not always embrace it: President Bush backed away from curbing carbon-dioxide emissions, an effort supported by Enron, which had looked to trade emission rights as part of its energy business.

''We'll make decisions based on what we think makes sound public policy,'' Mr. Cheney said in an interview, not what ''Enron thinks.''

The Bush-Lay bond traces back to Mr. Bush's father and involves a personal and philosophical affinity. Moreover, Enron and its executives gave $2.4 million to federal candidates in the last election, more than any other energy company. While some of that went to Democrats, 72 percent went to Republicans, according to an analysis of election records by the Center for Responsive Politics, a nonprofit group.

''He's for a lot of things we're for,'' said Mr. Johnson.

But when it came to deciding on nominees for the commission, Mr. Johnson said that Mr. Lay's views were not that crucial. The two most important advisers, he said, were Andrew Lundquist, the director of Mr. Cheney's energy task force, and Pat Wood 3rd, the head of the Texas public utility commission.

As governor, Mr. Bush named Mr. Wood to the utility commission. This year, when the White House filled the two Republican slots on the federal agency, Mr. Wood was the first choice, Mr. Johnson said.

Consumer advocates and business executives praise Mr. Wood. But Mr. Lay also had a role in promoting him. Shortly after Mr. Bush was elected governor in 1994, Mr. Lay sent him a letter endorsing Mr. Wood as the ''best qualified'' person for the Texas commission.

In all, there are five seats on the commission, two held by Republicans, two by Democrats and one held by a chairman who serves at the pleasure of the president. Mr. Hebert, who became a commissioner in 1997, was named chairman by Mr. Bush in January.

The Federal Energy Regulatory Commission's mandate to ensure fair prices in wholesale electricity and natural gas markets makes it crucial to sellers like Enron as well as consumers.

The movement toward deregulation sometimes leaves the commission caught in a tug of war: power marketers like Enron are trying to break into markets and grids controlled by old-line utilities, which operate under state regulation. The commission's chairman has considerable latitude in setting its agenda.

As part of its oversight of the wholesale electricity markets, the commission ordered several companies to refund what it considered excessively high prices this year in California. One lesser offender named in the commission's public filings—$3.2 million, of a total of $125 million—was an Enron subsidiary in Oregon.

Enron owns few generating assets, but buys and sells electricity in the market. Many of those transactions resemble the complicated risk-shifting techniques used by Wall Street for financial instruments.

Mr. Hebert, after he became chairman, initiated an examination into the effects those techniques have on the electricity markets. ''One of our problems is that we do not have the expertise to truly unravel the complex arbitrage activities of a company like Enron,'' he said, adding, ''we're trying to do it now, and we may have some results soon.''

William L. Massey, one of the agency's two democratic commissioners, said he supported the inquiry but had not been aware of it—an indication of the chairman's ability to set the commission's agenda.

Finally, the commission is trying to speed the pace of electricity deregulation by opening up the nation's transmission grid, much of which is owned by privately owned utilities that enjoy retail monopolies. Some Enron officials say the commission has been moving too slowly to open the grid. They attribute some of the problem to utilities. But they also fault Mr. Hebert.

''Hebert still has undeserved confidence in some of the vertically integrated companies coming to the table and dealing openly'' with transmission access issues, said Richard S. Shapiro, an Enron senior vice president.

The utilities, however, maintain that they provide cheap and reliable service for their customers. Washington lobbyists for one Southern utility said that Enron was really interested in focusing on the utility's big-business clients, which under state regulation pay higher rates than residential customers.

Since 1996, about half the states have moved to open their retail markets to competition, and the commission has begun to make it easier for outsiders to use the nation's transmission grid. But the promise of cheaper rates has been largely unfulfilled. So the push for more deregulation, in which Enron has been a leader, has slowed, especially when California's flawed program led to skyrocketing rates and chaotic markets.

Mr. Hebert is a free-market conservative who favors deregulation but also recognizes the importance of state's rights. A former Mississippi regulator, he is a protege of Trent Lott, the Senate Republican leader from Mississippi. Mr. Hebert said Mr. Lott was instrumental in his nomination to the commission in 1997 by President Clinton.

President Bush elevated Mr. Hebert to chairman on Inauguration Day, a move Mr. Lay said he told the White House he supported.

Mr. Johnson, the White House personnel chief, said that Mr. Lott and Mr. Hebert had both been told that Mr. Hebert could remain

chairman at least until the administration's nominees—Mr. Wood and Nora Brownell, a Pennsylvania utility regulator—are confirmed by the full Senate. The Senate energy committee voted earlier this week to approve the two nominees, after a hearing last week indicated strong support.

It is widely expected that President Bush will name Mr. Wood to replace Mr. Hebert as chairman after the Senate acts.

In an interview for a forthcoming episode of ''Frontline,'' the PBS series, Mr. Cheney suggested as much. ''Pat Wood's got to be the new chairman of the F.E.R.C., and he'll have to address'' various problems in the electricity markets, he said.

Mr. Hebert said that no one had told him he was being replaced. If someone else is named chairman, Mr. Hebert can remain a commissioner until the end of his term, which expires in 2004.

It was a few weeks after President Bush made him chairman Mr. Hebert said he spoke by telephone with Mr. Lay.

Mr. Lay told him that ''he and Enron would like to support me as chairman, but we would have to agree on principles'' involving the commission's role in expanding electricity competition, Mr. Hebert said of the conversation.

A senior commission official who was in Hebert's office during the conversation said Mr. Hebert rebuffed Mr. Lay's offer of a quid pro quo. The official said that he heard Mr. Hebert's side of the conversation and then, after the call ended, learned the rest from him.

Mr. Hebert said that he, too, backed competition but did not think the commission had the legal authority to tell states what to do in this area. Concerning the issue of opening transmission access through the creation of regional networks, Mr. Hebert supports a voluntary process while Enron seeks a faster and more compulsory system.

Mr. Lay said that while he might have discussed issues relating to the commission's authority concerning access to the grid, ''there was never any intent'' to link that or any other issue to Mr. Hebert's job status.

The commission is a quasijudicial agency, so decision-makers like Mr. Hebert must avoid private discussions about specific matters pending before the commission. Mr. Hebert and Mr. Lay both said that line was not crossed, but Mr. Hebert said he had never had such a blunt talk with an energy-industry executive.

Mr. Lay added that his few recent conversations with Mr. Hebert were nothing special. ''We had a lot of access during the Clinton administration,'' he said.

And he said that while making political contributions ''probably helps'' to gain access to an official, he made them ''because I'm supporting candidates I strongly believe in.''

Last June, Enron executives were asked to make voluntary donations to the company's political action committee. The solicitation letter noted that the company faced a range of governmental issues, including electricity deregulation.

This year, some people who sought but did not get nominations to the commission said that Mr. Lay and Enron had had a role in the process.

One was Joe Garcia, a former Florida utilities regulator and prominent Cuban-American activist. He said he had been ''interviewed'' by a few Enron officials, including Mr. Lay, who he said had not been as ''forceful or insistent'' as the other Enron officials.

But in their conversation, Mr. Garcia said, Mr. Lay made clear that he would be visiting the White House, adding that ''everyone knew of his relationship and his importance.''

Mr. Johnson, the White House personnel chief, could not cite another company besides Enron that sent him a list of preferred candidates for the commission, but he remembered hearing the views of Tom Kuhn, who heads the utility industry trade group, the Edison Electric Institute. Mr. Kuhn was a classmate of Mr. Johnson and Mr. Bush at Yale.

As for his conversation with Mr. Garcia, Mr. Lay said he was comfortable with his candidacy but ''I'm not sure what I told him about my friends at the White House.''

This article is part of a joint reporting project with the PBS series ''Frontline,'' which will broadcast a documentary about California's energy crisis on June 5.

Ms. CANTWELL. Mr. President, what are these schemes that were perpetrated on ratepayers in the West?

Get Shorty is a scheme that individuals may have read about in the paper, or maybe some individuals know from being in California or hearing parts of what happened in Washington State or Oregon. I thought it was the title of a movie. I did not know it was a clever marketing tool presented by a bunch of executives at an energy company to manipulate the prices so my ratepayers might pay more. I could not believe something like that would happen.

Another scheme that was part of the process is Load Shift, another way in which the individual consumer did not understand that some trading was going on with the price, and yet prices could be inflated and because, again, we had a shortage and had to go out and buy on the spot market, we were trapped at buying at that high rate.

There is another attempt to defraud consumers known as the Silver Peak Incident. Silver Peak refers to a major transmission line in California but is outlined in an internal Enron e-mail that was made public by the FERC investigation. It is also synonymous with a scheme that was concocted by the Enron chief trader of the West who has since pled guilty to charges of conspiracy to commit fraud, Mr. Tim Belden, and on May 25, 1999, Mr. Belden filed 2,900 megawatts of an offer to sell within the California PX, the transmission line that could carry only 17 megawatts of power.

So the California PX and ISO did, in fact, detect that there was an anomaly. They ended up raising the price 71 percent that day, and eventually Enron and the PX reached a settlement in which the company paid a $25,000 fine. It shows the kinds of problems that are in these various schemes, Fat Boy, also known as Icing Load, basically into realtime power markets. According to a smoking gun memo that Enron had issued on December 6 and December 8, Fat Boy was one of the most fundamental strategies used by traders. According to one trader, it is one of the oldest tricks in the book. It is now being used by other market participants.

I want to read to my colleagues how Enron's own attorney described Fat Boy, but first remember how the market worked. It was the job of the California system to balance the supply and demand within California's transmission, and that required market participants to submit schedules of how much power they planned ahead of time. Given that there are various fluctuations because of weather and the demand that consumers have, it was simply a fact of life that marketers and utilities were not able to forecast to the exact megawatt the precise amount that would be needed.

Thus, in order to ensure that the lights stayed on, the ISO would offer payments to utilities that would increase their generation in realtime in order to make sure that supply and demand matched up. So to take advantage of the situation, Enron would anticipate when the market was going to be short on supply. It would then submit a false day-ahead schedule loading the lines with generation it knew it had no intention of really using. That way, when it accessed the portion of power it put on the realtime grid, it would receive extra payments from the ISOs in keeping the lights on. That is right. By falsifying its day-ahead schedules, Enron received untold millions for pretending to keep the lights on in the West. I can assure my colleagues that is a very cruel joke to play on consumers in the West.

So what we have before us in the Domenici amendment is a failure to protect consumers in the repeal of PUHCA and in the continuation of not outlawing these very practices that Enron has deployed. What we want to do is take all these schemes and include them in an amendment that I will lay down tomorrow that basically bans market manipulation. Yes, I would like to see us adopt the Dayton amendment that keeps the 1935 law on the books. Because, yes, left alone, energy marketers have shown that even after 70-plus years, they can recreate the same types of market manipulation. So we need to have protections in place.

Round-trip trading is not the only thing that needs to be addressed in this bill in addition to PUHCA. What needs to be addressed, besides protecting the Public Utility Holding Company Act and keeping that on the books, and besides saying that round-trip trading is a problem, we also need to make sure these various other schemes, the Wheel Out scheme—I do not know who the marketing person was who thought of these themes. I am amazed—the Black Widow scheme, the Cuddly Bear scheme, the Red Congo scheme—people can see we are having a tough time getting all of these charts up here because there were so many schemes of manipulation, basically undertaken by a variety of individuals who thought this was a great idea to make money—the INC-ing scheme and the Non-Firm Export scheme.

The amendment I will lay down tomorrow says all of these manipulations, not just on day-trip trading but all of these practices are illegal; that the Senate will not put up with market

manipulation; that the Senate has seen, not just on the Democratic side of the aisle but the Republican side of the aisle—I want my Republican colleagues to join with us tomorrow and say that market manipulation is wrong—that it is wrong and we believe we need stronger consumer protections; that we think the Federal Energy Regulatory Commission should be given the powers to make sure we are protected from these schemes; that we have done our job from the Enron crisis, where we have learned that we need to do a better job on accounting practices; that we have learned that we need to do a better job on requirements of the SEC and, yes, we in the Senate understand that energy prices can be manipulated and we are going to do a better job of making sure the tools stay in place to protect consumers. That new enhancements to those tools prohibit these kinds of schemes from ever happening again.

As painful as this crisis has been for Washington State and for the West, this particular amendment I am offering is really about our next steps moving forward. It is about natural gas pricing. It is about the future manipulation that could happen if we do not put protections in place. It is about saying that we want to make sure, as we continue towards a diversified energy plan for our country, getting more natural gas from Alaska with a new pipeline, looking at renewable energy, looking at conservation, looking at all sorts of alternative fuels, planning for the hydrogen fuel economy, that while we are doing all of those things, we are going to make sure market manipulation does not take place. That is what is at stake with the amendments we are going to be voting on tomorrow.

Mine will not be the only amendment. As I have mentioned several times, Senator DAYTON has a great amendment in which he says we should leave the Public Utility Holding Company Act in place. I am trying to stop these marketing schemes from being foiled on other States and other economies. I am trying to say the billion-plus that was lost in Washington State and the over $3 billion that was lost in California is economic havoc that should never happen again to another State in this country.

To do that, we have to pass the Cantwell amendment that says these market manipulations are outlawed. That is what we are going to try to do tomorrow. I hope my colleagues will take the time tonight to understand this.

I point out my colleagues have talked about this Energy bill and the various aspects of that Energy bill in a way that would leave most thinking these are simple issues and we should basically dispense with them quickly. As I said, $6 billion to the west coast economy—and that is just the costs of additional power that we have had to buy at higher rates; that is not the ancillary costs of other businesses who have had to shut down.

We have had a paper company in Everett, WA, threaten if we have one additional rate increase of even a couple percentages, they will probably have to shut down that facility. We have had aluminum plants throughout the State of Washington that had to shut down for periods of time. If we have another rate increase they could be shut down permanently. We are talking thousands of jobs. We have had other industries say they do not think they could survive another rate increase.

It is hard when we have challenges to not say we should have a rate increase. My response is, why can't we get out of these long-term contracts by Enron? Why can't we renegotiate what have been manipulated costs we in Washington have had to pay for? When I think of what has happened to Washington State, we are talking about more than $6 billion. We owe it to people to have a debate about these issues.

I plan to offer several other amendments. It is incredible we allow big companies such as Enron to lobby for and to support the nomination of these FERC commissioners. Why should a big company like Enron get to influence the administration on who should chair a regulatory entity whose job is to regulate that very entity that is pushing their nomination? I will have an amendment about that.

I think the Federal Energy Regulatory Commission which engages in 15 calls with Wall Street to tell them when and how they are going to make decisions on these contracts and whether they are just and reasonable. I don't see why we should have a Federal Energy Regulatory Commission that spends its time telling Wall Street in advance whether they should try to settle manipulated contracts out of court with clients. I don't think that is their job.

We ought to have more protection on cost-based pricing than we have. We will have other amendments that try to address this issue about what we do about the fact that this voluminous report by the Federal Energy Regulatory Commission says all these contracts have been manipulated. Yet they fail to do nothing about it when the Federal Power Act says it is the commission's job to do something about unjust and unreasonable rates. That is what the Federal statute gave the authority to FERC to do, to make sure on wholesale rates the consumer was not gouged with unjust and unreasonable rates.

Now we have a Federal entity saying, yes, they certainly are manipulated contracts. These schemes are unbelievable, but we are not going to do anything as regulators to help the ratepayers out of this situation. We will have an amendment addressing the failure of FERC to do anything about these manipulated contracts.

Some of my other colleagues will have amendments dealing with this section. I don't know whether Senator FEINSTEIN will offer her amendment on derivatives but, again, that is another loophole Enron walked itself through by coming to Congress and lobbying for an exemption to the Futures Commodities Trading Act. They said online trades ought to be exempt. That was very smart of them to get that loophole. Why? Because then all online trading, that some of these schemes are the names for, was completed online where prices were manipulated in trades, inflated, and consumers ended up paying the higher price.

They get the derivatives loophole in the futures commodity. We say in America you can trade futures on corn and a variety of other agriculture products but you have to have open books. You have to have transparency. You have to show what you are actually doing so that if there is some sort of manipulation of the market you can come in and see what that manipulation is, a regulator can investigate.

But no, this body, several years ago, probably unknowing as to the unbelievable impact, said, let's go ahead and give them this exemption.

We found that a loophole big enough to drive a truck through—I should say big enough to drive billions of dollars through; that gouged consumers. I hope Senator FEINSTEIN will offer her derivatives amendment, which I cosponsor, to close that loophole.

Some of my colleagues say, we voted on that already; it failed. I ask my colleagues, we voted on that amendment before we knew of all these schemes about manipulation. Now we know these schemes and manipulation have happened and we are not going to try to do something to close those loopholes? It is something we need to bring front and center to the American people, demonstrating we here are doing our job. We are doing enough to get something done.

I have letters from various constituents through the West who chronicled events that have happened to them, individuals who have either sent E-mails, letters or various documentations about the problems they have seen in the energy market. The various costs they have endured paying for additional electricity, which then meant they had to make other choices. I know people that not only were part of that 44 percent increase in disconnect rates. People who had to make other choices about education, about vacations, including a sad story from a woman who could not even send her daughter to the prom because she could not afford to buy a dress because that money went to their energy bill instead.

What it comes down to tomorrow is whether we are going to allow this manipulation of Fat Boy, Get Shorty, Ricochet, Death Star, which the Domenici amendment is silent on. Whether we are going to take a vote to say that market manipulation is wrong.

What are we going to say to ratepayers who had to pay 88 percent increases, 61 percent increases, 54 percent

increases, 71 percent increases, 43 percent increases? Again, these aren't increases for 1 year, these are increases that my ratepayers are stuck with. They are stuck with them because they signed an Enron contract and because we have a Federal Energy Regulatory Commission that basically says: Yes, they have been manipulated, but we don't care, you still have to pay that rate.

I do not want this to happen to other parts of the country. I don't want to see economies like the Northwest economy, or the west coast economy, which is a critical part of our Nation's economy, suffer the consequences of manipulation of energy prices. The American people, to whom I have to answer when I go home to Washington State, or in other parts of the country if I travel, say to me: How come I am stuck with an 88 percent rate increase? How come I am stuck with a 61 percent rate increase? How come I am losing my job because our company can't afford the high electricity costs? or, How come my school district is paying high electricity rates and we have to pay a higher tuition? How come our school district is asking for a levy because we have higher electricity rates? People are not even taking action on giving us relief.

We will come back at this body on what we should do about past bad actions. But what we need to do tomorrow on the Cantwell market manipulation amendment is say that market manipulation of energy prices is wrong and that an energy title that fails to address these issues is not satisfactory.

I could take the last few minutes I have tonight, of my 1 hour, and tell you six or seven things that are also wrong with the Domenici electricity title. There are lots of schemes in there that run towards a market-based system on regional transmission organization and standard market design that I know my colleagues from the South and parts of the West probably are not too anxious to hear about, aren't too excited that I put in play. The Domenici amendment is a step closer to that.

Why do they want more of a free market? Because they want to see having that free market without the regulatory aspects of the Public Utility Holding Company Act, or having oversight of mergers, or having these kinds of hammers making sure no manipulation takes place. They want to see how much further prices can be manipulated. They want to see how they can have a free rein on what really is a needed utility for the American people.

I think, regarding those RTO and standard market design schemes that are also part of the Domenici underlying amendment, it is the absolutely wrong time to be talking about moving towards more change. We have just had this crisis. My State is still paying for this crisis. We are going to still be paying for it for years.

I understand the President is coming to the Northwest in August. I hope the President has an answer for why his administration, and the Federal Energy Regulatory Commission, have not dealt with this issue. I hope he has an answer, to say to ratepayers why we should continue to be gouged on this issue; why we in the West, even though contracts have been manipulated, still have to pay those prices.

I would say to him: Mr. President, Washington State has a bright future. It still has a software economy. It still has an aerospace industry. Yes, it has been challenged, but it is still strong. We have a burgeoning biotech industry. We have a huge trade community. We have a vibrant, diverse agricultural economy throughout our State. But none of those can continue to exist with exorbitant energy prices that have been manipulated.

I hope when he comes to Washington State, he has an answer. I can tell you right now, that answer will not be well received if it is about just creating more supply. We are all for creating more supply in Washington State, and we are all for diversifying, but we are not for market manipulation.

We have to think through these other aspects of the Domenici amendment on RTOs, regional transmission organizations, standard market design and the other elements that really do call into question our ability to regulate the cost of electricity, for which the American people count on us. I hate to think, after 70 years of having a similar pyramid scheme push us into having the Public Utility Holding Company Act, that somehow this body will not get the message. Instead of just dealing with this crisis that we have dealt with in electricity—maybe not next year, maybe not in 5 years, but 7 years down the road—we end up having a similar crisis with natural gas, and, instead of just affecting the west coast and Washington ratepayers, it impacts the whole country.

Fair energy prices are part of having a healthy economy. Affordable energy prices help to continue to stimulate economic growth. But manipulated energy prices are not just. They are not reasonable. They are not in the public interest. This body ought to take strong action against them.

I know my colleagues all care about this issue. We wanted to do the right thing on securities law. We wanted to do the right thing on accounting law. It is time, with the Cantwell amendment tomorrow, to do the right thing on making sure that energy market manipulation is prevented and does not happen again.

I yield the floor.

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

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

UNANIMOUS CONSENT REQUEST—Executive Calendar

Mr. MCCONNELL. Mr. President, as in executive session I ask unanimous consent that at a time to be determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session for the consideration of Executive Calendar No. 310, the nomination of William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit; provided further that there then be 4 hours for debate equally divided in the usual form; and that following that debate the Senate proceed to a vote on the confirmation of the nomination with no intervening action or debate; further, that the President then be immediately notified of the Senate's action and the Senate then resume legislative session.

Ms. CANTWELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, I modify my request to allow for 8 hours of debate.

Ms. CANTWELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Mr. President, I modify that to ask for 10 hours of debate.

The PRESIDING OFFICER. Is there objection?

Ms. CANTWELL. I object, Mr. President.

The PRESIDING OFFICER. Objection is heard.

EXECUTIVE SESSION

NOMINATION OF WILLIAM H. PRYOR, JR., OF ALABAMA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE ELEVENTH CIRCUIT

Mr. MCCONNELL. Mr. President, I now ask unanimous consent that the Senate proceed to executive session for the consideration of calendar No. 310, and I send a cloture motion to the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read the nomination of William H. Pryor, Jr., of Alabama, to be United States Circuit Judge for the Eleventh Circuit.

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that the live quorum under Rule XXII be waived.

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

The clerk will report the cloture motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the

Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 310, the nomination of William H. Pryor, Jr., to be United States Circuit Judge for the Eleventh Circuit.

Bill Frist, Orrin Hatch, Ben Nighthorse Campbell, Craig Thomas, Charles Grassley, John Cornyn, Chuck Hagel, Jim Talent, Richard Shelby, Wayne Allard, Elizabeth Dole, Conrad Burns, Larry Craig, Jeff Sessions, Lindsey Graham, Rick Santorum, and Thad Cochran.

LEGISLATIVE SESSION

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate resume legislative session.

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

MORNING BUSINESS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business.

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

JOHN J. HOULIHAN: A LIFETIME OF GIVING

Mr. DURBIN. Mr. President, I rise to pay tribute a great man, a compassionate public servant, a decorated war hero and a beloved husband, father and grandfather, John J. Houlihan, who died of lung cancer, Thursday, July 24, in his Palos Heights home surrounded by his loving family.

Born in 1923 on Chicago's South Side to the son of a slaughterhouse worker, John Houlihan graduated from Leo High School in 1941. Shortly after the attack on Pearl Harbor in December of that year, John enlisted in the United States Marines. He was shipped to the South Pacific where he saw action in the Battle of Midway.

On his 21st birthday, during a battle on the South Pacific island of Bougainville, he was hit by enemy artillery fire and lost his left leg. John Houlihan was awarded a Purple Heart, the Marine Corps Medal and the Asian Pacific Medal with 3 Bronze Stars.

He spent the next year and a half in Veterans' Administration hospitals recuperating from his wounds and undergoing physical therapy. During that time, a friend persuaded him to attend a church dance in Chicago. It was at that dance that John met his future wife, Vernal. Together they would raise a wonderful family of eight children.

Even while bouncing on crutches, John taught his children how to swim, ride bikes and hit baseballs. He taught them music and the joys of being a Notre Dame football fan. As his daughter Maureen has said, John's children grew up learning the Notre Dame fight song and the Marine Corps hymn.

After leaving the military, John attended DePaul University, where he studied business and accounting, and began working in the Cook County Clerk's office. He later worked in the offices of State Treasurers Jerome Cosentino and Pat Quinn.

A loyal Democrat, John was elected to the Illinois General Assembly in 1965 and served 8 years in the State house, representing the 41st District in the Park Forest area. He was also elected as a delegate to several democratic national conventions. While in the legislature, John started insurance and accounting businesses.

Following his service in the General Assembly, John's attention turned to veterans' rights and veterans' services. He became the first director of the Illinois Department of Veterans Affairs when former Governor Dan Walker tapped him to head the fledgling agency. He developed programs for the Veterans' Administration in Washington under former President Jimmy Carter, and most recently was supervisor of the Cook County Veterans Assistance Commission. John spent decades fighting for veterans' rights, winning honors and accolades along the way, including the first-ever Cook County Veterans' Recognition Award in 2000.

Looking over this long list of accomplishments, I think anyone would come to the conclusion that this was a great public servant. But what those of us who knew John will tell you is that he was also a great human being.

Meet John Houlihan just once, the story goes, and he would greet you by name years later. If you were a veteran who needed help, John Houlihan was the man to see. It didn't matter if you were rich or poor, black or white, Democrat or Republican, John Houlihan's door—and his heart—were always open to you.

They say some people are naturals when it comes to politics and public service. Some people have the right temperament, the right personality and the right mix of talents to be a good leader. John certainly had all of those things. But in truth, John had something that distinguished him from the crowd—a passion to help others and to make sure they got a fair shake. A passion for life and a belief that giving of yourself in the service of others was the highest calling.

John Houlihan gave completely of himself on the battlefields in the South Pacific; in the legislative fights on the House floor in Springfield; in VA hospitals and service centers all across Illinois and the rest of the Nation; and every day to his wife and his children and his grandchildren.

Mother Teresa, the late Roman Catholic nun and missionary, once said: ''We do no great things—we do only small things with great love.'' John Houlihan knew that. He showed us with his life. He will be greatly missed.

SINGAPORE SHOULD INCREASE PRESSURE ON BURMA

Mr. MCCONNELL. Mr. President, I do not intend to delay consideration of the U.S.-Singapore free-trade agreement, but I do want to take a moment to highlight a significant step that Singapore can take today to further the cause of freedom in Burma.

It has been reported, by U.N. Special Envoy Razali Ismail and others, that the repressive and illegitimate State Peace and Development Council, SPDC, has assets tucked away in Singapore financial institutions. Given the many illicit activities of the SPDC, one can rightfully question the source of these funds.

Like the United States, Singapore should immediately freeze the SPDC's assets until such time that democracy leader Aung San Suu Kyi and other all democrats are freed from detention and a process of national reconciliation is agreed to and implemented by all parties—the National League for Democracy, ethnic nationalities, and the SPDC.

Such action not only underscores Singapore's commitment to the rule of law throughout the region, but places much needed pressure on the junta in Rangoon to change their oppressive ways.

Southeast Asian countries can no longer ignore the many threats to regional stability posed by the generals in Burma. The situation in Burma should be a matter of concern to all of Burma's neighbors—and the U.N. Security Council.

MAKING IT EASIER FOR BAD APPLE GUN DEALERS

Mr. LEVIN. Mr. President, last week I spoke about a report, released by the Brady Campaign to Prevent Gun Violence, that identified a list of 10 ''bad apple'' gun dealers. According to data released by the Bureau of Alcohol, Tobacco, Firearm and Explosives, the dealers cited in the Brady Campaign report were the source of thousands of guns traced to criminal activity. Earlier this week, despite the startling information contained in the Brady report, the House of Representatives included an amendment in the Commerce, Justice, and State Departments appropriations bill which would not only make reports like the Brady Campaign's much more difficult to produce but also might cripple the ability of the ATF to enforce the nation's gun safety laws against firearms dealers who supply guns to criminals.

The House amendment would prohibit the public release of information related to the importation and production of firearms. This means that the only reliable national information available as to how many guns are produced in a given year, as well as type, caliber, and manufacturer, would no longer be available to the public. Further, the amendment would prohibit the public release of information related to multiple handgun sales. Under current law, dealers are required to notify the ATF of the sale of two or more handguns to the same person within 5

business days. Eliminating the availability of this data would make it even more difficult to monitor the activities of reckless gun dealers. In addition, the amendment would prohibit the release of information related to crime-gun tracing requests.

The amendment would also prohibit the ATF from issuing a rule requiring Federal Firearm Licensees to submit to a physical inventory. A physical inventory recently revealed that a Tacoma, WA, gun dealer could not account for the sniper rifle used by the Washington, D.C. area sniper and more than 200 other guns in its inventory. The amendment would also require the immediate destruction of records of approved firearms purchases and transfers generated by the National Instant Criminal Background Check System. The retention of these record has assisted law enforcement officials in trying to prevent guns from getting into the hands of criminals, as well as identifying gun trafficking patterns.

I believe this provision could shield reckless and negligent gun dealers from public scrutiny and weaken the ATF's oversight and enforcement authority. It will hopefully be rejected here in the Senate.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in Boston, MA. On July 4, 2003, a group of teens attacked a lesbian woman, Lisa Craig, at a Fourth of July fireworks display in Piers Park. Craig, her partner, and her two daughters were picnicking and watching fireworks. The trouble began at the park's playground when a group of teens began shouting homophobic epithets. When Craig asked the groups to leave, she was struck in the head by one of the teens. The attackers continued to punch and kick Craig as she was bleeding on the ground. Given the severity of her head injuries, Craig underwent 2 operations and received over 200 stitches.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

IRAQ

Mr. ALLARD. Mr. President, for nearly 15 years, our country engaged in a bitter struggle with the tyrannical regime of Saddam Hussein. We argued, negotiated, debated, and compromised with this brutal dictator, and yet the results were always the same: deception, deceit, and lies. In the meantime, thousands of innocent Iraqis were raped, tortured, or murdered. Some disappeared entirely, never to be seen again. Meanwhile, Iraq's enormous wealth was pilfered and squandered by Saddam's cronies who were more concerned about their collection of foreign sports cars than ensuring the Iraqi people had running water and sufficient electricity.

It is easy to lose sight of how far we have come. As we constantly hear stories of the guerrilla style warfare, of secret Iraqi resistance groups, and the criticism regarding the pace of reconstruction, we forget about the people we have saved or the freedom we have provided. Iraqis are now truly free, and we must remember that.

Change is not instantaneous, particularly when it comes to freeing a people who have been oppressed for over 25 years. As the Center for Strategic and International Studies recently reported, the reconstruction in Iraq will be an enormous task. We cannot and should not expect immediate results: decades of neglect and degradation cannot be overcome by the simple exertion of will. No, rebuilding of Iraq will be a slow and deliberate process. It cannot be rushed, and we must remember that we have only been rebuilding for 11 weeks.

The recommendations from the CSIS report were helpful in identifying those areas that we need to work on. For example, the CSIS team found that public safety remains the primary concern for many Iraqis as well as American commanders and recommends quickly expanding the Iraqi civilian defense forces. Another critical recommendation is finding work for unemployed Iraqis who have far too much time to consider their plight. Realistically, I believe agriculture and construction could provide that employment.

Though we still have a long road ahead, we should also recognize how far we have come. Saddam's brutal dictatorship is no longer in power, and we have taken steps to track down members of his former regime. The recent killing of Saddam's two sons was an important victory, and it appears that it will only be a matter of time before we catch Saddam. The Iraqi people are starting to realize that Saddam is not coming back to power and that freedom is truly theirs.

We have also restored most of the public utilities and improved security. Thousands of Iraqis are joining the country's new civil defense force, which will free up thousands of American troops for other missions. And oil revenue is increasing daily, helping defray the costs of running the country.

Perhaps most significantly, Iraq's governing council has convened and the process of developing a formal structure for governing the country has begun. We also must not forget that 85 percent of the cities are now governed by local Iraqi leaders.

Despite this amazing progress, some have criticized the administration's approach to Iraq. For example, many have wanted to know when our troops will come home for some time. Unfortunately, the Army was unable to provide a rotation schedule until recently because of ongoing military operations and security concerns.

This concern resonated in my home State as well. In Colorado, we have been awaiting word on when the local soldiers from the 3rd Armored Cavalry based at Fort Carson might return since the end of Operation Iraqi Freedom. Thankfully, the Army recently announced its unit rotation schedule, which means that if all goes according to plan, many of the units in Iraq, including the 3rd Armored Cavalry, will be home within a year.

This information will bring joy to our troops who have served so valiantly over the last several months. It will also give hope to the many families who had been patiently awaiting for information on when their loved ones might return. We should not forget that without their support and sacrifice, our troops would not be able to function. It is their families who give our troops strength.

This is why I have been working with nonprofit organizations like the Armed Forces Foundation that have been providing support to these families during this prolonged deployment. During the August recess, for example, I will be joining the Armed Forces Foundation in organizing a fishing trip for the children of the soldiers form Fort Carson. While activities like the children's fishing trip cannot replace a mother or father, they can lift the spirits of these families who have sacrificed so much.

Other criticism, however, is completely unjustified at this time. For example, some pushed for cost estimates on our future operations in Iraq, which everyone knows is nearly impossible to predict at this time. Department officials can't look into their crystal ball and pull out the magic number. Future operations in Iraq may cost more than the $4 billion we are currently spending or they may cost less. We just don't know at this time, and we won't know until Iraq is completely stabilized.

Another criticism centers on Iraq's weapons of mass destruction programs. Almost all of us believed, and many of us still believe, Iraq had weapons of mass destruction. And what happened to these weapons is a legitimate question.

Our forces have not found these weapons yet, but that does not mean they didn't exist or that we wont' find them in the future. There are few matters that our intelligence agencies have ever conclusively agreed on. One of those was that Iraq was developing weapons of mass destruction. Last October's National Intelligence Estimate clearly lays out the intelligence supporting this belief.

What attracted so much attention, unfortunately, was the use of particular pieces of intelligence in speeches by administration officials. The President's State of the Union Address for example included a statement that the administration now admits did not rise to the level of certainty required for Presidential speeches.

While I won't attempt to justify the inclusion of such a statement, I will say that the matter does not deserve the attention it has received. The President's statement was not false, and it was only one statement in a series that laid out Iraq's effort to develop weapons of mass destruction. In fact, British intelligence still stands behind the statement. And no one has questioned the veracity of the other statements in the President's speech.

So despite this statement, it seems clear to me that the President laid out a very convincing case that the American people and Congress agreed with. I also remind my colleagues that we voted to force Iraq to comply with United Nations resolutions 3 months before the President's speech.

Mr. President, Operation Iraqi Freedom was a spectacular campaign that resulted in the freeing of millions from tyranny and oppression. We should take pride in bringing freedom and liberty to the Iraqi people. Our troops are performing admirably and continue to believe in their mission. We still have much to accomplish, but with patience and perseverance, we will make a difference in this long-troubled region of the world.

THE BEGINNING FARMERS AND RANCHERS TAX INCENTIVE ACT OF 2003

Mr. HAGEL. Mr. President, I rise today to discuss S. 1464, legislation I recently introduced with Senator DORGAN to provide a capital gains tax incentive to agricultural producers on the sale of their farm or ranch land.

Agriculture is a vital engine that helps drive this Nation's economy. But this engine is only as powerful as the next generation of producers. The relentless financial problems facing the agricultural sector, particularly for beginning farmers, are daunting. It is often difficult for beginning farmers to compete for land with large capital-based operations. S. 1464 helps level the playing field by easing the transfer of land between the old and new generations of farmers and ranchers.

S. 1464, the Beginning Farmers and Ranchers Tax Incentive Act, would provide all agricultural producers selling their property to a beginning farmer or rancher a 100-percent reduction of their capital gains tax rate. Producers selling their land to someone who pledges to keep the land in agricultural production would receive a 50-percent reduction of their capital gains taxes. All producers selling their land would receive an automatic 25-percent reduction of their capital gains taxes. These incentives would encourage repopulation of the rural landscape with a new generation of young, energetic agricultural producers.

Family farmers and ranchers often do not benefit from some tax incentives already in place for other Americans. In 1997, Congress enacted a $500,000 capital gains tax exclusion for home sales. Unfortunately, this provision often does not benefit family farmers since their homes are typically included as part of the larger farmstead. S. 1464 would correct this inequity by extending the $500,000 exclusion to farmers and ranchers.

It is imperative that we do more to ensure that beginning farmers and ranchers are given opportunities to succeed in strengthening rural communities. S. 1464 helps do this by reducing the tax burden on retiring farmers and ranchers, so that the continuity of agricultural production remains unbroken from one generation to the next.

COMPETITIVE SOURCING INITIATIVE

Mr. THOMAS. Mr. President, I ask unanimous consent to have printed in the RECORD an op-ed article from the Government Executive Magazine.

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

[From the Government Executive Magazine, July 28, 2003]

LET'S COMPETE

(By Senator Craig Thomas)

A handful of lawmakers are embracing the status quo in an attempt to shield federal agencies, such as the National Park Service, from restructuring the way they provide commercial services.

This opposition comes as President Bush moves forward with his competitive sourcing initiative. Competitive sourcing, part of the President's management agenda, represents not only an opportunity to improve the way federal agencies operate, but a way to save taxpayer dollars.

According to an inventory first conducted by the Clinton administration pursuant to the 1998 Federal Activities Inventory Reform (FAIR) Act, 850,000 positions in the federal government were categorized as commercial in nature. These are jobs performing engineering services, writing software, making maps, hanging drywall, mowing lawns and other services ranging from high tech to routine. These are the same jobs offered by private firms and small businesses found in the Yellow Pages in any town in America.

Under Office of Management and Budget Circular A–76, competitive sourcing allows federal agencies to consider whether the private sector could be used to create efficiency. This does not preclude federal employees from restructuring their departments and competing to keep the work in-house. As it is now, many federal employees who work in commercial functions are struck in inefficient bureaucracies performing activities that are not inherently governmental.

For example, the government is considering competitive sourcing to help improve the services available at our national parks. The effort underway at the Park Service to use competitive sourcing as a tool for improving fiscal and operational efficiency comes at a time when the agency is facing a tremendous funding shortfall for maintenance at almost every park. Nationwide, this maintenance backlog is estimated at nearly $5 billion.

The Park Service faces many challenges while making America's treasures available for million of visitors each year; however, funds are limited for maintenance, security, safety and a variety of other activities. In the past, the Park Service has been instructed by Congress to reduce the in-house performance of its commercial activities, but these efforts have not evolved. It is important that we now allow the Park Service to evaluate its workforce and how best to use its funding.

As the author of the FAIR Act, I strongly support improving effectiveness and efficiency in government. At the same time, I realize that we need to go about it in the right way. We need to have a clear process with a reasonable timeline and federal employees need to be kept informed. It also is important that any public-private competition involves a level playing field—private sector contractors and the government should be judged on the same requirements.

At a July 24 hearing of the Senate Energy and Natural Resources Subcommittee on National Parks, I heard from witnesses who explained how the competitive sourcing process works and who corrected misinformation pertaining to the Park Service's competitive sourcing plan. Several witnesses testified that the government, on average, saves nearly 30 percent regardless of whether in-house employees or a private contractor win the competition. Although there are some unfront costs associated with conducting these public-private competitions, the long-term savings dwarf these expenses.

Every president for the last 50 years, Republican and Democrat alike, has endorsed the elimination of commercial functions in the federal workforce, but their plans were not vigorously implemented or enforced. Thus, early half the civilian federal workforce is doing work that could be done by the private sector.

We should keep in mind that President Bush's competitive sourcing plan is far different than the Clinton administration's reinventing government initiative. President Clinton's plan established an arbitrary quota for eliminating 252,000 federal jobs—without any form of competition. By comparison, President Bush has set no such requirement for outsourcing, but has urged federal agencies to review their commercial functions aand open them up for competition.

Over the past two and a half years, the Interior Department has noted that of the 1,600 full-time employees it has analyzed for competitive sourcing, not one federal employee has been involuntarily dismissed from his or her job. As the case of the Interior Department reveals, agencies try to reassign federal employees to higher priority, inherently governmental positions within their agencies. Some employees transfer to jobs in other federal departments, others take early retirement, or they go to work for a winning contractor.

The taxpayer is the ultimate lower when competitive sourcing is stymied. Inefficient monopolies that waste taxpayer dollars divert much-needed federal resources from our government's most pressing programs. Through reasonable comeptitive sourcing, I believe federal agencies like the Park Service can increase services to the public, while maintaining the valued resources we all enjoy.

Let's give good old-fashioned competition a chance.

BOEING EELV VIOLATIONS

Mr. ALLARD. Mr. President, last week, the Under Secretary of the Air Force, Peter Teets, announced the Air Force's determination that the Boeing Company had committed serious violations of Federal law by illegally acquiring thousands of documents from its chief competitor, Lockheed Martin. Apparently, the Boeing Company used this information to underbid Lockheed during the billion-dollar Evolved Expendable Vehicle competition. Boeing's illegal activity probably cost Lockheed Martin hundreds of millions of dollars in contracts and did serious damage to the Federal Government's procurement process.

As a result, the Air Force has punished the Boeing Company by suspending Boeing's Launch Systems, Services, and Delta business units for an indefinite period of time. The Air Force also reduced the total number of Boeing launches by seven. The Air Force increased the total number of launches for Lockheed by the same number.

The Air Force granted Lockheed Martin permission to develop a west coast launch capability at Vandenberg Air Force Base, which will give Lockheed an opportunity to compete for launches from this critical base. This decision will give the Air Force more flexibility in awarding launches in the future.

I was pleased by the Air Force's decision. Integrity of the procurement process is essential and nothing less than the highest standards should be expected. Boeing's actions are a major disappointment, and it is my hope that the Air Force's decision will serve up as a wake-up call, not just for this company, but for all companies doing business with the Department of Defense.

Boeing must not take measures to ensure that its employees know that this activity is unacceptable. To this end, the hiring of former Senator Warren Rudman to review the company's policies and procedures regarding ethics and the handling of competitive information was a good first step. It saddens me to think that a handful of individuals could have caused such problems for the 160,000 hard-working men and women employed by the Boeing Company.

We should keep in mind that the Department of Justice is continuing its own investigation into the criminal activities of these former employees. I will also be requesting through the Senate Armed Services Committee that the General Accounting Office investigate whether defense consolidation has resulted in a situation where the Federal Government's ability to punish those companies that violate the procurement process has been limited.

To be clear, I continue to support the Air Force's policy of sustaining two launch providers for the EELV program. Last February, I sent a letter to the Secretary of Defense emphasizing my belief that reliance on only one provider could jeopardize our ability to utilize space. Assured access to space requires sufficient launch capability, which would be lost with the elimination of one launch service providers. And, while redundancy is expensive, I believe we need to ensure space assets are there for our men and women in the Armed Forces when they are needed.

ADDITIONAL STATEMENTS

TRIBUTE TO THE NASHUA LIONS CLUB

● Mr. SUNUNU. Mr. President, I rise today to pay tribute to the Nashua Lions Club in recognition of their 80th anniversary.

Eighty-six years ago, insurance executive Melvin Jones and his fellow Chicago business associates gathered and formed Lions International.

Originally, their objectives were humanitarian service to their community. It wasn't until Helen Keller spoke at their 1925 convention and challenged them to become her ''Knights of the Blind'' that they began a service that today has become the largest service organization in the world.

In mid-1923, a similar group of Nashua business leaders began meeting at the old YMCA on Temple Street. A few months later they were chartered as the Nashua Lions Club, becoming the second oldest club in the State. Since that time, the men and women of the Nashua Lions have answered the challenge of Helen Keller and have lived by the Lions motto ''We Serve.''

In their 80 years of service, the Nashua Lions have raised over $1 million that has gone to pay for eye examinations, eye glasses, eye surgery, and hearing aid for needy children and adults. Last year, Nashua Lions tested more children between the ages of 3 months and 4 years than any club in the entire State using the revolutionary ''KIDSIGHT'' camera that enables doctors to read a laster photo of a young child's eye and determine whether or not they have any problems at an early age.

In the early 1950's, the Nashua Lions led by former Major Mario Vagge built the friendship club—a place for handicapped Nashua residents to go and socialize—which is still in use today. In 1995, the club was approached by a Nashua family with a severely handicapped child at home. ''Melanie's Room'' became a reality and for several years Melanie and her family shared in her being with them at home.

Besides the usual groups and charities supported by the Lions, many club members throughout the years have given not only their own money, but they have devoted countless hours to the city through service as mayors, alderman, fire commissioners, judges, educators, police, and firefighters.

Local groups have benefited from having Lions serve on their organizations board of directors. Lions are involved with programs such as Big Brothers/Big Sister in-school mentors, Juvenile Diabetes Education efforts, Special Olympics, and Lions Club Camp Pride.

In addition to their numerous community and charity efforts, the Nashua Lions have also provided leadership to the entire Lions International Organization. During their 80-year history, Nashua has had three district governors: Clifford Sloan, 1960–1961, Joseph Bielawski, 1983–1984, and Edward Lecius, 1998–1999.

The Nashua Lions are a true example of the volunteer spirit that President Bush has asked all Americans to undertake. Their leadership, caring, compassion, and hard work have helped make Nashua a great place to live.

The countless lives they have touched through their many programs may never be known, however, just think what might have been if there were no Nashua Lions Club the past 80 years.

I offer my thanks and congratulations to the men and women of the Nashua Lions Club for their 80 years of dedicated service to the residents of the Gate City.●

TRIBUTE TO COLONEL DAVID L. HANSEN

● Mr. WARNER. Mr. President, I rise today to commend the distinguished service and leadership of Colonel David L. Hansen, who has ably served for the past 2 years as the district engineer for the Norfolk District of the U.S. Army Corps of Engineers.

COL Hansen will soon assume new responsibilities as the Assistant Deputy Chief of Staff for Resource Management at the U.S. Army Training and Doctrine Command, Fort Monroe, VA.

As he moves on to these new challenges, I want to convey my personal appreciation and the gratitude of all Virginians for his many accomplishments, and commitment to fulfilling the mission of the Corps of Engineers to provide superior planning, engineering, construction and conservation of our valuable water resources. In his brief tenure as district engineer, COL Hansen led the Corps in effective disaster response to many communities, particularly the city of Franklin, in helping them rebuild from the devastating flooding of Hurricane Floyd. He led the Corps in proceeding with the modernization of Hampton Roads Harbor with his initiatives that have resulted in the construction of the 50-foot outbound channel so that Virginia remains competitive with the world's leading ports and is ready to serve the next generation of cargo vessels.

COL Hansen's hallmark has been in executing the Corps mission to protect and restore our environmental resources and he leaves us with a solid foundation to build upon in the years

ahead. Through his unwavering determination, Virginians will soon enjoy a free-flowing Rappahannock River for 106 miles from the Chesapeake Bay to the Blue Ridge Mountains. The removal of the Embrey Dam at Fredericksburg has been a project that I am dedicated to completing, and COL Hansen's leadership has ensured that this will begin next February.

The Chesapeake 2000 Agreement renewed the Federal-State partnership to restore and improve the management of the living resources of the Chesapeake Bay. Immediately, COL Hansen took the goals of the agreement and put them into action. A central feature of the Chesapeake 2000 Agreement that I am actively involved with is the tenfold increase in native oyster stocks over the next 10 years. To accomplish this, we have pursued an unprecedented effort to build three-dimensional oyster reefs in traditional oyster grounds throughout the bay. COL Hansen has taken up this challenge with unprecedented energy and commitment to coordinate Federal and State policymakers and scientists.

These are just a few examples of COL Hansen's leadership in working with private organizations, State and local governments and other Federal agencies to ensure the Corps responds effectively to natural disasters, water resource development, and environmental initiatives. He embodies the finest traditions of the Corps of Engineers and the principles of public service.

We thank him for his service to our Nation and Virginia, and wish him and his family every success in his new assignment.●

BRIGADIER GENERAL JARED P. KENNISH

● Mr. REED. Mr. President, I rise today to recognize the accomplishments of BG General Jared P. Kennish, Assistant Adjutant General for the Rhode Island Air National Guard. BG Kennish was awarded the Bronze Star Medal for meritorious achievement while serving as the commander of the 376th Air Expeditionary Wing at Manas Air Base in Kyrgyzstan from November 16, 2002 to April 16, 2003 in support of Operation Enduring Freedom.

BG Kennish was recognized by the United States Air Force for contributing ''significantly to the overwhelming success of air and ground operations against the Taliban and al-Qaeda terrorist networks throughout Afghanistan.'' He led one of the most diverse and multifunctional air wings ever assembled, combining the operations of F–16s, KC–135s, KC–10s, C–130s and Puma helicopters from the Air Forces of the United States, Denmark, Holland, Italy, Norway and Spain. BG Kennish was also recognized as a ''true global mobility visionary'' whose selfless efforts in support of joint air operations during Operation Enduring Freedom ''will be a model for future contingencies.''

BG Kennish's accomplishments throughout Operation Enduring Freedom are no surprise to the great state of Rhode Island. Throughout a career of exemplary service that has spanned over 37 years in the United States Air Force and the Rhode Island Air National Guard, BG Kennish has left his positive imprint in every job he has performed. From service throughout Operations Desert Shield and Desert Storm in 1991, to operational deployments in northern Iraq and Mombasa, Kenya, to command of the 143rd Airlift Wing, Rhode Island Air National Guard, BG Kennish has been a shining example of professional excellence of whom all Rhode Islanders are rightly proud.

I echo the praise of the United States Air Force in recognizing BG Kennish with the award of the Bronze Star Medal. I ask my colleagues to join with me today, July 29, 2003, in thanking BG Kennish on behalf of a grateful Nation for his selfless service to our country.●

TRIBUTE TO DR. VICTOR WESTPHALL

● Mr. DOMENICI. Mr. President, I rise today to honor a wonderful man, Dr. Victor Westphall, who passed away July 22. Dr. Westphall dedicated his life to recognizing and celebrating the service and sacrifice of our Vietnam veterans.

Dr. Westphall's dedication to fallen heroes was not surprising because he too was a veteran. He entered the United States Navy in 1943 as an Ensign and served in the South Pacific during World War II. During this time, he was responsible for setting up message centers to allow front-line communication. After 3 years and two full stripes in the Navy, Dr. Westphall moved with his wife and his two sons to New Mexico. He earned his doctorate in history at the University of New Mexico and eventually became a leading author and expert on Southwest American history.

On a most painful day in May of 1968, Dr. Westphall received word that his son, David, had been killed in Vietnam. David, a Marine lieutenant, died with 12 of his men in an ambush near Con Thien. Soon after, Dr. Westphall was determined to draw some good out of this tragic event. He decided to use the life insurance payment from his son's death to build the Vietnam Veterans Peace and Brotherhood Chapel in Angel Fire, NM. Although Dr. Westphall struggled to find financial support to help build the memorial, he remained dedicated to the project, and in 1971, the first monument to pay homage to Vietnam veterans in the United States was formally dedicated.

The Vietnam Veterans Peace and Brotherhood Chapel stands as a majestic tribute to our veterans who served in Vietnam. Dr. Westphall hired a Santa Fe architect to design a beautiful white chapel with gentle curves sweeping 50 feet upward toward the sky. This serene memorial overlooks the sacred Moreno Valley, just below New Mexico's 13,000 foot Wheeler Peak. It offers visitors the opportunity to remember those who served their Nation proudly in the Vietnam War in a peaceful and spiritual setting. The Chapel's eternal flame illuminates this hallowed place for quiet meditation.

I often remember a touching story that Dr. Westphall occasionally recounted about the Chapel. When the memorial was first opened, the Chapel would close nightly. However, one morning Dr. Westphall found a message left by a young veteran on the door: ''I needed to come in and you locked me out.'' Since then, the Chapel remained open every hour of every day.

Like the Chapel, Dr. Westphall was always there for our Nation's veterans. I salute Dr. Westphall's lifetime of service and devotion to our veterans, and I am proud and honored to have had him as a friend. He gave his son, his time, his money, his property, and life to honor our fallen heroes.

As a fitting tribute, I end with the inscription at the entrance to his son's Chapel, now called the Vietnam Veterans National Memorial:

The Ultimate Curse
Greed plowed cities desolate
Lusts ran snorting thru the streets
Pride reared up to desecrate
Shrines, and there were no retreats.
So man learned to shed the tears
With which he measures out his years.

—Victor David Westphall III●

MESSAGE FROM THE HOUSE

At 12:06 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to section 2(a) of the National Cultural Center Act (20 U.S.C. 76h(a)), amended by Public Law 107–117, and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the Board of Trustees of the John F. Kennedy Center for the Performing Arts: Mr. KENNEDY of Rhode Island.

The message also announced that pursuant to 36 U.S.C. 2301, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the United States Holocaust Memorial Council: Mr. LANTOS of California and Mr. FROST of Texas.

The message further announced that pursuant to 14 U.S.C. 194(a), and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the Board of Visitors to the United States Coast Guard Academy: Mr. FILNER of California.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3455. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Boscalid; 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-bipheny;]-2-yl); Pesticide Tolerance'' (FRL#7319–6) received on July 25, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3456. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Low Pathogenic Avian Influenza; Payment of Indemnity'' (Doc. no. 02–248–2) received on July 25, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3457. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Oriental Fruit Fly; Removal of Quarantined Area'' (Doc. no. 02–130–2) received on July 25, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3458. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Sapote Fruit Fly; Removal of Quarantined Area in Texas'' (Doc. no. 03–032–2) received on July 25, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3459. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Japanese Beetle; Domestic Quarantine and Regulations'' (Doc. no. 03–057–1) received on July 25, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3460. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Tuberculosis in Cattle and Bison; State Designations; New Mexico'' (Doc. no. 03–044–1) received on July 25, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3461. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Memorandum of Understanding—Switzerland'' (DFARS Case 2001–D019) received on July 28, 2003; to the Committee on Armed Services.

EC–3462. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Tax Exemptions (Italy)'' (DFARS Case 2000–D027) received on July 28, 2003; to the Committee on Armed Services.

EC–3463. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Caribbean Basin Country End Products'' (DFARS Case 2000–D302) received on July 28, 2003; to the Committee on Armed Services.

EC–3464. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Veterans Employment Emphasis'' (DFARS Case 97–D314) received on July 28, 2003; to the Committee on Armed Services.

EC–3465. A communication from the Under Secretary of Defense, Acquisition and Technology, transmitting, pursuant to law, the annual report on operations of the National Defense Stockpile; to the Committee on Armed Services.

EC–3466. A communication from the Principal Deputy, Office of the Assistant Secretary of Defense, Reserve Affairs, transmitting, the National Guard Challenge Program Annual Report for Fiscal Year 2001; to the Committee on Armed Services.

EC–3467. A communication from the Under Secretary of Defense, Personnel and Readiness, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–3468. A communication from the Under Secretary of Defense, Personnel and Readiness, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–3469. A communication from the Chairman, Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a report of the Administration's 2002 compensation program adjustments; to the Committee on Banking, Housing, and Urban Affairs.

EC–3470. A communication from the Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Coastal Ocean Program Supplemental Notice of Funds Availability for the Monitoring and Event Response for Harmful Algal Blooms Program FY02'' (RIN0648-ZB12) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3471. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Office of Sustainable Fisheries, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Zone Off Alaska Western Alaska Community Development Quota Program'' (RIN0648–AL92) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3472. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Closure of the Commercial Run-Around Gillnet Fishery for King Mackerel in the Exclusive Economic Zone in the Southern Florida West Coast Subzone'' received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3473. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Office of Sustainable Fisheries, transmitting, pursuant to law, the report of a rule entitled ''Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pelagic Fisheries; Prohibition on Fishing for Pelagic Management Unit Species; Nearshore Area Closures Around American Samoa by Vessels More than Fifty Feet in Length'' (RIN0648–AL41) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3474. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Office of Sustainable Fisheries, transmitting, pursuant to law, the report of a rule entitled ''Framework 1 to the Atlantic Fishery Management Plan'' (RIN0648–AP44) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3475. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Office of Sustainable Fisheries, transmitting, pursuant to law, the report of a rule entitled ''Final 2002 Specifications for the Atlantic Herring Fishery'' (RIN0648–AP37) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3476. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Closure of the Commercial Hook-and-Line Fishery for King Mackerel in the Exclusive Economic Zone in the Southern Florida West Coast Subzone'' received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3477. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the report of a rule entitled ''Update of Existing and Addition of New Filing and Service Fees'' (FMC Doc. no. 02–05) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3478. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Atlantic Highly Migratory Species Fisheries; Commercial Shark Management Measures'' (RIN0648–AP70) received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3479. A communication from the Director, Office of White House Liaison, Department of Commerce, transmitting, pursuant to law, a vacancy and a change in previously submitted reported information for the position of Assistant Secretary for Oceans and Atmospheres received on July 28, 2003; to the Committee on Commerce, Science, and Transportation.

EC–3480. A communication from the Chairman, Interagency Coordination Committee on Oil Pollution Research, United States Coast Guard, transmitting, pursuant to law, the Committee's report on Oil Spill Research; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs, with amendments:

S. 910. A bill to ensure the continuation of non-homeland security functions of Federal agencies transferred to the Department of Homeland Security (Rept. No. 108–115).

By Mr. GRASSLEY, from the Committee on Finance and the Committee on the Judiciary jointly:

Report to accompany S. 1416, a bill to implement the United States-Chile Free Trade Agreement (Rept. No. 108–116).

Report to accompany S. 1417, a bill to implement the United States-Singapore Free Trade Agreement (Rept. No. 108–117).

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committee were submitted:

TREATY DOC. 107–10, AGREEMENT WITH RUSSIAN FEDERATION CONCERNING POLAR BEAR POPULATION (EXEC. REPT. NO. 108–7)

Text of Committee Recommended Resolution of Ratification:

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A CONDITION.

The Senate advises and consents to the ratification of the Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, done at Washington October 16, 2000 (T. Doc. 107–10, in this resolution referred to as the ''Agreement''), subject to the condition in section 2.

SEC. 2. CONDITION.

The advice and consent of the Senate to the ratification of the Agreement is subject to the condition that the Secretary of State shall promptly notify the Committee on Environment and Public Works and the Committee on Foreign Relations of the Senate in any instance that, pursuant to Article 3 of the Agreement, the Contracting Parties modify the area to which the Agreement applies. Any such notice shall include the text of the modification and information regarding the reasons for the modification.

TREATY DOC. 108–1, AGREEMENT AMENDING TREATY WITH CANADA CONCERNING PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES (EXEC. REPT. NO. 108–7)

Text of Committee Recommended Resolution of Ratification:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advises and consents to the ratification of the Agreement Amending the Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, done at Washington May 26, 1981, and effected by an exchange of diplomatic notes at Washington July 17, 2002, and August 13, 2002 (T. Doc. 108–1).

TREATY DOC. 108–2, AMENDMENTS TO THE 1987 TREATY ON FISHERIES WITH PACIFIC ISLAND STATES. (EXEC. REPT. NO. 108–7)

Text of Committee Recommended Resolution of Ratification:

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION.

The Senate advises and consents to the ratification of the Amendments to the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the United States of America, which Annexes and Agreed Statements, done at Port Moresby, April 2, 1987, done at Koror, Palau, March 30, 1999, and at Kiritimati, Kiribati March 24, 2002 (T. Doc. 108–2, in this resolution referred to as the ''Amendments''), subject to the declaration in section 2.

SEC. 2. DECLARATION.

The advice and consent of the Senate to the ratification of the Amendments is subject to the following declaration: The advice and consent provide under section 1 is without prejudice to any position the Senate may take with respect to providing advice and consent to ratification of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed by the United States on September 9, 2000.

TREATY DOC. 106–45, CONVENTION FOR INTERNATIONAL CARRIAGE BY AIR (EXEC. REPT. NO. 108–8)

Treaty of Committee Recommended Resolution of Ratification:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, done at The Hague on September 28, 1955 (T. Doc. 107–14).

TREATY DOC. 107–14, PROTOCOL TO AMEND THE CONVENTION FOR UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR (EXEC. REPT. NO. 108–8)

Text of Committee Recommended Resolution of Ratification:

Resolved (two-thirds of the Senators present concurring therein).

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO RESERVATION.

The Senate advises and consents to the ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (T. Doc. 106–45, in this resolution referred to as the ''Convention''), subject to the reservation in section 2.

SEC. 2. RESERVATION.

The advice and consent of the Senate to the ratification of the Convention is subject to the following reservation, which shall be included in the instrument of ratification: Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign state.

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. SCHUMER:

S. 1479. A bill to amend and extend the Irish Peace Process and Cultural Training Program Act of 1998; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 1480. A bill to amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes; to the Committee on Governmental Affairs.

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mrs. FEINSTEIN, and Mr. KENNEDY):

S. 1481. A bill to prohibit the application of the trade authorities procedures with respect to implementing bills that contain provisions regarding the entry of aliens; to the Committee on Finance.

By Mr. INOUYE (for himself, Mr. STEVENS, and Mr. COCHRAN):

S. 1482. A bill to amend the Internal Revenue Code of 1986 to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

By Mr. DODD (for himself, Mr. KENNEDY, Mr. HARKIN, Ms. MIKULSKI, Mr. JEFFORDS, Mr. BINGAMAN, Mrs. MURRAY, Mr. REED, Mr. EDWARDS, Mrs. CLINTON, Mr. ROCKEFELLER, and Mr. DASCHLE):

S. 1483. A bill to amend the Head Start Act to reauthorize that Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. WYDEN:

S. 1484. A bill to require a report on Federal Government use of commercial and other databases for national security, intelligence, and law enforcement purposes, and for other purposes; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. HARKIN, Mr. SCHUMER, Mr. LEAHY, Mr. DAYTON, Mr. DURBIN, Mr. REID, Mr. DODD, Mr. SARBANES, Ms. STABENOW, Ms. MIKULSKI, and Mrs. CLINTON):

S. 1485. A bill to amend the Fair Labor Standards Act of 1938 to protect the rights of employees to receive overtime compensation; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CHAFEE (for himself and Mr. JEFFORDS):

S. 1486. A bill to amend the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act to implement the Stockholm Convention on Persistent Organic Pollutants, the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; to the Committee on Environment and Public Works.

By Mr. SPECTER:

S. 1487. A bill to require the Secretary of the Army to award the Combat Medical Badge or another combat badge for Army helicopter medical evacuation ambulance (Medevac) pilots and crews; to the Committee on Armed Services.

By Mr. BINGAMAN:

S. 1488. A bill to establish the Native American Entrepreneurs Program to provide $3,000,000 in grants annually to qualified organizations to provide training and technical assistance to disadvantaged Native American entrepreneurs; to the Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN (for himself, Mr. AKAKA, Mr. ALLEN, Mr. BAUCUS, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BREAUX, Mr. BUNNING, Mr. CAMPBELL, Ms. CANTWELL, Mr. CARPER, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CRAPO, Mr. DAYTON, Mr. DEWINE, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JOHNSON, Mr. KENNEDY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mrs. LINCOLN, Mr. LUGAR, Ms. MIKULSKI, Mr. MILLER, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. REID, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SESSIONS, Mr. SMITH, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. VOINOVICH, Mr. WARNER, Mr. KERRY, and Mr. LEVIN):

S. Res. 204. A resolution designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 138

At the request of Mr. ROCKEFELLER, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 138, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. 215

At the request of Mrs. FEINSTEIN, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 486

At the request of Mr. DOMENICI, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 486, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 569

At the request of Mr. ENSIGN, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 678

At the request of Mr. SPECTER, his name was added as a cosponsor of S. 678, a bill to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

S. 720

At the request of Mr. JEFFORDS, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 720, a bill to amend title IX of the Public Health Service Act to provide for the improvement of patient safety and to reduce the incidence of events that adversely effect patient safety.

S. 736

At the request of Mr. ENSIGN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 741

At the request of Mr. SESSIONS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 741, a bill to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

S. 874

At the request of Mr. TALENT, the names of the Senator from Maine (Ms. SNOWE), the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Virginia (Mr. WARNER) were added as cosponsors of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 950

At the request of Mr. ENZI, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 950, a bill to allow travel between the United States and Cuba.

S. 982

At the request of Mrs. BOXER, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 982, 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 hold Syria accountable for its role in the Middle East, and for other purposes.

S. 985

At the request of Mr. DODD, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 985, a bill to amend the Federal Law Enforcement Pay Reform Act of 1990 to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas, and for other purposes.

S. 1020

At the request of Mr. KOHL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1020, a bill to amend the Child Nutrition Act of 1966 and the Richard B. Russell National School Lunch Act to improve the school breakfast program.

S. 1021

At the request of Mr. KOHL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1021, a bill to amend the Richard B. Russell National School Lunch Act to improve the summer food service program for children.

S. 1022

At the request of Mr. KOHL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1022, a bill to amend the Richard B. Russell National School Lunch Act to improve the child and adult care food program.

S. 1046

At the request of Mr. BUNNING, his name was withdrawn as a cosponsor of S. 1046, a bill to amend the Communications Act of 1934 to preserve localism, to foster and promote the diversity of television programming, to foster and promote competition, and to prevent excessive concentration of ownership of the nation's television broadcast stations.

S. 1177

At the request of Mr. HATCH, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 1177, a bill to ensure the collection of all cigarette taxes, and for other purposes.

S. 1210

At the request of Mr. JEFFORDS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 1210, a bill to assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries.

S. 1265

At the request of Mr. CORZINE, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1265, a bill to limit the applicability of the annual updates to the allowance for State and other taxes in the tables used in the Federal Needs Analysis Methodology for the award year 2004–2005, published in the Federal Register on May 30, 2003.

S. 1296

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 1296, a bill to exempt seaplanes from certain transportation taxes.

S. 1298

At the request of Mr. AKAKA, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1298, a bill to amend the Farm Security and Rural Investment Act of 2002 to ensure the humane slaughter of non-ambulatory livestock, and for other purposes.

S. 1331

At the request of Mr. SANTORUM, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1331, a bill to clarify the treatment of tax attributes under section 108 of the Internal Revenue Code of 1986 for taxpayers which file consolidated returns.

S. 1381

At the request of Mr. MILLER, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 1381, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 1414

At the request of Mr. HATCH, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1414, a bill to restore second amendment rights in the District of Columbia.

S. 1419

At the request of Ms. LANDRIEU, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1419, a bill to support the establishment or expansion and operation of programs using a network of public and private community entities to provide mentoring for children in foster care.

S.J. RES. 17

At the request of Mr. DORGAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S.J. Res. 17, a joint resolution disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership.

S. CON. RES. 5

At the request of Mr. GRASSLEY, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. Con. Res. 5, a concurrent resolution expressing the support for the celebration in 2004 of the 150th anniversary of the Grand Excursion of 1854.

S. CON. RES. 25

At the request of Mr. VOINOVICH, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. Con. Res. 25, a concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an ''American Jewish History Month'', and for other purposes.

S. CON. RES. 33

At the request of Mr. CRAIG, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. Con. Res. 33, a concurrent resolution expressing the sense of the Congress regarding scleroderma.

S. RES. 107

At the request of Mr. INOUYE, the names of the Senator from Oklahoma (Mr. INHOFE) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of S. Res. 107, a resolution expressing the sense of the Senate to designate the month of November 2003 as ''National Military Family Month''.

S. RES. 200

At the request of Mr. JOHNSON, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. Res. 200, a resolution expressing the sense of the Senate that Congress should adopt a conference agreement on the child tax credit and on tax relief for military personnel.

AMENDMENT NO. 1140

At the request of Mr. BINGAMAN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of amendment No. 1140 intended to be proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

AMENDMENT NO. 1384

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 1384 proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

AMENDMENT NO. 1386

At the request of Mr. BOND, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from Kentucky (Mr. BUNNING), the Senator from Ohio (Mr. VOINOVICH) and the Senator from Oklahoma (Mr. NICKLES) were added as cosponsors of amendment No. 1386 proposed to S. 14, a bill to enhance the energy security of the United States, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FEINGOLD:

S. 1480. A bill to amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes; to the Committee on Governmental Affairs.

Mr. FEINGOLD. Mr. President, today I am introducing legislation to strengthen the Buy American Act of 1933, the statute that governs procurement by the federal government. The name of the act accurately and succinctly describes its purpose: to ensure that the federal government supports domestic companies and domestic workers by buying American-made goods.

While I a strong supporter of the act, I am concerned that, through abuse of its 5 broad waivers, the spirit—if not the letter—of the act is being weakened time and again.

It only makes sense, Mr. President, for the federal government to make every effort to purchase goods that are made in America. A law requiring this common-sense approach should not be necessary. Unfortunately, this law is necessary, and the way in which its many loopholes are being used also makes strengthening it necessary.

I have often heard my colleagues say on this floor that American-made goods are the best in the world. I could not agree more. This Congress should do more to ensure that the federal government adheres to this sentiment by enforcing and strengthening the provisions of the Buy American Act.

As we all know the United States manufacturing industry is hemorrhaging, as jobs and companies move overseas or are lost all together. According to the AFL–CIO, the United States has lost more than 2.4 million manufacturing jobs since April 1998. This disturbing trend is of particular concern in my home state of Wisconsin.

A March 2003 report by the Wisconsin State Department of Workforce Development notes that ''a combination of weak domestic and global demand, mergers and consolidations, automation, globalization of operations, and uncertainty surrounding war have caused employment in Wisconsin's manufacturing sector to shrink in recent years.'' The Department found that there were 594,100 manufacturing jobs in Wisconsin in 2000, and the Department estimates that this figure had dropped to 517,100 jobs by June of this year. More than 77,000 jobs lost in just 2½ years, Mr. President. And the people of my state can expect more of the same during the rest of this decade if we don't take action soon.

While the Department expects some sectors to experience an upturn by 2010, it estimates that the people of my state can still expect to lose thousands more manufacturing jobs by 2010.

Much of this can be blamed on flawed trade agreements that the United States has entered into in recent years. The trade policy of this country over the past several years has been appalling. The trade agreements into which we have entered have contributed to the loss of key employers, ravaging entire communities. But despite that clear evidence, we continue to see trade agreements being reached that will only aggravate this problem

This has to stop. We cannot afford to pursue trade policies that gut our manufacturing sector and send good jobs overseas. We cannot afford to undermine the protections we have established for workers, the environment, and for our public health and safety. And we cannot afford to squander our democratic heritage by entering into trade agreements that supercede our right to govern ourselves through open, democratic institutions.

I will be introducing legislation in the near future to address that problem directly by establishing minimum standards for the trade agreements into which our nation enters. That measure is a companion to a resolution that will be introduced in the other body by my colleague from Ohio [Mr. BROWN].

Regrettably, some of the blame for the dire situation in which American manufacturing finds itself also lies in our own federal tax and procurement policies, some of which actually encourage American companies to move or incorporate abroad. The Buy American law was enacted 70 years ago to ensure that Federal procurement policies support American jobs.

Some argue that the Buy American Act has outlived its usefulness in today's global economy. I argue that it is as relevant today as it was when it was enacted in 1933. The passage of 70 years has not diminished the importance of this Act for American manufacturing companies or for those who are employed in this crucial sector of our economy. In fact, a strong argument can be made that this Act is even more necessary today than it was 70 years ago. With American jobs heading overseas at an alarming rate, the Government should be doing all it can to make sure that U.S. taxpayer dollars are spent to support American jobs.

Some argue that the Buy American Act is protectionist and anti-free trade. I disagree. Supporting American industry is not protectionist—it is common sense. The erosion of our manufacturing base needs to be stopped, and Congress should support procurement and trade policies that help to ensure that we do not continue to lose portions of this vital segment of our economy.

The legislation that I introduce today, the Buy American Improvement Act, would strengthen the existing Act by tightening existing waivers and would require that information be provided to Congress and to the American people about how often the provisions of this Act are waived by Federal departments and agencies.

As I noted earlier, there are currently five primary waivers in the Buy American Act. The first allows an agency head to waive the Act's provisions if a determination is made that complying with the Act would be ''inconsistent with the public interest.'' I am concerned that this waiver, which includes no definition for what is ''inconsistent with the public interest'' is actually a gaping loophole that gives broad discretion to department secretaries and agency heads. My bill would clarify this so-called ''public interest'' waiver provision to prohibit it from being invoked by an agency or department head after a request for procurement (RFP) has been published in the Federal Register. Once the bidding process has begun, the Federal Government should not be able to pull an RFP by saying that it is in the ''public interest'' to do so. This determination, sometimes referred to as the Buy

American Act's national security waiver, should be made well in advance of placing a procurement up for bid.

The Buy American Act may also be waived if the head of the agency determines that the cost of the lowest-priced domestic product is ''unreasonable,'' and a system of price differentials is used to assist in making this determination. My bill would amend this waiver to require that preference be given to the American company if that company's bid is substantially similar to the lowest foreign bid or if the American company is the only domestic source for the item to be procured.

I have a long record of supporting efforts to help taxpayers get the most bang for their buck and of opposing wasteful Federal spending. I don't think anyone can argue that supporting American jobs is ''wasteful.'' We owe it to American manufacturers and their employees to make sure they get a fair shake. I would not support awarding a contract to an American company that is price gouging, but we should make every effort to ensure that domestic sources for goods needed by the Federal Government do not dry up because American companies have been slightly underbid by foreign competitors.

The Buy American Act also includes a waiver for goods bought by the Federal Government that will be used outside of the United States. There is no question that there will be occasions when the Federal Government will need to procure items quickly that will be used outside the United States, such as in a time of war. However, items that are bought on a regular basis and are used at foreign military bases or United States embassies, for example, could reasonably be procured from domestic sources and shipped to the location where they will be used. My bill would require an analysis of the difference in cost for obtaining articles, materials, or supplies that are used on a regular basis outside the United States, or that are not needed on an immediate basis, from an American company, including the cost of shipping, and a foreign company before issuing a waiver and awarding the contract to a foreign company.

The fourth waiver allowed under the Buy American Act states that the domestic source requirements of the Act may be waived if the articles to be procured are not available from domestic sources ''in sufficient and reasonably available commercial quantities and of a satisfactory quality.'' My bill would require that an agency or department head, prior to issuing such as waiver, conduct a study that determines that domestic production cannot be initiated to meet the procurement needs and that a comparable article, material, or supply is not available from an American company.

The newest Buy American Act waiver, which was enacted in 1994, exempts purchases of less than $2,500 from the domestic source requirements of the Act. While this waiver is not addressed in my bill, I have requested that the General Accounting Office conduct a study of this so-called ''micro purchase'' exemption, including how often it is used and its impact on American businesses.

My bill also strengthens the Buy American Act in four other ways.

First, it expands annual reporting requirements regarding the use of waivers that currently apply only to the Department of Defense to include all Federal departments and agencies. My bill specifies that these reports should include an itemized list of waivers, including the items procured, their dollar value, and their source. In addition, these reports would have to be made available on the Internet.

The bill also increases the minimum American-made content standard for qualification under the Act from the current 50 percent to 75 percent. The definition of what qualifies as an American-made product has been a source of much debate. To me, it seems clear that American-made means manufactured in this country. This classification is a source of pride for manufacturing workers around our country. The current 50 percent standard should be raised to a 75 percent minimum.

My bill also addresses the crucial issue of dual-use technologies and efforts to prevent them from falling into the hands of terrorists or countries of concern. My bill would prohibit the awarding of a contract or sub-contract to a foreign company to manufacture goods containing any item that is classified as a dual-use item on the Commerce Control List unless approval for such a contract has been obtained through the Export Administration Act process.

Finally, my bill would require the General Accounting Office to report to Congress with recommendations for defining the terms ''inconsistent with the public interest'' and ''unreasonable cost'' for purposes of invoking the corresponding waivers in the Act. I am concerned that both of these terms lack definitions, and that they can be very broadly interpreted by agency or department heads. GAO would be required to make recommendations for statutory definitions of both of these terms, as well as on establishing a consistent waiver process that can be used by all Federal agencies.

I am pleased that this legislation is supported by a broad array of business and labor groups including: Save American Manufacturing, the U.S. Business and Industry Council, the International Association of Machinists and Aerospace Workers, the Milwaukee Valve Company, and the National and Wisconsin AFL–CIO.

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. 1480

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 ''Buy American Improvement Act of 2003''.

SEC. 2. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

''(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

''(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

''(A) that company's offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

''(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

''(3) USE OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

''(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

''(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

''(A) domestic production cannot be initiated to meet the procurement needs; and

''(B) a comparable article, material, or supply is not available from a company in the United States.

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 60 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside the United States in that fiscal year.

''(2) CONTENT OF REPORT.—The report required by paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies for which this Act was waived.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A list of all articles, materials, and supplies acquired, their source, and the amount of the acquisitions.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended—

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

''(c) FEDERAL AGENCY.—The term 'Federal agency' means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and activities under the Architect's direction).''; and

(2) by adding at the end the following:

''(d) SUBSTANTIALLY ALL.—Articles, materials, or supplies shall be treated as made substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, if the cost of the domestic components of such articles, materials, or supplies exceeds 75 percent.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking ''department or independent establishment'' in subsection (a), and inserting ''Federal agency''; and

(B) by striking ''department, bureau, agency, or independent establishment'' in subsection (b) and inserting ''Federal agency''.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

SEC. 3. GAO REPORT AND RECOMMENDATIONS.

(a) SCOPE OF WAIVERS.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(1) unreasonable cost; and

(2) inconsistent with the public interest.

The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 4. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 2) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign entity plans, manuals, or other information that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

By Mr. LEAHY (for himself, Mr. JEFFORDS, Mrs. FEINSTEIN, and Mr. KENNEDY):

S. 1481. A bill to prohibit the application of the trade authorities procedures with respect to implementing bills that contain provisions regarding the entry of aliens; to the Committee on Finance.

Mr. LEAHY. Mr. President, I rise today to introduce the Congressional Responsibility for Immigration Act, a bill to deny fast-track procedures to trade agreements that include immigration provisions. We have witnessed outrage in both parties and in both houses of Congress to the inclusion of ''temporary entry'' provisions in the Free Trade Agreements (''FTAs''), with Chile and Singapore. Members of the House and Senate Judiciary Committees, along with other concerned Members, have stated clearly that they never again want to see trade agreements that include immigration provisions. This bill will allow us to do more than rely on the vague assurances that the Office of the U.S. Trade Representative has offered in response to our strongly-held concerns—it will provide a major deterrent that should prevent this Administration and future Administrations from ignoring Congress' authority over immigration policy. I am pleased that Senator FEINSTEIN—who has led the fight against the inclusions of immigration provisions in the Chile and Singapore agreements—Senator JEFFORDS, and Senator KENNEDY have joined me in introducing this bill.

This bill is simple and straightforward. It states that whenever the Senate considers legislation to implement a free trade agreement, any Senator could raise a point of order against the bill on the grounds that it includes an immigration provision. If the point of order were upheld, the bill would have to be considered under ordinary procedures, allowing us to amend it and strike provisions that violated our constitutional authority over immigration. Succeeding Administrations have told us for decades that they simply cannot pursue trade agreements without ''fast-track'' authority, and Congress has chosen to give that authority to the Executive Branch. Having surrendered some of our power, however, we must be all the more vigilant in ensuring that this surrender remains limited in scope.

It has been widely reported that the USTR considers the ''temporary entry'' provisions in the Chile and Singapore agreements to be models for future agreements. I have criticized those provisions because I share the concerns expressed by Senators FEINSTEIN, LINDSEY GRAHAM, SESSIONS and others that the United States Trade Representative should not be in the business of amending domestic immigration laws, as these treaties do. The decision to include immigration provisions was not only unauthorized but also unnecessary to achieve the Administration's stated goals. Congress has already created the H–1B program, which allows foreign workers with specialized skills to work in the United States. That program was established after a lengthy process of public hearings, debate, and negotiation, and it has worked to help meet labor shortages and strengthen our economy. If the Administration feels that the program needs to be changed, or a new visa category created, it should have sought to do so through the ordinary legislative process.

By including immigration provisions in trade agreements, the Executive Branch not only usurps Congress' authority to create programs, but also to amend them if they prove to be unsuccessful. Any amendments that Congress makes to immigration policies that are made through trade agreements are subject to challenge as violations of those agreements. As a result, our hands are tied not just at the time of the negotiation, but for all future legislative activity as well. This is simply unacceptable—it was not the purpose of our trade agreements and it is neither a wise nor a constitutionally appropriate means of creating our immigration policy. We must pass this bill and restore our proper separation of powers.

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. 1481

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 ''Congressional Responsibility for Immigration Act''.

SEC. 2. LIMITATIONS ON TRADE AUTHORITIES PROCEDURES.

(a) IN GENERAL.—Notwithstanding any other provision of law, section 2103(b)(3) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b)(3)) and the provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) (trade authorities procedures) shall not apply to any bill implementing a trade agreement between the United States and any other country, if the implementing bill contains any provision relating to the immigration laws of the United States or the entry of aliens.

(b) POINT OF ORDER IN SENATE.—

(1) IN GENERAL.—When the Senate is considering an implementing bill, upon a point of order being made by any Senator against any part of the implementing bill that contains material in violation of subsection (a), and the point of order is sustained by the Presiding Officer, the Senate shall cease consideration of the implementing bill under the procedures described in subsection (a).

(2) WAIVERS AND APPEALS.—

(A) WAIVERS.—Before the Presiding Officer rules on a point of order described in paragraph (1), any Senator may move to waive the point of order and the motion to waive

shall not be subject to amendment. A point of order described in paragraph (1) is waived only by the affirmative vote of a majority of the Members of the Senate, duly chosen and sworn.

(B) APPEALS.—After the Presiding Officer rules on a point of order under this paragraph, any Senator may appeal the ruling of the Presiding Officer on the point of order as it applies to some or all of the provisions on which the Presiding Officer ruled. A ruling of the Presiding Officer on a point of order described in paragraph (1) is sustained unless a majority of the Members of the Senate, duly chosen and sworn, vote not to sustain the ruling.

(C) DEBATE.—Debate on a motion to waive under subparagraph (A) or on an appeal of the ruling of the Presiding Officer under subparagraph (B) shall be limited to 1 hour. The time shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader of the Senate, or their designees.

By Mr. INOUYE (for himself, Mr. STEVENS, and Mr. COCHRAN):

S. 1482. A bill to amend the Internal Revenue Code of 1986 to repeal the reduction in the deductible portion of expenses for business meals and entertainment; to the Committee on Finance.

Mr. INOUYE. Mr. President, I rise to introduce legislation to repeal the current 50 percent tax deduction for business meals and entertainment expenses, and to restore the tax deduction to 80 percent gradually over a five-year period. I am joined by my good friends, Senators TED STEVENS and THAD COCHRAN, as cosponsors of this measure. Restoration of this deduction is essential to the livelihood of small and independent businesses as well as the food service, travel, tourism, and entertainment industries throughout the United States. These industries are being economically harmed as a result of the 50 percent tax deduction.

The business meals and entertainment expenses deduction was reduced from 80 percent to 50 percent in the Omnibus Budget Reconciliation Act of 1993, and went into effect on January 1, 1994. Its results have been detrimental to small businesses, the self-employed, and independent and traveling sales representatives. Research conducted by the National Restaurant Association (NRA) indicates that the great majority of business meal users are small businesses and of such businesses, one-fifth are self employed. On an average, business meal costs for small businesses is less than $15 per lunch. These groups rely on one-on-one meetings, usually during meals, for their marketing strategy, and the reduction of the business meals and entertainment deduction has impacted their marketing efforts.

An increase in the meal deduction would have a significant impact on the overall economy. Accompanying my statement is the NRA's State-by-State chart reflecting the estimated economic impact of increasing the business meal deductibility from 50 percent to 80 percent. The NRA estimates that an increase to 80 percent would increase business meal sales by $6 billion and create a $13 billion increase to the overall economy.

I urge my colleagues to join me in cosponsoring this important legislation. I ask unanimous consent that the NRA's State-by-State chart and the text of my bill be printed in the RECORD.

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

ESTIMATED IMPACT OF INCREASING BUSINESS MEAL DEDUCTIBILITY FROM 50 PERCENT TO 80 PERCENT

[In millions]

State	Increase in business meal spending—50 percent to 80 percent deductibility	Total economic impact in the state
Alabama	$79	$163
Alaska	17	29
Arizona	116	229
Arkansas	43	85
California	856	1,896
Colorado	120	259
Connecticut	76	143
Delaware	21	37
District of Columbia	29	38
Florida	333	680
Georgia	198	443
Hawaii	41	79
Idaho	23	46
Illinois	293	688
Indiana	130	267
Iowa	51	108
Kansas	50	102
Kentucky	90	180
Louisiana	91	177
Maine	25	48
Maryland	115	239
Massachusetts	190	378
Michigan	210	409
Minnesota	113	255
Mississippi	44	84
Missouri	119	271
Montana	19	34
Nebraska	35	71
Nevada	66	116
New Hampshire	31	57
New Jersey	168	350
New Mexico	36	68
New York	396	774
North Carolina	188	394
North Dakota	12	22
Ohio	250	547
Oklahoma	67	143
Oregon	82	170
Pennsylvania	242	537
Rhode Island	27	50
South Carolina	89	177
South Dakota	15	30
Tennessee	130	285
Texas	499	1,165
Utah	41	88
Vermont	12	22
Virginia	146	308
Washington	172	349
West Virginia	28	49
Wisconsin	106	228
Wyoming	10	16

Source: National Restaurant Association estimates.

S. 1482

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

SECTION 1. REPEAL OF REDUCTION IN BUSINESS MEALS AND ENTERTAINMENT TAX DEDUCTION.

(a) IN GENERAL.—Section 274(n)(1) of the Internal Revenue Code of 1986 (relating to only 50 percent of meal and entertainment expenses allowed as deduction) is amended by striking ''50 percent'' and inserting ''the applicable percentage''.

(b) APPLICABLE PERCENTAGE.—Section 274(n) of the Internal Revenue Code of 1986 is amended by striking paragraph (3) and inserting the following:

''(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the term 'applicable percentage' means the percentage determined under the following table:

''For taxable years beginning in calendar year—	The applicable percentage is—
2001	68
2002	74
2003 or thereafter	80.''.

(c) CONFORMING AMENDMENT.—The heading for section 274(n) of the Internal Revenue Code of 1986 is amended by striking ''ONLY 50 PERCENT'' and inserting ''PORTION''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

By Mr. DODD (for himself, Mr. KENNEDY, Mr. HARKIN, Ms. MIKULSKI, Mr. JEFFORDS, Mr. BINGAMAN, Mrs. MURRAY, Mr. REID, Mr. EDWARDS, Mrs. CLINTON, Mr. ROCKEFELLER, and Mr. DASCHLE):

S. 1483. A bill to amend the Head Start Act to reauthorize that Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I am pleased to be joined today by my colleague, the ranking member of the Committee on Health, Education, Labor, and Pensions, Senator KENNEDY, and Senators HARKIN, MIKULSKI, JEFFORDS, BINGAMAN, MURRAY, REED, EDWARDS, CLINTON, ROCKEFELLER and DASCHLE in introducing the Head Start School Readiness and Coordination Act.

Let's be clear about one fact: Head Start works. More than 21 million children have gone through Head Start since the program began in 1965 and currently around 900,000 children are enrolled.

Head Start has to be one of the most studied of all Federal programs. But, with each study, there is no question about the results—Head Start children are learning. Could they learn more? Could they make greater gains? That's what our bill is about.

Our bill has four basic points. Our bill will: strengthen the Head Start workforce by requiring stronger Head Start teacher credentials and wages more comparable to public school prekindergarten and kindergarten children; improve Head Start's academic focus, particularly instruction in preliteracy; expand Head Start to all eligible preschool children by 2008, including serving 200,000 infants and toddlers through Early Head Start by 2008; and, promote better coordination across all early care and education programs in every State.

The biggest problem today with Head Start is not the children Head Start serves, but the children who are left behind—those who are not participating in a Head Start program.

While the majority of Head Start children enter the program below national language and literacy norms for all children of similar ages, about 25 percent of children entering Head Start are extremely behind their peers. For these children, Head Start is a particularly important jump start to build school readiness skills.

If our goal is to help Head Start children make even greater gains than

they are currently making, then we need to raise the educational credentials of Head Start teachers. We require that within 3 years, all newly hired Head Start teachers must either have an Associate's degree or become enrolled in a program leading to an AA degree within a year from when they're hired. In addition, we require a teacher with a Bachelor's degree in every classroom over the next 8 years.

Currently, over half of State-funded pre-kindergarten programs require a teacher with a BA. We should require no less for Head Start children.

Unlike the House bill, we provide additional funding to meet this stronger teacher requirement—in fact, $3 billion over 5 years. The average Head Start annual salary is about $20,000. The average annual salary for a kindergarten teacher is $43,000. If we do not raise Head Start teacher salaries to be more in line with public school pre-kindergarten and kindergarten salaries, Head Start programs will never be able to attract and retain a stronger workforce.

Next, we improve the academic focus of Head Start. We require Head Start programs to align their curriculum and classroom practice with local school districts and state school readiness standards. We require every Head Start teacher to have on-going training in literacy instruction. And, we provide funds for more books for Head Start classrooms so that each classroom can truly be a literature-rich environment.

While the House bill does not even include enough funding to keep pace with inflation, our bill expands Head Start to all eligible preschoolers by 2008. In addition, we double the current setaside for Early Head Start from 10 percent of Head Start funding to 20 percent. To me, the earlier we can reach these children, the greater the likelihood that they can make even greater gains than current children, who, for the most part enter Head Start as 4 year-olds.

Last, this bill will promote better coordination across all early care and education programs in every state—without a block grant. We require that every state designate or create an advisory council on early care and education. The council will issue a report to serve as a roadmap for how States can better coordinate various early childhood programs and services.

An expanded State Head Start Collaboration office would work with the advisory council to ensure that Head Start fits into the big picture set by the state for early childhood education.

Children in Head Start can learn more. But, they can't learn more unless we require a stronger workforce and unless we invest the resources necessary to attract and retain that workforce. While I agree that we need to strengthen the literacy focus of Head Start, we cannot do it unless every Head Start teacher is provided with literacy training.

The Administration and House Republicans believe that we need a block grant to promote coordination and collaboration. I disagree. The block grant serves only to weaken the comprehensive services offered by every Head Start program.

Tell the 208,000 children who needed dental treatment, the 71,000 who needed speech and language help, the 21,961 who had developmental delays, the 47,280 who needed treatment for asthma, the 25,869 who had vision problems, and the 20,260 who had hearing problems, that they did not need the comprehensive services provided by Head Start.

Doctors don't water down medicine that's working, and neither should we when it comes to Head Start. But clearly House Republicans have chosen expediency over bipartisanship. That's wrong.

Our bill, the Head Start School Readiness and Coordination Act, will further improve Head Start, without weakening the comprehensive services that Head Start children need.

While we look forward to working with House and Senate Republicans in an effort to craft a bipartisan bill, we also wish to emphasize that we hold certain fundamental beliefs about Head Start that are in our bill and should be part of any final bill.

Last night my colleague, Senator ALEXANDER, introduced legislation to promote better coordination and the creation of Head Start Centers of Excellence. His interest and creativity help stake a marker for basic principles that in addition to my bill should be part of any final bill. I agree with my colleague that there is consensus around improving school readiness, improving coordination, and increasing accountability. I look forward to working with Senator ALEXANDER and Senator GREGG, the Chairman of the Senate Health, Education, Labor, and Pensions Committee and others who joined with me today in drafting a bipartisan bill to promote the strongest start possible for low income children prior to beginning kindergarten.

In the wake of the No Child Left Behind Act, now is not the time to leave Head Start children behind.

I ask unanimous consent that a short summary of the legislation be printed in the RECORD.

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

HEAD START SCHOOL READINESS AND COORDINATION ACT

Brief Summary: Head Start works. The Head Start School Readiness and Coordination Act will help Head Start work better. The Act strengthens the Head Start workforce by requiring stronger education credentials for Head Start teachers and wages more comparable to public school pre-kindergarten and kindergarten teachers; improves Head Start's academic focus, particularly in preliteracy instruction; expands Head Start to more children, including more younger children through the expansion of Early Head Start; and, promotes better coordination across all early care and education programs in the State.

EXPANDS HEAD START ENROLLMENT

Expands access to all eligible 3 and 4 year olds by 2008.

Serves over 200,000 infants and toddlers a year by 2008.

Increases funds for migrant Head Start programs from 4 percent annually to 5 percent.

Increases funds for tribal Head Start programs from 3 percent annually to 4 percent.

STRENGTHENS THE HEAD START WORKFORCE

Within 3 years, requires all newly hired teachers to have an Associate degree, or be enrolled in a program leading to an AA degree within 1 year of hire.

Requires a teacher with a Bachelor's degree in every classroom by 2008.

Provides the resources necessary to attract and retain a more educated workforce and to enable current Head Start teachers to go back to school.

STRENGTHENS HEAD START'S ACADEMIC FOCUS, PARTICULARLY PRE-LITERACY

Requires all Head Start teachers to receive on-going training in literacy.

Requires Head Start programs to align curriculum and classroom practice with local school districts and state school readiness standards.

Provides funds to increase the number of books in Head Start classrooms, promote partnerships with libraries, and foster books in the homes of Head Start children.

IMPROVES HEAD START'S COORDINATION AND COLLABORATION

Expands State Head Start Quality Improvement and Collaboration offices to better coordinate Head Start with other early childhood programs.

Promotes flexibility for Head Start to reach more children from working poor families.

PROMOTES BETTER COORDINATION ACROSS ALL EARLY CARE AND EDUCATION PROGRAMS

Requires States to designate or establish an advisory council on early care and education to review a State's overall needs for children from birth to school entry.

Allows States to administer Head Start training and technical assistance to better comply with Head Start performance standards and to promote professional development among Head Start teachers and other early care providers, if supplemented by the States.

Involves States as a member of the team monitoring and reviewing Head Start Performance and allows States to designate new Head Start agencies.

IMPROVES HEAD START ACCOUNTABILITY

Requires Head Start programs to conduct an annual review, with a team that includes a representative from the local school district, the State, and the HHS regional office.

Allows the Secretary of HHS to conduct periodic unannounced monitoring visits.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator DODD and other colleagues in introducing the Head Start Coordination and School Readiness Act. Our goal is to reauthorize Head Start and continue this very successful federal program to prepare low-income children for school.

For nearly four decades, Head Start has enabled vulnerable, young pre-kindergarten children to enter school ready to learn. It provides a balanced educational curriculum to see that children develop early skills in reading, writing, and math, and positive social skills as well. It provides visits to doctors and dentists, and nutritious

meals to see that children are healthy. It provides outreach to parents to encourage them to participate actively in their child's early development.

It is clear that Head Start works. A federal evaluation found that Head Start children make gains during the program itself, and the gains continue when the children enter kindergarten. Once Head Start children complete their kindergarten year, they are near the national average of 100 in key areas, with scores of 93 in vocabulary, 96 in early writing, and 92 in early math.

In this legislation, we build on Head Start's proven track record and expand it to include thousands of low-income children who are not yet served by the program. We provide for better coordination of Head Start with state programs for low-income children. We strengthen Head Start's focus on school readiness and pre-literacy. We increase the education requirements and compensation for Head Start teachers. We provide greater accountability, including a high quality assessment of each Head Start program.

To strengthen Head Start, we have to begin by providing more resources for it. The need for Head Start is greater than ever. Child poverty is on the rise again. Today, only 60 percent of children eligible for Head Start participate in it. Over 312,000 three- and four-year-olds are left out because of the inadequate funding level of the program. Early Head Start serves only 3 percent of eligible infants and toddlers. It is shameful that 97 percent of the children eligible for Early Head Start have no access to it. It's long past time for Congress to expand access to Head Start to serve as many infants, toddlers, and preschool children as possible.

Throughout the 1990's, we tripled our investment, and Head Start expanded by 52 percent. But this year, the President's budget fails to reach out to a single new child. It provides only $148 million in additional funding for the coming year—only a quarter of the increase that Head Start received in recent years, and barely enough to cover inflation.

The bill that we introduce today will set a goal of fully funding Head Start over the next 5 years, in order to reach all eligible preschoolers. Each year, an additional 62,000 three- and four-year-olds would be served by the program. Funding will rise from $6.7 billion in the current fiscal year, to $8.5 billion in fiscal year 2004, and $16.3 billion in fiscal year 2008.

Early Head Start is an especially important lifeline for needy infants and toddlers. Research clearly shows its benefit to infants and toddlers and their families. Early Head Start children have larger vocabularies, lower levels of aggressive behavior, and higher levels of sustained attention than children not enrolled in the program. Parents are more likely to play with their children and read to them.

This bill will double the size of Early Head Start, providing resources to serve an additional 29,000 infants and toddlers each year, at an estimated cost of $1 billion in fiscal year 2004, and $3.2 billion in fiscal year 2008.

The current Federal-to-local structure of Head Start enables it to tailor its services to meet local community needs. Performance standards guarantee a high level of quality across all programs. Yet each program is unique and specifically adapted to the local community. Head Start is successful in serving Inuit children in Alaska, migrant-workers' children in Tennessee, and inner-city children in Boston. It is essential to maintain the ability of local Head Start programs to tailor their services to meet local community's needs.

To strengthen this coordination with local programs, our bill creates a Head Start Quality Improvement and Collaboration Office in every state to maximize services to Head Start children, align Head Start with kindergarten classrooms, and strengthen its local partnerships with other agencies. These offices will also work to expand training and technical assistance to Head Start grantees to better meet the goal of preparing children for school.

States will also have an active role in coordinating their early childhood programs and increasing their quality. Our bill designates an Early Care and Education Council in each State to conduct an inventory of children's needs in the state, develop unified data collection and make recommendations on coordination, technical assistance and training.

Over the past four decades, Head Start has built up quality and performance standards to guarantee a full range of services, so that children are educated in the basics about letters and numbers and books, and are also healthy, well-fed, and supported in stable and nurturing relationships. Head Start is a model program, and we can enhance its quality even more.

One way to do that is to strengthen Head Start's current literacy initiative. We know the key to later reading success is to get young children excited about letters and books and numbers. Our bill emphasizes language and literacy, by enhancing the literacy training required of Head Start teachers, by continuing to promote parent literacy, and by working to put more books into Head Start classrooms and into children's homes.

At the heart of Head Start's success are its teachers and staff. They are caring, committed persons who know the children they serve and are dedicated to improving their lives. They help children learn to identify letters of the alphabet and arrange the pieces of puzzles. They teach them to brush their teeth, wash their hands, make friends and follow rules. Yet their salary is still half the salary of kindergarten teachers, and turnover is high—11 percent a year.

Because a teacher's quality is directly related to a child's outcome, our bill sets a goal that every Head Start classroom has a teacher with a bachelor's degree within 8 years. It provides an additional $650 million over the next 5 years to see that teachers have the means to go back to school to earn a bachelor's degree, and it guarantees $3 billion over that period to see that teachers earn adequate wages to keep them in Head Start once they obtain their degree.

Finally, accountability is a cornerstone of excellence in education and should start early. Head Start should be accountable for its promise to provide safe and healthy learning environments, to support each child's individual pattern of development and learning, to cement community partnerships in services for children, and to involve parents in their child's growth.

Head Start reviews are already among the most extensive in the field. Every 3 years, a Federal and local team spends a week thoroughly examining every aspect of every Head Start program. They check everything from batteries in flashlights to how parents feel about the program. Our bill promotes even stronger monitoring of Head Start programs. It calls for periodic visits to programs, and strengthens annual reviews and plans for improvement.

Assessing outcomes for children is vital in promoting accountability and ensuring that the gains promised for Head Start children are actually achieved. But these steps have to be taken the right way.

Instead of rushing forward, as the Administration suggests, with a national assessment for every four-year-old in Head Start this fall, our bill calls on the National Academy of Sciences to guide the development and implementation of a high-quality assessment for Head Start children over the next four years. That assessment will be valid and reliable, fair to children from all backgrounds, balanced in what it measures, and assess the development of the whole child.

Unfortunately, the Administration and House Republicans have presented plans that would turn Head Start into Slow Start or No Start. It makes no sense to turn Head Start into a block grant to the states. To do so would dismantle the program and undermine Head Start's guarantees that children can see doctors and dentists, eat nutritious meals, and learn early academic and social skills. It would undermine the role of parents, who are better parents today, strong advocates, and enthusiastic volunteers as a result of Head Start.

The Head Start Coordination and School Readiness Act we are introducing today will keep Head Start on its successful path. I urge our colleagues on both sides of the aisle to join us in continuing and strengthening this program, and give children the head start they need and deserve to prepare for school and for life.

Mr. President, I ask unanimous consent that a letter of support and statement from the National Head Start Association be printed in the RECORD.

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

Hon. EDWARD KENNEDY,
U.S. Senate,
Washington DC.

DEAR SENATOR KENNEDY: We are writing to voice our strong support for the legislation you plan to introduce today, the Dodd/Kennedy Head Start School Readiness and Coordination Act.

This legislation would reauthorize the Head Start program an build on it 38-year record of success in delivering high quality, comprehensive services to low-income children and their families. The Children's Defense Fund is working to ensure that we truly Leave No Child Behind in America. This bill takes an important step in making this promise a reality by proposing to expand Head Start to all eligible preschool children and double the current set-aside for infants and toddlers over the next five years.

We applaud the expanded funding as well as your efforts to strengthen and improve Head Start services for the nation's poorest children. Recognizing that teachers are critical to children's learning, the bill promotes advances education for Head Start teachers and guarantees the necessary federal resources to ensure that qualified teachers can afford to stay in Head Start classrooms. The bill also encourages new models for developing a comprehensive, coordinated system of preschool education. While preserving Head Start's existing federal to local funding structure, these strategies will ensure strong collaboration at both the local and start levels.

Your legislation is a marked improvement over the injurious bill passed by the House of Representatives last week. It is my fervent hope that the Senator wholesheartedly rejects the House approach in conference.

As always, we are deeply grateful for your extraordinary leadership of children and families and we look forward to working with you on this important piece of legislation.

Sincerely yours,
MARIAN WRIGHT EDELMAN.

STATEMENT BY SARAH GREENE, PRESIDENT AND CEO, NATIONAL HEAD START ASSOCIATION (NHSA)

Re Kennedy-Dodd Head Start bill.

WASHINGTON, D.C., July 29, 2003.—Sarah Greene, president and CEO of the National Head Start Association, released the following statement today:

''The National Head Start Association, representing 2,500 local Head Start providers, over 900,000 at-risk children, 47,000 teachers and parents and volunteers, is pleased to endorse the ''Head Start School Readiness and Coordination Act'' introduce today by Senators Edward Kennedy (D–MA) and Christopher Dodd (D–CT), ranking members of the Senate Health, Education, Labor and Pensions (HELP) Committee.

This legislation will strengthen the Head Start workforce by requiring stronger credentials for Head Start teachers and bring wages more into line with public school prekindergarten and kindergarten teachers; improve Head Start's academic focus, particularly in pre-literacy instruction; expand Head Start to reach more at-risk children, including more younger children through the expansion of Early Head Start; and promote better coordination across all early care and education programs within the states.

NHSA is proud to have been involved in the crafting of this expansive measure that will continue the long history of improving Head Start's program quality and outcomes for our neediest pre-schoolers. The Head Start community will work closely with members of the help Committee to assure passage of this important legislation.''

ABOUT NHSA

The National Head Start Association is a private not-for-profit membership organization dedicated exclusively to meeting the needs of Head Start children and their families. The Association provides support for the entire Head Start family by advocating for policies that provide high-quality services to children and their families; by providing extensive training and professional development services to all Head Start staff; and be developing and disseminating research, information, and resources that impact Head Start program delivery. NHSA provides a national forum for the continued delivery and enhancement of Head Start services for at-risk children and their families.

Mr. REED. Mr. President, I rise today as a cosponsor of the Head Start School Readiness and Coordination Act.

Since 1965, Head Start has provided comprehensive early childhood development, educational, health, nutritional, social and other services to low-income preschool children and their families. I believe our goal during the upcoming reauthorization must be to enhance, not dismantle, this essential program so it can continue its important and necessary work to lessen the effects of poverty and ensure that children are ready for school.

Head Start serves our poorest children and families but it does not reach enough of them. Although Head Start currently serves over 900,000 children, mainly 3- and 4-year-olds, 40 percent of eligible children, approximately 600,000, are currently not served. Early Head Start, arguably an even more critically important program for infants, toddlers and pregnant women given what we now know about early brain development, serves a mere 3 percent of those eligible.

Several measures are needed to improve Head Start while ensuring that its many important services are not reduced. We need to fully fund Head Start so that many more children can benefit. We need resources to improve the quality of Head Start teachers and adequately compensate them. And we need to improve coordination with child care and State-funded pre-kindergarten programs.

Unfortunately, the Administration's proposal and the House bill do none of these things. Instead they would create a block grant for States and, by doing so, eliminate both the program's Federal quality standards and the requirement for comprehensive services. With almost all States facing substantial budget deficits and many already cutting funding for early child care and pre-kindergarten programs, a block grant demonstration for one State, eight States, or more would jettison the Head Start guarantee of high quality programs and comprehensive services for our nation's low income children and families.

The Head Start School Readiness and Coordination Act preserves both the performance standards that ensure quality as well as the comprehensive services such as health screenings, immunizations, nutritious meals, emotional and behavioral supports, and direct support to parents of Head Start children. I will work hard to ensure that these important services are not diminished and that the effort to improve Head Start does not come at the expense or sacrifice of other aspects of the program.

A particular focus of mine during the past several education reauthorizations has been to ensure that our teachers get the training and continued professional development they need to help students succeed.

Currently, only 25 percent of Head Start teachers hold bachelor's degrees. A key provision in the Head Start School Readiness and Coordination Act would require all newly hired teachers to have a minimum of an Associate's degree and all classrooms to have a teacher with a Bachelor's degree by 2008. Importantly, the bill also provides funding for Head Start teachers to meet these requirements and to boost Head Start teacher's salaries to alleviate the shortage and turnover problem that currently exists. Head Start teachers typically earn half the salary of kindergarten teachers. If we expect a higher level of education from these teachers, then we must compensate them at higher levels.

Unfortunately, the House bill does not provide the means of achieving either of these goals. It is questionable whether the House bill even provides enough funding to cover the cost of inflation. It clearly does not provide funding to boost salaries or provide the additional educational training to achieve the degree requirements sought. Worse, the House bill reduces the minimum set-aside for training and technical assistance from 2 percent to 1 percent and introduces a cap of 2 percent. We will never attract and retain highly qualified teachers without financial support to enable their education and training and incentives to keep them in the Head Start program.

Another troubling aspect of both the Administration's proposal and House bill is that both would allow employment discrimination based on religion in Head Start programs run by religious groups.

Faith-based organizations are an integral part of Head Start, having already provided such services for years. We should continue to encourage their participation without allowing them to discriminate. Indeed, during the Health, Education, Labor and Pensions Committee hearing, the Administration witnesses were unable to provide any information on barriers faced by religious organizations in participating in Head Start, nor could they identify any research pointing to the efficacy of teaching by unified religious staff. I

will fight hard to prevent such discrimination in Head Start as I have in other bills moving through Congress.

I am pleased that provisions I worked on have also been included in The Head Start School Readiness and Coordination Act.

I am particularly pleased about the over-income provision that will allow more children to qualify whose families are above the poverty line but are still struggling to make ends meet. The parental involvement provisions will encourage the continuity of their involvement and improve the academic success of children in Head Start activities. The library and museum provisions will develop and enhance close collaborations of these institutions with Head Start programs to strengthen literacy skills and other educational outcomes for children.

I commend Senators KENNEDY and DODD on their work to draft this bill, and I urge my colleagues to consider and pass this important piece of legislation.

Mrs. CLINTON. Mr. President, I rise today to express my strong support for the Head Start Readiness and Coordination Act, of which I am a proud original co-sponsor. I want to commend Senator DODD and Senator KENNEDY for their hard work and commitment to making this bill the best it could be.

The Head Start Readiness and Coordination Act presents a clear contrast with what has been proposed by the Administration and what has been passed by the House of Representatives. What this Administration and the Republican Leaders in the House want to do will not provide a Head Start for children—it will be a giant step back. A step back from all of the great things that Head Start provides: family services, dental care, health care, and of course learning. We need to strengthen Head Start not weaken it. And we need to expand its reach, not limit it.

The way we create more opportunities for every child in New York and across the country is to build on our successes. And let met tell you Head Start has been a success since 1965. More than 20 million kids have benefited from this program. In this year alone, 50,000 New York families will participate.

And the trend every time reauthorization has come up is to build a program that helps even more children and their families. If it's not broken, don't fix it.

And that's what our ''Head Start Readiness and Coordination Act'' will do. We double the size of Early Head Start. We expand access to all eligible pre-schoolers. We provide better services for families and children who are still learning English—that's 25 percent of the Head Start population. And we improve coordination between the States so that children are ready for school and so that every child who needs it to have access to year-round care.

This bill builds on the remarkable success of the Clinton Administration in improving Head Start. During my husband's tenure in the White House, enrollment in Head Start increased by almost 30 percent and funding increased by 120 percent. In 1994, my husband created the Early Head program to provide critical care to infants who are in one of—if not the most—critical stage of development. And in the 1998 reauthorization, we doubled the Early Head Start program so that today it is serving 62,000 infants and toddlers.

The Clinton Administration also introduced outcome measures aligned with the successful performance standards to improve the quality of the program. And we ensured that 50 percent of all Head Start teachers have an Associates degree. At the time, many people said we were setting impossible standards, but today, the performance standards and outcomes are the backbone of every Head Start program, and the goal of 50 percent of teachers having Associates degrees has been exceeded.

So, I know that we can reform and improve Head Start. And that is why I will never support dismantling it. Head Start is more than just one of this country's most successful anti-poverty programs. It is a great equalizer. It is a place where a young girl might have a book read to her for the first time; a place where a young boy might have his first check-up, and a place where a mother or father might learn about nutrition, the early signs of lead poisoning, and how to encourage learning at home.

Head Start has lived up to its name and then some for millions of Americans. There is bipartisan support to preserve Head Start as we know it, to expand it, and to improve it. I look forward to working with my colleagues to make sure that this happens. We can do all of these great things without dismantling one of our greatest national endeavors for our children.

By Mr. WYDEN:

S. 1484. A bill to require a report on Federal Government use of commercial and other databases for national security, intelligence, and law enforcement purposes, and for other purposes; to the Committee on the Judiciary.

Mr. WYDEN. Mr. President, I believe the United States can fight terrorism ferociously without gutting civil liberties. The point of the legislation I am introducing today is to address concerns that have arisen about the second part of this equation: an area of privacy that has gotten short shrift. That is the personal financial, medical and other data on millions of Americans that today is less than a mouseclick away from the computers of thousands of Federal bureaucrats. Access to and the use of that personal information by Federal bureaucrats is not protected by any comprehensive law.

The power of technology that allows the Federal Government to pry into the personal lives of millions of Americans is only beginning to be understood. It is a breath-taking power, and it has come partly to light through the Defense Department's Terrorism Information Awareness Program (TIA), and through the Transportation Security Administration's Computer Assisted Passenger Profiling System II or CAPPSII Program. These and more than two dozen other agencies wield that power with little or no restraint.

The legislation I am introducing with the support of a bipartisan group of privacy watchdog organizations, the Citizens' Protection in Federal Databases Act, will put the breaks on unchecked Federal data sweeps. It requires the Federal agencies with law enforcement or intelligence authority to share with Congress exactly what they are doing with private or public databases, why they are doing it, and most importantly, what, if any, privacy protections the agencies are affording the individuals' whose sensitive information is caught up in those databases.

The Citizens' Protection in Federal Databases Act also prohibits searches based on hypothetical scenarios.

Apparently, some government agencies are using valuable Federal resources chasing hypothetical situations dreamed up without regard to actual intelligence or law enforcement information.

The TIA Report to Congress in May of this year explained at length the program's intent to construct possible terrorist ''scenarios'' based on ''historical examples, estimated capabilities, and imagination.'' These scenarios would then be fed into database searches in an effort to substantiate the hypotheticals.

This Act bans such searches. This prohibition will promote the efficient use of Federal law enforcement time and money and help protect Americans from being subject to ''virtual goose chases.''

Since 9/11, there has been an abundance of stories regarding Americans being stopped, searched, or detained due to some mistaken information. For example, after 9/11, the FBI decided to share with companies across the country a list with names of people wanted for possible association with terrorism. This list, as part of ''Project Lookout,'' was sent to thousands of corporations, some of whom now use the list in lieu of background checks.

Here's the problem—this list is not necessarily accurate. First of all, the list quickly became obsolete as the FBI checked people off. That means even if people were cleared by the FBI of suspicion, their names were still on this list. Secondly, the list has been shared so many times, and passed from person to person, group to group—many names have become misspelled and now folks, due to one or two typos, are being stopped as suspected terrorists.

That story is just one example of what can happen when information is

mishandled. It is Congress's job to make sure mistakes like these do not happen.

The Citizens' Protection in Federal Databases Act is not the end of this issue. After shedding some light on what exactly is happening with personal information—the Congress must then address how to protect Americans from the misuse of this information.

I am happy to be working with a strong group of privacy advocates. The group includes the Electronic Privacy Information Center, the Electronic Frontier Foundation, the Center for Democracy and Technology, People for the American Way, the Free Congress Foundation, and the American Civil Liberties Union, and they have been instrumental in getting strong safeguards enacted against abuses in the TIA and other programs. I look forward to working with these groups, and my Senate colleagues, to see that this bill is enacted into law.

When tens of thousands of bureaucrats have at their fingertips all-too-easy access to such personal information from private and public databases as the use of passports, driver's licenses, credit cards, ATMs, airline tickets, and rental cars, the American people want to know what is happening to their information. They want to know who wants access to it and why. Their personal information deserves strong privacy protection, and that is what this legislation is all about.

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. 1484

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 ''Citizens' Protection in Federal Databases Act''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Many Federal national security, law enforcement, and intelligence agencies are currently accessing large databases, both public and private, containing information that was not initially collected for national security, law enforcement, or intelligence purposes.

(2) These databases contain personal and sensitive information on millions of United States persons.

(3) Some of these databases are subject to Federal privacy protections when in private sector control.

(4) Risks to personal privacy are heightened when personal information from different sources, including public records, is aggregated in a single file and made accessible to thousands of national security, law enforcement, and intelligence personnel.

(5) It is unclear what standards, policies, procedures, and guidelines govern the access to or use of these public and private databases by the Federal Government.

(6) It is unclear what Federal Government agencies believe they legally can and cannot do with the information once acquired.

(7) The Federal Government should be required to adhere to clear civil liberties and privacy standards when accessing personal information.

(8) There is a need for clear accountability standards with regard to the accessing or usage of information contained in public and private databases by Federal agencies.

(9) Without accountability, individuals and the public have no way of knowing who is reading, using, or disseminating personal information.

(10) The Federal Government should not access personal information on United States persons without some nexus to suspected counterintelligence, terrorist, or other illegal activity.

SEC. 3. LIMITATION ON USE OF FUNDS FOR PROCUREMENT OR ACCESS OF COMMERCIAL DATABASES PENDING REPORT ON USE OF INFORMATION.

(a) LIMITATION.—Notwithstanding any other provision of law, commencing 60 days after the date of the enactment of this Act, no funds appropriated or otherwise made available to the Department of Justice, the Department of Defense, the Department of Homeland Security, the Central Intelligence Agency, the Department of Treasury, or the Federal Bureau of Investigation may be obligated or expended by such department or agency on the procurement of or access to any commercially available database unless such head of such department or agency submits to Congress the report required by subsection (b) not later than 60 days after the date of the enactment of this Act.

(b) REPORT.—(1) The Attorney General, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of the Treasury, the Director of Central Intelligence, and the Director of the Federal Bureau of Investigation shall each prepare, submit to the appropriate committees of Congress, and make available to the public a report, in writing, containing a detailed description of any use by the department or agency under the jurisdiction of such official, or any national security, intelligence, or law enforcement element under the jurisdiction of the department or agency, of databases that were obtained from or remain under the control of a non-Federal entity, or that contain information that was acquired initially by another department or agency of the Federal Government for purposes other than national security, intelligence or law enforcement, regardless of whether any compensation was paid for such databases.

(2) Each report shall include—

(A) a list of all contracts, memoranda of understanding, or other agreements entered into by the department or agency, or any other national security, intelligence, or law enforcement element under the jurisdiction of the department or agency for the use of, access to, or analysis of databases that were obtained from or remain under the control of a non-Federal entity, or that contain information that was acquired initially by another department or agency of the Federal Government for purposes other than national security, intelligence, or law enforcement;

(B) the duration and dollar amount of such contracts;

(C) the types of data contained in the databases referred to in subparagraph (A);

(D) the purposes for which such databases are used, analyzed, or accessed;

(E) the extent to which such databases are used, analyzed, or accessed;

(F) the extent to which information from such databases is retained by the department or agency, or any national security, intelligence, or law enforcement element under the jurisdiction of the department or agency, including how long the information is retained and for what purpose;

(G) a thorough description, in unclassified form, of any methodologies being used or developed by the department or agency, or any intelligence or law enforcement element under the jurisdiction of the department or agency, to search, access, or analyze such databases;

(H) an assessment of the likely efficacy of such methodologies in identifying or locating criminals, terrorists, or terrorist groups, and in providing practically valuable predictive assessments of the plans, intentions, or capabilities of criminals, terrorists, or terrorist groups;

(I) a thorough discussion of the plans for the use of such methodologies;

(J) a thorough discussion of the activities of the personnel, if any, of the department or agency while assigned to the Terrorist Threat Integration Center; and

(K) a thorough discussion of the policies, procedures, guidelines, regulations, and laws, if any, that have been or will be applied in the access, analysis, or other use of the databases referred to in subparagraph (A), including—

(i) the personnel permitted to access, analyze, or otherwise use such databases;

(ii) standards governing the access, analysis, or use of such databases;

(iii) any standards used to ensure that the personal information accessed, analyzed, or used is the minimum necessary to accomplish the intended legitimate Government purpose;

(iv) standards limiting the retention and redisclosure of information obtained from such databases;

(v) procedures ensuring that such data meets standards of accuracy, relevance, completeness, and timeliness;

(vi) the auditing and security measures to protect against unauthorized access, analysis, use, or modification of data in such databases;

(vii) applicable mechanisms by which individuals may secure timely redress for any adverse consequences wrongfully incurred due to the access, analysis, or use of such databases;

(viii) mechanisms, if any, for the enforcement and independent oversight of existing or planned procedures, policies, or guidelines; and

(ix) an outline of enforcement mechanisms for accountability to protect individuals and the public against unlawful or illegitimate access or use of databases.

SEC. 4. GENERAL PROHIBITIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no department, agency, or other element of the Federal Government, or officer or employee of the Federal Government, may conduct a search or other analysis for national security, intelligence, or law enforcement purposes of a database based solely on a hypothetical scenario or hypothetical supposition of who may commit a crime or pose a threat to national security.

(b) CONSTRUCTION.—The limitation in subsection (a) shall not be construed to endorse or allow any other activity that involves use or access of databases referred to in section 3(b)(2)(A).

SEC. 5. DEFINITIONS.

In this Act:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) DATABASE.—The term ''database'' means any collection or grouping of information about individuals that contains personally identifiable information about individuals, such as individual's names, or identifying numbers, symbols, or other identifying

particulars associated with individuals, such as fingerprints, voice prints, photographs, or other biometrics. The term does not include telephone directories or information publicly available on the Internet without fee.

(3) UNITED STATES PERSON.—The term ''United States person'' has the meaning given that term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

By Mr. KENNEDY (for himself, Mr. HARKIN, Mr. SCHUMER, Mr. LEAHY, Mr. DAYTON, Mr. DURBIN, Mr. REID, Mr. DODD, Mr. SARBANES, Ms. STABENOW, Ms. MIKULSKI, and Mrs. CLINTON):

S. 1485. A bill to amend the Fair Labor Standards Act of 1938 to protect the rights of employees to receive overtime compensation; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator HARKIN and other colleagues on this legislation to protect the right to overtime pay for millions of working men and women across America. The Bush administration has just announced new regulations that would deny overtime protections to more than 8 million hard-working men and women, including an estimated 200,000 workers in Massachusetts. Firefighters, police officers, military reservists, nurses, retail clerks, medical technicians, tech workers and many others would be harmed by the new rules.

In the current failing economy, these workers depend more than ever on overtime pay to make ends meet and to pay their bills for housing, food, and health care. Overtime pay often constitutes as much as a quarter of their total pay, and the administration's proposal will mean an average pay cut of $161 a week for them.

Our bill states clearly that no worker currently eligible for overtime protection can be denied overtime pay as a result of the new regulations.

We know that overtime protections make an immense difference in preserving the 40-hour work week. For over half a century, the Fair Labor Standards Act has discouraged employers from requiring longer hours of work, by making overtime more expensive. Instead of relying on fewer workers forced to work longer hours, employers are likely to hire additional workers to meet the employer's needs. That result creates more jobs, and reduces the unfair exploitation of workers.

The Bush administration is the first administration in 70 years in which the number of private sector jobs has declined. Not since President Hoover have we been hemorrhaging jobs like this. How could any fair administration possibly adopt regulations that will increase overtime working hours, and reduce the need to hire additional workers?

According to the Congressional General Accounting Office, employees exempt from overtime pay are twice as likely to work overtime as those covered by the protection. Americans are working longer hours today than ever before—longer than in any other industrial nation. At least one in five employees now has a work week that exceeds 50 hours, let alone 40 hours.

Clearly, workers are already struggling to balance their families' needs with their work responsibilities. Requiring them to work more hours for less pay will add an even greater burden to this daily struggle. Protecting the 40-hour work week is vital to protecting the work-family balance for millions of Americans in communities in all parts of the nation.

Sixty-five years ago, President Roosevelt signed into law the Fair Labor Standards Act to establish a minimum wage and maximum work hours. It was the midst of the Great Depression and President Roosevelt told the country that ''if the hours of labor for the individual could be shortened . . . more people could be employed. If minimum wages could be established, each worker could get a living wage.''

Those words are as true in 2003 as they were in 1938. The economy has lost more private sector jobs during this economic decline than in any recession since the Great Depression. What can the administration be thinking, to come up with this shameful proposal to weaken the overtime protections on which millions of workers rely? Is the administration so desperate to prop up business profits that it's willing to punish workers to do it?

As Senator HARKIN says, the President's policy is economic malpractice. Democrats will not sit idly by and watch Americans lose their jobs, their livelihoods, their homes, and their dignity. We will continue the fight to restore jobs to the economy, provide fair unemployment benefits, and raise the minimum wage. And we will do all we can to preserve the overtime protections on which so many Americans families depend. I urge my colleagues to support this essential legislation to keep the faith with the Nation's working families.

By Mr. CHAFEE (for himself and Mr. JEFFORDS):

S. 1486. A bill to amend the Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act to implement the Stockholm Convention on Persistent Organic Pollutants, the Protocol on Persistent Organic Pollutants to the Convention on Long-Range Transboundary Air Pollution, and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; to the Committee on Environment and Public Works.

Mr. CHAFEE. Mr. President, today I introduce the POPs, LRTAP POPs, and PIC Implementation Act of 2003, along with Senator JEFFORDS. This legislation implements the Stockholm Convention on Persistent Organic Pollutants (POPs), the Convention on Long-range Transboundary Air Pollution (LRTAP POPs), and the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC). With advice and consent by the Senate and with passage of this legislation, the United States will appropriately become an active participant in these important international agreements.

Persistent organic pollutants (POPs) are highly toxic and cause adverse health effects, including cancer, reproductive disorders, and immune system disruptions. POPs may not break down for years or decades, can travel long distances through air and water, and are known to bioaccumulate in living organisms. PCBs, DDT, and dioxin are examples of POPs. The Stockholm Convention on Persistent Organic Pollutants seeks to globally eliminate or severely restrict the production and use of 12 of the most dangerous pesticides and industrial chemicals, ensure the environmentally sound management of POPs waste, and prevent the emergence of new chemicals with POPs-like characteristics. To date, there are 151 signatories and 33 Parties to the Convention.

The legislation we are introducing today implements the key provision of the POPs Convention which allows additional chemicals to be added to the Convention. The bill amends the Toxic Substances Control Act to create a process by which the Administrator of the Environmental Protection Agency would consider regulating a newly listed chemical to the POPs Convention or to the LRTAP POPs Protocol. Beginning 1 year after a chemical is added by the international body, any person may petition the Administrator to commence a rulemaking if one has not been commenced. Providing mechanism to include additional chemicals at a future date, with opportunities for public involvement, ensures that the United States will fully implement the POPs Convention.

This bill includes two titles: the first title amends the Toxic Substances Control Act (TSCA) and the second title amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Senator JEFFORDS and I have worked exclusively to forge a compromise on the first title amending TSCA. The second title amending FIFRA will be considered by the Committee on Agriculture, Nutrition, and Forestry. The language in this bill amending FIFRA is intended to serve as a place holder until the Committee on Agriculture, Nutrition, and Forestry has the opportunity to consider that title. It does not represent a compromise on that title.

I believe that this adding mechanism includes appropriate checks and balances, and requires the Environmental Protection Agency to balance the relevant factors when determining how to regulate a newly-listed chemical. While

different parties would craft these provisions differently if starting with a clean slate, I believe that this legislation represents a solid compromise that will allow the United States to fulfill its obligations when Governor Whitman signed the POPs treaty, and will engage the United States as a leading member of the international community regarding toxic substances.

By Mr. SPECTER:

S. 1487. A bill to require the Secretary of the Army to award the Combat Medical Badge or another combat badge for Army helicopter medical evacuation ambulance (Medevac) pilots and crews; to the Committee on Armed Services.

Mr. SPECTER. Mr. President, I have sought recognition to explain briefly the provisions of legislation I have introduced today that would direct the Secretary of the Army to award the Combat Medical Badge, CMB, or a similar badge to be designed by the Secretary of the Army, to pilots and crew of the Army's helicopter medical ambulance units—commonly referred to by their call sign ''DUST OFF''—who have flown combat missions to rescue and aid wounded soldiers, sailors, airmen, and Marines.

The legacy of the DUST OFF mission was recently brought to my attention by a group of Pennsylvania constituents who have been sharing the DUST OFF story in an attempt to persuade the Army to recognize the service and sacrifice DUST OFF crews made, especially during the Vietnam War, in saving the lives of thousands of fallen comrades by extracting the wounded from forward positions to bases where they would receive life-saving medical care.

The Army began using helicopters to evacuate wounded soldiers during the Korean War. However, because of their smaller size, Korean War helicopters were used solely as a means of transporting the wounded from the combat zones. It was not until the early 1960's that a group of Army aviators envisioned using the newer, larger, UH–1A ''Huey'' helicopters to serve as mobile air ambulances where a medic and crew could provide life-saving treatment en route to the medical aide station.

The road to establish air ambulance units within the Army was rocky and uncertain. Combat commanders often considered the use of helicopters for this purpose a diversion of valuable resources. However, through determination, skill, and the American fighting spirit, air ambulance crews proved they were a valuable and reliable resource in providing support to the combat mission. Indeed, between 1962 and 1973, DUST OFF crews evacuated more than 900,000 allied military personnel and Vietnamese civilian casualties to medical assistance sites.

Captain John Temperelli, Jr. was the first commander of the 57th Medical Detachment, Helicopter Ambulance, who would lead the first DUST OFF unit in Vietnam. Army Captain Temperelli is considered the ''pioneer'' of DUST OFF; however, it was Army Major Charles L. Kelly, the unit's third commander, who would establish the traditions and the motto that DUST OFF crews hold sacred today.

Major Kelly, like his predecessors, believed in the mission of rescuing fallen comrades—so much so that he gave his life to the mission. On July 1, 1964, Major Kelly and his crew received a call to evacuate a wounded soldier. When they arrived, Major Kelly was instructed by an American advisor on the ground to leave the area; the landing zone was too ''hot.'' Major Kelly responded with the phrase that would become the DUST OFF motto: ''When I have your wounded.'' As Major Kelly hovered over the battlefield, an enemy bullet struck him in the heart; he was killed. It was with news of Major Kelly's death and the story of DUST OFF's dedication to the wounded that DUST OFF earned its permanency in the Army.

I recently received a book written by a Pennsylvania native, Army Chief Warrant Officer 5 Mike Novosel, titled DUSTOFF: The Memoir of an Army Aviator. Mr. Novosel—a Medal of Honor recipient who served two tours in Vietnam and was a veteran of two other wars—knows first hand the sacrifice, courage and dedication to duty that DUST OFF crews displayed in Vietnam and continue to display today. In his two tours as a DUST OFF pilot in Vietnam, Mr. Novosel flew 2,543 missions and extracted 5,589 wounded. In his book, Mr. Novosel shares many amazing stories of landing in ''hot'' landing zones to allow his medic and crew chief, who were also exposed to enemy fire, to rescue and care for the wounded. But as Mr. Novosel has said, his experience as a DUST OFF pilot was not uncommon. Thousands of brave soldiers risked their lives every day by flying into combat zones to evacuate the wounded.

I am honored that Mr. Novosel and others have brought the story of DUST OFF to my attention. It is my sincere hope that the Army will recognize DUST OFF pilots and crew with an appropriate badge which acknowledges the combat service of these brave individuals. When the War Department created the Combat Medical Badge, CMB, in WWII, as a companion to the Combat Infantryman Badge, CIB, it did so to recognize that ''medical aidmen . . . shared the same hazards and hardships of ground combat on a daily basis with the infantry soldier.'' DUST OFF pilots and crew equally shared the hazards and hardships of ground combat with the infantry soldier. The fact that they were not directly assigned or attached to a particular infantry unit—a fact that, under current Army policy, makes them eligible to receive a CIB or CMB—should not bar special recognition of their service, service that one author has characterized as ''the brightest achievement of the U.S. Army in Vietnam.''

I had not introduced a bill until today because I wanted to hear testimony from DUST OFF participants about their experiences under fire. I also wanted to provide the Army with an opportunity to explain its position and, perhaps, rethink its opposition to the awarding of an appropriate designation to DUST OFF crew members. Earlier today, the Senate Committee on Veterans' Affairs held a hearing on the matter. Based on testimony offered today by three Vietnam veterans—Chief Warrant Officer, Ret., Michael J. Novosel, M.O.H., Chief Warrant Officer, Ret., John M. Travers, and Mr. William Fredrick ''Fred'' Castleberry—I am now more convinced than ever of the worthiness of this legislation. The Army again expressed its opposition today; I do hope that it will reconsider.

On the Vietnam Veterans Memorial are etched the names of over 400 medics, pilots, and crew that gave their lives so others might live. The forward thinking, enthusiasm, and dedication of DUST OFF crews in Vietnam are attributes seen in today's DUST OFF crews. I urge my colleagues to support this legislation which would recognize the nature of the service these individuals have performed, and continue to perform, while serving on DUST OFF crew.

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. 1487

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

SECTION 1. AWARD OF COMBAT MEDICAL BADGE (CMB) OR OTHER COMBAT BADGE FOR ARMY HELICOPTER MEDICAL EVACUATION AMBULANCE (MEDEVAC) PILOTS AND CREWS.

(a) REQUIREMENT TO ELECT AND AWARD COMBAT BADGE.—The Secretary of the Army shall, at the election of the Secretary—

(1) award the Combat Medical Badge (CMB) to each member of a helicopter medical evacuation ambulance crew; or

(2)(A) establish a badge of appropriate design, to be known as the Combat Medevac Badge; and

(B) award that badge to each member of a helicopter medical evacuation ambulance crew who meets such requirements for eligibility for the award of that badge as the Secretary shall prescribe.

(b) AWARD FOR SERVICE BEFORE DATE OF ENACTMENT.—In the case of persons who qualified for treatment as a member of a helicopter medical evacuation ambulance crew by reason of service during the period beginning on June 25, 1950, and ending on the date of enactment of this Act, the Secretary shall award a badge under subsection (a) to each such person with respect to whom an application for the award of such badge is made to the Secretary after such date in such manner as the Secretary may require.

(c) MEMBER OF HELICOPTER MEDICAL EVACUATION AMBULANCE CREW DEFINED.—In this section, the term ''member of a helicopter medical evacuation ambulance crew'' means any person who while a member of the Army served in combat on or after June 25, 1950, as a pilot or crew member of a helicopter medical evacuation ambulance.

By Mr. BINGAMAN:

S. 1488. A bill to establish the Native American Entrepreneurs Program to provide $3,000,000 in grants annually to qualified organizations to provide training and technical assistance to disadvantaged Native American entrepreneurs; to the Committee on Indian Affairs.

Mr. BINGAMAN. Mr. President, I rise to introduce the Native American Entrepreneurs Act of 2003. The purpose of this legislation is straightforward: it authorizes grants of $3 million in 2004, $4 million in 2005, and $5 million in 2006 to qualified organizations to provide training and technical assistance to Native American entrepreneurs.

In my State of New Mexico and all across the country Native Americans still confront the problem of economic development, this in spite of the many efforts that have been made over time, both by Congress and by the tribes themselves. Over the last decade, some tribes have found a way to address this problem by focusing on the creation of gambling centers. But while these clearly have assisted many tribes, from where I sit this is at best a short- or medium-term solution that does not address the foremost issue at hand—that being how we help individual Native Americans acquire the business skills to become self-sufficient.

In the 106th Congress the Senate and the House passed legislation that created a program at the Small Business Administration that was designed to help disadvantaged individuals gain access to the technical training and funds. The bill—the Program for Investment in Microentrepreneurs Act of 1999, or PRIME—was drafted by several Senators, myself included, who felt it was imperative to encourage investment in microentrepreneurial activities in the United States. The reason for the effort was simple: microenterprise was a proven mechanism for enabling individuals on the periphery to obtain the capital and technical training needed to start their own business and move up the economic ladder in their community. It was also a proven mechanism for creating jobs, alleviating poverty, and stimulating economic development. It deserved to be pushed to the forefront of our legislative efforts in the Senate.

Under the PRIME legislation, organizations that provide technical assistance and loans to Native American communities are eligible for grants. But while diversity in grant award are mandated under the legislation, specific amounts mandated for Native Americans are not. The legislation I am introducing today would change that. The legislation provides additional funding to the PRIME Act for organizations that work with Native Americans specifically. In other words, the funding does not negate the possibility that further funds be provided to Native Americans under PRIME, nor, because it is additional funds over and above current authorization levels, does it cut into the funds that are now available to microenterprise organizations under PRIME. But it does ensure that organizations that serve only Native Americans get specific funding for their efforts.

I will be the first to admit that the authorization levels in this bill are modest, but they are feasible given the current budget environment. I will also admit that the bill carves out a small portion of the problem currently facing Native Americans, but I consider it to be a first step. I intend to address others problems in future legislation. The most important thing is that this bill, if enacted, will have an immediate and concrete impact in Native American communities in New Mexico and the rest of the country. I urge my colleagues to support it.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 204—DESIGNATING THE WEEK OF NOVEMBER 9 THROUGH NOVEMBER 15, 2003, AS ''NATIONAL VETERANS AWARENESS WEEK'' TO EMPHASIZE THE NEED TO DEVELOP EDUCATIONAL PROGRAMS REGARDING THE CONTRIBUTIONS OF VETERANS TO THE COUNTRY

Mr. BIDEN (for himself, Mr. AKAKA, Mr. ALLEN, Mr. BAUCUS, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BREAUX, Mr. BUNNING, Mr. CAMPBELL, Ms. CANTWELL, Mr. CARPER, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COCHRAN, Ms. COLLINS, Mr. CONRAD, Mr. CRAPO, Mr. DAYTON, Mr. DEWINE, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mr. GRASSLEY, Mr. HAGEL, Mr. HATCH, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INHOFE, Mr. INOUYE, Mr. JOHNSON, Mr. KENNEDY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mrs. LINCOLN, Mr. LUGAR, Ms. MIKULSKI, Mr. MILLER, Ms. MURKOWSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. REID, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SESSIONS, Mr. SMITH, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. VOINOVICH, Mr. WARNER, Mr. KERRY, and Mr. LEVIN) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 204

Whereas tens of millions of Americans have served in the Armed Forces of the United States during the past century;

Whereas hundreds of thousands of Americans have given their lives while serving in the Armed Forces during the past century;

Whereas the contributions and sacrifices of the men and women who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by Americans;

Whereas the advent of the all-volunteer Armed Forces has resulted in a sharp decline in the number of individuals and families who have had any personal connection with the Armed Forces;

Whereas this reduction in familiarity with the Armed Forces has resulted in a marked decrease in the awareness by young people of the nature and importance of the accomplishments of those who have served in the Armed Forces, despite the current educational efforts of the Department of Veterans Affairs and the veterans service organizations;

Whereas the system of civilian control of the Armed Forces makes it essential that the future leaders of the Nation understand the history of military action and the contributions and sacrifices of those who conduct such actions; and

Whereas, on November 6, 2002, President George W. Bush issued a proclamation urging all Americans to observe November 10 through November 16, 2002, as National Veterans Awareness Week: Now, therefore, be it

Resolved,

SECTION 1. NATIONAL VETERANS AWARENESS WEEK.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating the week of November 9 through November 15, 2003, as ''National Veterans Awareness Week'' for the purpose of emphasizing educational efforts directed at elementary and secondary school students concerning the contributions and sacrifices of veterans; and

(2) calling on the people of the United States to observe National Veterans Awareness Week with appropriate educational activities.

Mr. BIDEN. Mr. President, today I have the honor of joining with 54 of my colleagues in submitting a resolution expressing the sense of the Senate that the week that includes Veterans' Day this year be designated as ''National Veterans Awareness Week.'' This marks the fourth year in a row that I have submitted such a resolution, which has been adopted unanimously by the Senate on all previous occasions.

The purpose of National Veterans Awareness Week is to serve as a focus for educational programs designed to make students in elementary and secondary schools aware of the contributions of veterans and their importance in preserving American peace and prosperity. This goal takes on particular importance and immediacy this year as we find ourselves again with uniformed men and women in harm's way in foreign lands.

Why do we need such an educational effort? In a sense, this action has become necessary because we are victims of our own success with regard to the superior performance of our Armed Forces. The plain fact is that there are just fewer people around now who have had any connection with military service. For example, as a result of tremendous advances in military technology and the resultant productivity increases, our current Armed Forces now operate effectively with a personnel roster that is one-third less in size than just 15 years ago. In addition, the success of the all-volunteer career-oriented force has led to much lower turnover of personnel in today's military than in previous eras when conscription was in place. Finally, the number of veterans who served during previous

conflicts, such as World War II, when our military was many times larger than today, is inevitably declining.

The net result of these changes is that the percentage of the entire population that has served in the Armed Forces is dropping rapidly, a change that can be seen in all segments of society. Whereas during World War II it was extremely uncommon to find a family in America that did not have one of its members on active duty, now there are numerous families that include no military veterans at all. Even though the Iraqi war has been prominently discussed on television and in the newspapers, many of our children are much more preoccupied with the usual concerns of young people than with keeping up with the events of the day. As a consequence, many of our youth still have little or no connection with or knowledge about the important historical and ongoing role of men and women who have served in the military. This omission seems to have persisted despite ongoing educational efforts by the Department of Veterans Affairs and the veterans service organizations.

This lack of understanding about military veterans' important role in our society can have potentially serious repercussions. In our country, civilian control of the Armed Forces is the key tenet of military governance. A citizenry that is oblivious to the capabilities and limitations of the armed forces, and to its critical role throughout our history, can make decisions that have unexpected and unwanted consequences. Even more important, general recognition of the importance of those individual character traits that are essential for military success, such as patriotism, selflessness, sacrifice, and heroism, is vital to maintaining these key aspects of citizenship in the armed forces and even throughout the population at large.

The failure of our children to understand why a military is important, why our society continues to depend on it for ultimate survival, and why a successful military requires integrity and sacrifice, will have predictable consequences as these youngsters become of voting age. Even though military service is a responsibility that is no longer shared by a large segment of the population, as it has been in the past, knowledge of the contributions of those who have served in the Armed Forces is as important as it has ever been. To the extent that many of us will not have the opportunity to serve our country in uniform, we must still remain cognizant of our responsibility as citizens to fulfill the obligations we owe, both tangible and intangible, to those who do serve and who do sacrifice on our behalf.

The importance of this issue was brought home to me three years ago by Samuel I. Cashdollar, who was then a 13-year-old seventh grader at Lewes Middle School in Lewes, DE. Samuel won the Delaware VFW's Youth Essay Contest that year with a powerful presentation titled ''How Should We Honor America's Veterans?'' Samuel's essay pointed out that we have Nurses' Week, Secretaries' Week, and Teachers' Week, to rightly emphasize the importance of these occupations, but the contributions of those in uniform tend to be overlooked. We don't want our children growing up to think that Veterans Day has simply become a synonym for department store sale, and we don't want to become a nation where more high school seniors recognize the name Britney Spears than the name Dwight Eisenhower.

National Veterans Awareness Week complements Veterans Day by focusing on education as well as commemoration, on the contributions of the many in addition to the heroism and service of the individual. National Veterans Awareness Week also presents an opportunity to remind ourselves of the contributions and sacrifices of those who have served in peacetime as well as in conflict; both groups work unending hours and spend long periods away from their families under conditions of great discomfort so that we all can live in a land of freedom and plenty.

Last year, my Resolution designating National Veterans Awareness Week had 55 cosponsors and was approved in the Senate by unanimous consent. Responding to that resolution, President Bush issued a proclamation urging our citizenry to observe National Veterans Awareness Week. I ask my colleagues to continue this trend of support for our veterans by endorsing this resolution again this year. Our children and our children's children will need to be well informed about what veterans have accomplished in order to make appropriate decisions as they confront the numerous worldwide challenges that they are sure to face in the future.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1410. Mr. BINGAMAN proposed an amendment to amendment SA 1386 proposed by Mr. BOND (for himself, Mr. LEVIN, Mr. DOMENICI, and Ms. STABENOW) to the bill S. 14, to enhance the energy security of the United States, and for other purposes.

SA 1411. Mr. MILLER submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1412. Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON, of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) proposed an amendment to the bill S. 14, supra.

SA 1413. Mr. BINGAMAN proposed an amendment to the bill S. 14, supra.

SA 1414. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1415. Mr. INOUYE submitted an amendment intended to be proposed by him to the bill S. 14, supra; which was ordered to lie on the table.

SA 1416. Mr. FEINGOLD (for himself and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1417. Mr. DAYTON (for himself, Ms. CANTWELL, and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, supra; which was ordered to lie on the table.

SA 1418. Mr. BINGAMAN proposed an amendment to the bill S. 14, supra.

SA 1410. Mr. BINGAMAN proposed an amendment to amendment SA 1386 proposed by Mr. BOND (for himself, Mr. LEVIN, Mr. DOMENICI, and Ms. STABENOW) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

On page 5, strike lines 14 through 18 and insert the following:

(c) CLARIFICATION OF AUTHORITY TO AMEND PASSENGER AUTOMOBILE STANDARD.—Section 32902 of title 49, United States Code, is amended—

(1) in subsection (b), by inserting before the period at the end the following: '', or such other number as the Secretary prescribes under subsection (c)''; and

(2) in subsection (c)(2), by striking ''The procedures of section 551'' and all that follows and inserting the following: ''The amendment shall be considered to be a major rule that is subject to chapter 8 of title 5, United States Code (relating to congressional review of agency rulemaking).''.

SA. 1411. Mr. MILLER submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 260, between lines 7 and 8, insert the following:

SEC. 712. AVERAGE FUEL ECONOMY STANDARDS FOR PICKUP TRUCKS

(a) IN GENERAL.—Section 32902(a) of title 49, United States Code, is amended—

(1) by inserting ''(1)'' after ''AUTOMOBILES.—''; and

(2) by adding at the end the following new paragraph:

''(2) The average fuel economy standard for pickup trucks manufactured by a manufacturer in a model year after model year 2005 shall be 20.7 miles per gallon. No average fuel economy standard prescribed under another provision of this section shall apply to pickup trucks.''.

(b) DEFINITION OF PICKUP TRUCK.—Section 32901(a) of such title is amended by adding at the end the following new paragraph:

''(17) 'pickup truck' has the meaning given that term in regulations prescribed by the Secretary for the administration of this chapter, as such regulations are in effect on January 1, 2003, except that such term shall also include any additional vehicle that the Secretary defines as a pickup truck in regulations prescribed for the administration of this chapter after such date.''.

SA 1412. Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWKSI, Mr. CAMPBELL, Mr. SMITH,

Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

Beginning on page 405, strike line 18 and all that follows through page 467, line 16, and insert the following:

TITLE XI—ELECTRICITY

SEC. 1101. DEFINITIONS.

(a) ELECTRIC UTILITY.—Section 3(22) of the Federal Power Act (16 U.S.C. 796(22)) is amended to read as follows:

''(22) 'electric utility' means any person or Federal or State agency (including any entity described in section 201(f)) that sells electric energy; such term includes the Tennessee Valley Authority and each Federal power marketing agency;''.

(b) TRANSMITTING UTILITY.—Section 3(23) of the Federal Power Act (16 U.S.C. 796(23)) is amended to read as follows:

''(23) 'transmitting utility' means an entity, including any entity described in section 201(f), that owns or operates facilities used for the transmission of electric energy—

''(A) in interstate commerce; or

''(B) for the sale of electric energy at wholesale;''.

(c) ADDITIONAL DEFINITIONS.—Section 3 of the Federal Power Act (16 U.S.C. 796) is amended by adding at the end the following:

''(26) 'unregulated transmitting utility' means an entity that—

''(A) owns or operates facilities used for the transmission of electric energy in interstate commerce, and

''(B) is an entity described in section 201(f);

''(27) 'electric cooperative' means a cooperatively owned electric utility;

''(28) 'Regional Transmission Organization' or 'RTO' means an entity of sufficient regional scope approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure non-discriminatory access to such facilities; and

''(29) 'Independent System Operator' or 'ISO' means an entity used for the transmission of electric energy and which has been approved by the Commission to exercise operational or functional control of facilities used for the transmission of electric energy in interstate commerce and to ensure non-discriminatory access to such facilities.''.

(d) ADDITIONAL MODIFICATIONS.—

(1) Section 201(b)(2) of the Federal Power Act (16 U.S.C. 824(b)(2)) is amended by striking ''The'' the first time it appears and inserting, ''Notwithstanding section 201(f), the''.

(2) Section 201(f) of the Federal Power Act (16 U.S.C. 824(f)) is amended by adding after ''political subdivision of a state,'' ''an electric cooperative that has financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or sells less than 4,000,000 megawatt hours of electricity per year,''.

(e) For the purposes of this title, the term ''Commission'' means the Federal Energy Regulatory Commission.

Subtitle A—Reliability

SEC. 1111. ELECTRIC RELIABILITY STANDARDS.

(a) Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''ELECTRIC RELIABILITY

''SEC. 215. (a) For the purposes of this section:

''(1) The term 'bulk-power system' means—

''(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

''(B) electric energy from generation facilities needed to maintain transmission system reliability.

The term does not include facilities used in the local distribution of electric energy.

''(2) The terms 'Electric Reliability Organization' and 'ERO' mean the organization certified by the Commission under subsection (c), the purpose of which is to establish and enforce reliability standards for the bulk-power system, subject to Commission review.

''(3) The term 'reliability standard' means a requirement, approved by the Commission under this section, to provide for reliable operation of the bulk-power system. The term includes requirements for the operation of existing bulk-power system components and the design of planned additions or modifications to such components to the extent necessary to provide for reliable operation of the bulk-power system, but the term does not include any requirement to enlarge such components or to construct new transmission capacity or generation capacity.

''(4) The term 'reliable operation' means operating the components of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance or unanticipated failure of system components.

''(5) The term 'Interconnection' means a geographic area in which the operation of bulkpower system components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain reliable operation of the portion of the system within their control.

''(6) The term 'transmission organization' means an RTO or other transmission organization finally approved by the Commission for the operation of transmission facilities.

''(7) The term 'regional entity' means an entity having enforcement authority pursuant to subsection (e)(4).

''(b) The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including the entities described in section 201(f), for purposes of approving reliability standards established under this section and enforcing compliance with this section. All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section. The Commission shall issue a final rule to implement the requirements of this section not later than 180 days after the date of enactment of this section.

''(c) Following the issuance of a Commission rule under subsection (b), any person may submit an application to the Commission for certification as the Electric Reliability Organization. The Commission may certify one such ERO if the Commission determines that such ERO—

''(1) has the ability to develop and enforce, subject to subsection (d)(2), reliability standards that provide for an adequate level of reliability of the bulk-power system; and

''(2) has established rules that—

''(A) assure its independence of the users and owners and operators of the bulk-power system, while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure;

''(B) allocate equitably reasonable dues, fees, and other charges among end users for all activities under this section;

''(C) provide fair and impartial procedures for enforcement of reliability standards through the imposition of penalties in accordance with subsection (e) (including limitations on activities, functions, or operations, or other appropriate sanctions);

''(D) provide for reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing reliability standards and otherwise exercising its duties; and

''(E) provide for taking, after certification, appropriate steps to gain recognition in Canada and Mexico.

''(d)(1) The ERO shall file each reliability standard or modification to a reliability standard that it proposes to be made effective under this section with the Commission.

''(2) The Commission may approve by rule or order a proposed reliability standard or modification to a reliability standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission shall give due weight to the technical expertise of the ERO with respect to the content of a proposed standard or modification to a reliability standard and to the technical expertise of a regional entity organized on an Interconnection-wide basis with respect to a reliability standard to be applicable within that Interconnection, but shall not defer with respect to the effect of a standard on competition. A proposed standard or modification shall take effect upon approval by the Commission.

''(3) The ERO shall rebuttably presume that a proposal from a regional entity organized on an Interconnection-wide basis for a reliability standard or modification to a reliability standard to be applicable on an Interconnection-wide basis is just, reasonable, and not unduly discriminatory or preferential, and in the public interest.

''(4) The Commission shall remand to the ERO for further consideration a proposed reliability standard or a modification to a reliability standard that the Commission disapproves in whole or in part.

''(5) The Commission, upon its own motion or upon complaint, may order the ERO to submit to the Commission a proposed reliability standard or a modification to a reliability standard that addresses a specific matter if the Commission considers such a new or modified reliability standard appropriate to carry out this section.

''(6) The final rule adopted under subsection (b) shall include fair processes for the identification and timely resolution of any conflict between a reliability standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization. Such transmission organization shall continue to comply with such function, rule, order, tariff, rate schedule or agreement accepted approved, or ordered by the Commission until—

''(A) the Commission finds a conflict exists between a reliability standard and any such provision;

''(B) the Commission orders a change to such provision pursuant to section 206 of this Part; and

''(C) the ordered change becomes effective under this Part.

If the Commission determines that a reliability standard needs to be changed as a result of such a conflict, it shall order the ERO to develop and file with the Commission a modified reliability standard under paragraph (4) or (5) of this subsection.

''(e)(1) The ERO may impose, subject to paragraph (2), a penalty on a user or owner or operator of the bulk-power system for a violation of a reliability standard approved by the Commission under subsection (d) if

the ERO, after notice and an opportunity for a hearing—

''(A) finds that the user or owner or operator has violated a reliability standard approved by the Commission under subsection (d); and

''(B) files notice and the record of the proceeding with the Commission.

''(2) A penalty imposed under paragraph (1) may take effect not earlier than the 31st day after the ERO files with the Commission notice of the penalty and the record of proceedings. Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator that is the subject of the penalty filed within 30 days after the date such notice is filed with the Commission. Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (1), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside, reinstate, or modify the penalty, and, if appropriate, remand to the ERO for further proceedings. The Commission shall implement expedited procedures for such hearings.

''(3) On its own motion or upon complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system, if the Commission finds, after notice and opportunity for a hearing, that the user or owner or operator of the bulk-power system has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a reliability standard.

''(4) The Commission shall establish regulations authorizing the ERO to enter into an agreement to delegate authority to a regional entity for the purpose of proposing reliability standards to the ERO and enforcing reliability standards under paragraph (1) if—

''(A) the regional entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board;

''(B) the regional entity otherwise satisfies the provisions of subsection (c)(1) and (2); and

''(C) the agreement promotes effective and efficient administration of bulk-power system reliability.

The Commission may modify such delegation. The ERO and the Commission shall rebuttably presume that a proposal for delegation to a regional entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power system reliability and should be approved. Such regulation may provide that the Commission may assign the ERO's authority to enforce reliability standards under paragraph (1) directly to a regional entity consistent with the requirements of this paragraph.

''(5) The Commission may take such action as is necessary or appropriate against the ERO or a regional entity to ensure compliance with a reliability standard or any Commission order affecting the ERO or a regional entity.

''(6) Any penalty imposed under this section shall bear a reasonable relation to the seriousness of the violation and shall take into consideration the efforts of such user, owner, or operator to remedy the violation in a timely manner.

''(f) The ERO shall file with the Commission for approval any proposed rule or proposed rule change, accompanied by an explanation of its basis and purpose. The Commission, upon its own motion or complaint, may propose a change to the rules of the ERO. A proposed rule or proposed rule change shall take effect upon a finding by the Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of subsection (c).

''(g) The ERO shall conduct periodic assessments of the reliability and adequacy of the bulk-power system in North America.

''(h) The President is urged to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with reliability standards and the effectiveness of the ERO in the United States and Canada or Mexico.

''(i)(1) The ERO shall have authority to develop and enforce compliance with reliability standards for only the bulk-power system.

''(2) This section does not authorize the ERO or the Commission to order the construction of additional generation or transmission capacity or to set and enforce compliance with standards for adequacy or safety of electric facilities or services.

''(3) Nothing in this section shall be construed to preempt any authority of any State to take action to ensure the safety, adequacy, and reliability of electric service within that State, as long as such action is not inconsistent with any reliability standard.

''(4) Within 90 days of the application of the ERO or other affected party, and after notice and opportunity for comment, the Commission shall issue a final order determining whether a State action is inconsistent with a reliability standard, taking into consideration any recommendation of the ERO.

''(5) The Commission, after consultation with the ERO, may stay the effectiveness of any State action, pending the Commission's issuance of a final order.

''(j) The Commission shall establish a regional advisory body on the petition of at least two-thirds of the States within a region that have more than one-half of their electric load served within the region. A regional advisory body shall be composed of one member from each participating State in the region, appointed by the Governor of each State, and may include representatives of agencies, States, and provinces outside the United States. A regional advisory body may provide advice to the ERO, a regional entity, or the Commission regarding the governance of an existing or proposed regional entity within the same region; whether a standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest; whether fees proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest, and any other responsibilities requested by the Commission. The Commission may give deference to the advice of any such regional advisory body if that body is organized on an Interconnection-wide basis.

''(k) The provisions of this section do not apply to Alaska or Hawaii.''.

(b) The electric reliability organization certified by the Commission under section 215(c) of the Federal Power Act and any regional entity delegated enforcement authority pursuant to section 215(e) of the Federal Power Act are not departments, agencies, or instrumentalities of the United States Government.

Subtitle B—Regional Markets

SEC. 1121. IMPLEMENTATION DATE FOR PROPOSED RULEMAKING ON STANDARD MARKET DESIGN.

The Commission's proposed rulemaking entitled ''Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design'' (Docket No. RM01–12000) is remanded to the Commission for reconsideration. No final rule pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, may be issued before July 1, 2005. Any final rule issued by the Commission pursuant to the proposed rulemaking, including any rule or order of general applicability within the scope of the proposed rulemaking, shall be preceded by a notice of proposed rulemaking issued after the date of enactment of this Act and an opportunity for public comment.

SEC. 1122. SENSE OF THE CONGRESS ON REGIONAL TRANSMISSION ORGANIZATIONS.

It is the sense of Congress that, in order to promote fair, open access to electric transmission service, benefit retail consumers, facilitate wholesale competition, improve efficiencies in transmission grid management, promote grid reliability, remove opportunities for unduly discriminatory or preferential transmission practices, and provide for the efficient development of transmission infrastructure needed to meet the growing demands of competitive wholesale power markets, all transmitting utilities in interstate commerce should voluntarily become members of independently administered Regional Transmission Organizations (''RTO'') that have operational or functional control of facilities used for the transmission of electric energy in interstate commerce and do not own or have a financial interest in generation facilities used to supply electric energy for sale at wholesale.

SEC. 1123. PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

Nothing in this Act authorizes the Commission to require a transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission-approved organization designated to provide non-discriminatory transmission access.

SEC. 1124. FEDERAL UTILITY PARTICIPATION IN REGIONAL TRANSMISSION ORGANIZATIONS.

(a) DEFINITIONS.—For purposes of this section:

(1) The term ''appropriate Federal regulatory authority'' means—

(A) with respect to a Federal power marketing agency, the Secretary of Energy, except that the Secretary may designate the Administrator of a Federal power marketing agency to act as the appropriate Federal regulatory authority with respect to the transmission system of that Federal power marketing agency; and

(B) with respect to the Tennessee Valley Authority, the Board of Directors of the Tennessee Valley Authority.

(2) The term ''Federal utility'' means a Federal power marketing agency or the Tennessee Valley Authority.

(3) The term ''transmission system'' means electric transmission facilities owned, leased, or contracted for by the United States and operated by a Federal utility.

(b) TRANSFER.—

(1) The appropriate Federal regulatory authority is authorized to enter into a contract, agreement, or other arrangement transferring control and use of all or part of the Federal utility's transmission system to a Regional Transmission Organization

(''RTO''), as defined in the Federal Power Act. Such contract, agreement or arrangement shall be voluntary and include—

(A) performance standards for operation and use of the transmission system that the head of the Federal utility determines necessary or appropriate, including standards that assure recovery of all the Federal utility's costs and expenses related to the transmission facilities that are the subject of the contract, agreement, or other arrangement; consistency with existing contracts and third-party financing arrangements; and consistency with said Federal utility's statutory authorities, obligations, and limitations;

(B) provisions for monitoring and oversight by the Federal utility of the RTO fulfillment of the terms and conditions of the contract, agreement or other arrangement, including a provision that may provide for the resolution of disputes through arbitration or other means with the RTO or with other participants, notwithstanding the obligations and limitations of any other law regarding arbitration; and

(C) a provision that allows the Federal utility to withdraw from the RTO and terminate the contract, agreement, or other arrangement in accordance with its terms.

(2) Neither this section, actions taken pursuant to it, nor any other transaction of a Federal utility using an RTO shall serve to confer upon the Commission jurisdiction or authority over the Federal utility's electric generation assets, electric capacity or energy that the Federal utility is authorized by law to market, or the Federal utility's power sales activities.

(c) EXISTING STATUTORY AND OTHER OBLIGATIONS.—

(1) Any statutory provision requiring or authorizing a Federal utility to transmit electric power, or to construct, operate, or maintain its transmission system shall not be construed to prohibit a transfer of control and use of its transmission system pursuant to, and subject to all requirements of subsection (b).

(2) This subsection shall not be construed to—

(A) suspend, or exempt any Federal utility from any provision of existing Federal law, including but not limited to any requirement or direction relating to the use of the Federal utility's transmission system, environmental protection, fish and wildlife protection, flood control, navigation, water delivery, or recreation; or

(B) authorize abrogation of any contract or treaty obligation.

SEC. 1125. REGIONAL CONSIDERATION OF COMPETITIVE WHOLESALE MARKETS.

(a) STATE REGULATORY AUTHORITIES.—Not later than 90 days after the date of enactment of this Act, the Commission shall convene regional discussions with State regulatory authorities, as defined in section 3(21) of the Federal Power Act. The regional discussions should address whether wholesale electric markets in each region are working effectively to provide reliable service to electric consumers in the region at the lowest reasonable cost. Priority should be given to discussions in regions that do not have, as of the date of enactment of this Act, a Regional Transmission Organization (''RTO'') or an Independent System Operator (''ISO''), as defined in the Federal Power Act. The regional discussions shall consider—

(1) the need for an RTO or other organizations in the region to provide nondiscriminatory transmission access and generation interconnection;

(2) a process for regional planning of transmission facilities with State regulatory authority participation and for consideration of multi-state projects;

(3) a means for ensuring that costs for all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), and buyers of wholesale energy or capacity are reasonable and economically efficient;

(4) a means for ensuring that all electric consumers, as defined in section 3(5) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602(5)), within the region maintain their ability to use the existing transmission system without incurring unreasonable additional costs in order to expand the transmission system for new customers;

(5) whether the integrated transmission and electric power supply system can and should be operated in a manner that schedules and economically prioritizes all available electric generation resources, so as to minimize the costs of electric energy to all consumers (''economic dispatch'') and maintain system reliability;

(6) a means to provide transparent price signals to promote proper location and utilization of generation and the efficient expansion of transmission in a manner that does not result in collection of transmission rents that do not relieve congestion;

(7) eliminating in a reasonable manner, consistent with applicable State and Federal law, multiple, cumulative charges for transmission service across successive locations within a region (''pancaked rates'');

(8) resolution of seams issues with neighboring regions and inter-regional coordination;

(9) a means of providing information electronically to potential users of the transmission system;

(10) implementation of a market monitor for the region with State regulatory authority and Commission oversight and establishment of rules and procedures that ensure that State regulatory authorities are provided access to market information and that provides for expedited consideration by the Commission of any complaints concerning exercise of market power and the operation of wholesale markets;

(11) a process by which to phase-in any proposed RTO or other organization designated to provide non-discriminatory transmission access, including the formulation of transmission pricing methodologies, so as to best meet the needs of a region, and, if relevant, shall take into account the special circumstances that may be found in the Western Interconnection related to the existence of transmission congestion, the existence of significant hydroelectric capacity, the participation of unregulated transmitting utilities, and the distances between generation and load;

(12) the need to submit regional studies, within one year of enactment of this Act, to the Commission outlining possible methodologies that will ensure that the amount of energy produced in any region will be equal to at least 50 percent of the amount of energy consumed in that region by 2013;

(13) the potential value of developing a uniform system-wide average rate for transmission pricing as a way to enhance the efficiency and reliability of the transmission grid; and

(14) a timetable to meet the objectives of this section.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall report to Congress on the progress made in addressing the issues in subsection (a) of this section in discussions with the States.

(c) SAVINGS.—Nothing in this section shall affect any discussions between the Commission and State or other retail regulatory authorities that are on-going prior to enactment of this Act.

Subtitle C—Improving Transmission Access and Protecting Service Obligations

SEC. 1131. SERVICE OBLIGATION SECURITY AND PARITY.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''SERVICE OBLIGATION SECURITY AND PARITY

''SEC. 216. (a)(1) Any load-serving entity that, as of the date of enactment of this section—

''(A) owns generation facilities, markets the output of federal generation facilities, or holds rights under one or more wholesale contracts to purchase electric energy, for the purpose of meeting a service obligation, and

''(B) by reason of ownership of transmission facilities, or one or more contracts or service agreements for firm transmission service, holds firm transmission rights for delivery of the output of such generation facilities or such purchased energy to meet such service obligation, is entitled to use such firm transmission rights, or, at its election, equivalent tradeable or financial transmission rights, in order to deliver such output or purchased energy, or the output of other generating facilities or purchased energy to the extent deliverable using such rights, to the extent required to meet its service obligation.

''(2) To the extent that all or a portion of the service obligation covered by such firm transmission rights or equivalent tradeable or financial transmission rights is transferred to another load-serving entity, the successor load-serving entity shall be entitled to use the firm transmission rights or equivalent tradeable or financial transmission rights associated with the transferred service obligation. Subsequent transfers to another load-serving entity, or back to the original load-serving entity, shall be entitled to the same rights.

''(3) The Commission shall exercise its authority under this Act in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy their service obligations.

''(b) Nothing in this section shall affect any methodology, approved by the Commission prior to the date of enactment of this section, for the allocation of transmission rights by an RTO or ISO that has been authorized by the Commission to allocate transmission rights.

''(c) Nothing in this Act shall relieve a load-serving entity from any obligation under State or local law to build transmission or distribution facilities adequate to meet its service obligations.

''(d) Nothing in this section shall provide a basis for abrogating any contract or service agreement for firm transmission service or rights in effect as of the date of the enactment of this subsection.

''(e) For purposes of this section:

''(1) The term 'distribution utility' means an electric utility that has a service obligation to end-users or to a State utility or electric cooperative that, directly or indirectly, through one or more additional State utilities or electric cooperatives, provides electric service to end-users.

''(2) The term 'load-serving entity' means a distribution utility or an electric utility that has a service obligation.

''(3) The term 'service obligation' means a requirement applicable to, or the exercise of authority granted to, an electric utility under Federal, State or local law or under long-term contracts to provide electric service to end-users or to a distribution utility.

''(4) The term 'State utility' means a State or any political subdivision of a State, or any agency, authority, or instrumentality of

any one or more of the foregoing, or a corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing or distributing power.

''(5) A transmitting utility that is a water district or water agency to which section 201(f) applies and that has a right under state law to provide water shall be treated as a load-serving entity. Such water district or water agency's right to provide water should be treated as a service obligation.

''(f) Nothing in the section shall apply to an entity located in an area referred to in section 212(k)(2)(A).

''(g) This section does not authorize the Commission to take any action not otherwise within its jurisdiction under other provisions of this Act.''

SEC. 1132. OPEN NON-DISCRIMINATORY ACCESS.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by inserting after section 211 (16 U.S.C. 824j) the following:

''OPEN ACCESS BY UNREGULATED TRANSMITTING UTILITIES

''SEC. 211A. (a) Subject to section 212(h), the Commission may, by rule or order, require an unregulated transmitting utility to provide transmission services

''(1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and

''(2) on terms and conditions (not relating to rates) that are comparable to those under which such unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential.

''(b) The Commission shall exempt from any rule or order under this section any unregulated transmitting utility that

''(1) sells no more than 4,000,000 megawatt hours of electricity per year; or

''(2) does not own or operate any transmission facilities that are necessary for operating an interconnected transmission system (or any portion thereof); or

''(3) meets other criteria the Commission determines to be in the public interest.

''(c) The requirements of subsection (a) shall not apply to facilities used in local distribution.

''(d) if an unregulated transmitting utility exempted pursuant to subsection (b) no longer meets any of the criteria for exemption, the exemption shall expire.

''(e) The rate changing procedures applicable to public utilities under subsections (c) and (d) of section 205 are applicable to unregulated transmitting utilities for purposes of this section.

''(f) In exercising its authority under paragraph (1) of subsection (a), the Commission may remand transmission rates to an unregulated transmitting utility for review and revision where necessary to meet the requirements of subsection (a).

''(g) The provision of transmission services under subsection (a) does not preclude a request for transmission services under section 211.

''(h) The Commission may not require a State or municipality to take action under this section that constitutes a private business use for purposes of section 141 of the Internal Revenue Code of 1986 (26 U.S.C. 141).

''(i) Nothing in this Act authorizes the Commission to require an unregulated transmitting utility to transfer control or operational control of its transmitting facilities to an RTO or any other Commission approved organization designated to provide non-discriminatory transmission access.''.

SEC. 1133. TRANSMISSION INFRASTRUCTURE INVESTMENT.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''PARTICIPANT FUNDING

''SEC. 217. (a) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate final regulations establishing transmission pricing policies applicable to all public utilities associated with the construction of new interstate transmission facilities and expansion, modification, or upgrading of existing interstate transmission facilities (''transmission expansion'').

''(b) CONTENTS.—Consistent with section 205, the regulation under subsection (a) shall, to the maximum extent practicable—

''(1) promote economic capital investment in efficient transmission systems;

''(2) encourage the construction and use of transmission facilities and generation facilities that reduce risk and provide just and reasonable rates to consumers;

''(3) encourage improved operation of generation and transmission facilities and deployment of transmission technologies designed to increase capacity and efficiency of existing networks; and

''(4) ensure that the costs of any transmission expansion are assigned or allocated in a fair manner, meaning that those who benefit from the transmission expansion pay an appropriate share of the associated costs.

''(c) PLAN.

''(1) IN GENERAL.—An RTO or ISO may submit to the Commission a plan containing the criteria for determining the person or persons who will be required to pay for any transmission expansion. Nothing herein diminishes or alters the rights of individual members of an RTO or ISO under the Act.

''(2) REQUIREMENTS.—The Commission shall approve a plan submitted under paragraph (1) if the Commission determines that the plan—

''(A) meets all the requirements of this Act and is consistent with the regulation promulgated under subsection (a);

''(B) specifies the method or methods by which costs may be allocated or assigned. Such methods may include, but are not limited to:

''(i) directly assigned;

''(ii) participant funded; or

''(iii) rolled into regional or sub-regional rates; and

''(C) ensures that the party or parties who pay for facilities necessary for the transmission expansion receive appropriate compensation for those facilities, considering among other factors the economic benefits associated with the transmission expansion.

''(3) DEFERENCE.—In exercising its jurisdiction under this section, the Commission shall give substantial deference to the comments filed with the Commission by State regulatory authorities, other appropriate State officials, and stakeholders of the RTO or ISO.

''(4) EFFECT OF SECTION.—Nothing in this section shall affect an RTO or ISO's allocation methodology for transmission expansion approved by the Commission prior to the date of enactment of this section.''.

Subtitle D—Amendments to the Public Utility Regulatory Policies Act of 1978

SEC. 1141. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—

''(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is further amended by adding at the end the following:

''(i) NET METERING.—In undertaking the consideration and making the determination under section 111 with respect to the standard concerning net metering established by section III (d)(11), the term net metering service shall mean a service provided in accordance with the following standards:

''(1) An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(2) An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period in accordance with reasonable metering practices.

''(3) If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with reasonable metering practices.

''(4) If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

''(5) An eligible on-site generating facility and net metering system used by an electric consumer shall meet all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(6) The Commission, after consultation with State regulatory authorities and unregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

''(7) For purposes of this subsection—

''(A) The term 'eligible on-site generating facility' means a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less

that is fueled by solar energy, wind energy, or fuel cells; or a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system.

''(B) The term 'renewable energy resource' means solar, wind, biomass, or geothermal energy.

''(C) The term 'high efficiency system' means fuel cells or combined heat and power.

''(D) The term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.''.

SEC. 1142. SMART METERING.

(a) IN GENERAL.—Section 111(d) of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(12) TIME-BASED METERING AND COMMUNICATIONS.—

''(A) Each electric utility shall offer each of its customer classes, and provide individual customers upon customer request, a time-based rate schedule under which the rate charged by the electric utility varies during different time periods and reflects the variance in the costs of generating and purchasing electricity at the wholesale level. The time-based rate schedule shall enable the electric consumer to manage energy use and cost through advanced metering and communications technology.

''(B) The types of time-based rate schedules that may be offered under the schedule referred to in subparagraph (A) include, among others—

''(i) time-of-use pricing whereby electricity prices are set for a specific time period on an advance or forward basis, typically not changing more often than twice a year. Prices paid for energy consumed during these periods shall be pre-established and known to consumers in advance of such consumption, allowing them to vary their demand and usage in response to such prices and manage their energy costs by shifting usage to a lower cost period or reducing their consumption overall;

''(ii) critical peak pricing whereby time-of-use prices are in effect except for certain peak days, when prices may reflect the costs of generating and purchasing electricity at the wholesale level and when consumers may receive additional discounts for reducing peak period energy consumption; and

''(iii) real-time pricing whereby electricity prices are set for a specific time period on an advanced or forward basis and may change as often as hourly.

''(C) Each electric utility subject to subparagraph (A) shall provide each customer requesting a time-based rate with a time-based meter capable of enabling the utility and customer to offer and receive such rate, respectively.

''(D) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this paragraph.

''(E) In a State that permits third-party marketers to sell electric energy to retail electric consumers, such consumers shall be entitled to receive that same time-based metering and communications device and service as a retail electric consumer of the electric utility.

''(F) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall, not later than 12 months after the date of enactment of this paragraph conduct an investigation in accordance with section 115(I) and issue a decision whether it is appropriate to implement the standards set out in subparagraphs (A) and (C).''.

(b) STATE INVESTIGATION OF DEMAND RESPONSE AND TIME-BASED METERING.—Section 115 of the Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(j) TIME-BASED METERING AND COMMUNICATIONS.—Each State regulatory authority shall conduct an investigation and issue a decision whether or not it is appropriate for electric utilities to provide and install time-based meters and communications devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs.''.

(c) FEDERAL ASSISTANCE ON DEMAND RESPONSE.—Section 132(a) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(a)) is amended by striking ''and'' at the end of paragraph (3), striking the period at the end of paragraph (4) and inserting ''; and'', and by adding the following at the end thereof:

''(5) technologies, techniques, and rate-making methods related to advanced metering and communications and the use of these technologies, techniques and methods in demand response programs.''.

(d) FEDERAL GUIDANCE.—Section 132 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2643) is amended by adding the following at the end thereof:

''(d) DEMAND RESPONSE.—The Secretary shall be responsible for—

''(1) educating consumers on the availability, advantages, and benefits of advanced metering and communications technologies, including the funding of demonstration or pilot projects;

''(2) working with States, utilities, other energy providers and advanced metering and communications experts to identify and address barriers to the adoption of demand response programs; and

''(3) not later than 180 days after the date of enactment of the Energy Policy Act of 2003, providing the Congress with a report that identifies and quantifies the national benefits of demand response and makes a recommendation on achieving specific levels of such benefits by January 1, 2005.

''(e) DEMAND RESPONSE AND REGIONAL COORDINATION.—

''(1) It is the policy of the United States to encourage States to coordinate, on a regional basis, State energy policies to provide reliable and affordable demand response services to the public.

''(2) The Secretary of Energy shall provide technical assistance to States and regional organizations formed by two or more States to assist them in—

''(A) identifying the areas with the greatest demand response potential;

''(B) identifying and resolving problems in transmission and distribution networks, including through the use of demand response; and

''(C) developing plans and programs to use demand response to respond to peak demand or emergency needs.

''(3) Not later than 1 year after the date of enactment of the Energy Policy Act of 2003, the Commission shall prepare and publish an annual report, by appropriate region, that assesses demand response resources, including those available from all consumer classes, and which identifies and reviews—

''(A) saturation and penetration rate of advanced meters and communications technologies, devices and systems;

''(B) existing demand response programs and time-based rate programs;

''(C) the annual resource contribution of demand resources;

''(D) the potential for demand response as a quantifiable, reliable resource for regional planning purposes; and

''(E) steps taken to ensure that, in regional transmission planning and operations, demand resources are provided equitable treatment as a quantifiable, reliable resource relative to the resource obligations of any load-serving entity, transmission provider, or transmitting party.

''(f) FEDERAL ENCOURAGEMENT OF DEMAND RESPONSE DEVICES.—It is the policy of the United States that time-based pricing and other forms of demand response, whereby electricity customers are provided with electricity price signals and the ability to benefit by responding to them, shall be encouraged, and the deployment of such technology and devices that enable electricity customers to participate in such pricing and demand response systems shall be facilitated.''.

SEC. 1143. ADOPTION OF ADDITIONAL STANDARDS.

(a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

''(6) Each electric utility shall provide distributed generation, combined heat and power, and district heating and cooling systems competitive access to the local distribution grid and competitive pricing of service, and shall use simplified standard contracts for the interconnection of generating facilities that have a power production capacity of 250 kilowatts or less.

''(7) No electric utility may refuse to interconnect a generating facility with the distribution facilities of the electric utility if the owner or operator of the generating facility complies with technical standards adopted by the State regulatory authority and agrees to pay the costs established by such State regulatory authority.

''(8) Each electric utility shall develop a plan to minimize dependence on one fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable technologies.

''(9) Each electric utility shall develop and implement a 10-year plan to increase the efficiency of its fossil fuel generation.''.

(b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

''(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of subsection (b), any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978 shall be deemed to be a reference to the date of enactment of this subsection.''.

SEC. 1144. TECHNICAL ASSISTANCE.

Section 132(c) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2642(c)) is amended to read as follows:

''(c) TECHNICAL ASSISTANCE FOR CERTAIN RESPONSIBILITIES.—The Secretary may provide such technical assistance as determined appropriate to assist State regulatory authorities and electric utilities in carrying out their responsibilities under section 111(d)(11) and paragraphs (6), (7), (8), and (9) of section 113(b).''.

SEC. 1145. COGENERATION AND SMALL POWER PRODUCTION PURCHASE AND SALE REQUIREMENTS.

(a) TERMINATION OF MANDATORY PURCHASE AND SALE REQUIREMENTS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 824a–3) is amended by adding at the end 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 nondiscriminatory access to—

''(A)(i) independently administered, auction-based day ahead and real time wholesale markets for the sale of electric energy; and

(ii) wholesale markets for longterm sales of capacity and electric energy; or

''(B)(i) transmission and interconnection services that are provided by a Commission-approved regional transmission entity and administered pursuant to an open access transmission tariff that affords nondiscriminatory treatment to all customers; and

''(ii) competitive wholesale markets that provide a meaningful opportunity to sell capacity, including long-term and short-term sales, and electric energy, including long-term, short-term and real-time sales, to buyers other than the utility to which the qualifying facility is interconnected. In determining whether a meaningful opportunity to sell exists, the Commission shall consider, among other factors, evidence of transactions within the relevant market; or

''(C) wholesale markets for the sale of capacity and electric energy that are, at a minimum, of comparable competitive quality as markets described in subparagraphs (A) and (B).

''(2) REVISED PURCHASE AND SALE OBLIGATION FOR NEW FACILITIES.—

''(A) After the date of enactment of this subsection, no electric utility shall be required pursuant to this section to enter into a new contract or obligation to purchase from or sell electric energy to a facility that is not an existing qualifying cogeneration facility unless the facility meets the criteria for qualifying cogeneration facilities established by the Commission pursuant to the rulemaking required by subsection (n).

''(B) For the purposes of this paragraph, the term 'existing qualifying cogeneration facility' means a facility that—

''(i) was a qualifying cogeneration facility on the date of enactment of subsection (m); or

''(ii) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by subsection (n).

''(3) COMMISSION REVIEW.—Any electric utility may file an application with the Commission for relief from the mandatory purchase obligation pursuant to this subsection on a service territory-wide basis. Such application shall set forth the factual basis upon which relief is requested and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection have been met. After notice, including sufficient notice to potentially affected qualifying cogeneration facilities and qualifying small power production facilities, and an opportunity for comment, the Commission shall make a final determination within 90 days of such application regarding whether the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) have been met.

''(4) REINSTATEMENT OF OBLIGATION TO PURCHASE.—At any time after the Commission makes a finding under paragraph (3) relieving an electric utility of its obligation to purchase electric energy, a qualifying cogeneration facility, a qualifying small power production facility, a State agency, or any other affected person may apply to the Commission for an order reinstating the electric utility's obligation to purchase electric energy under this section. Such application shall set forth the factual basis upon which the application is based and describe why the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) of this subsection are no longer met. After notice, including sufficient notice to potentially affected utilities, and opportunity for comment, the Commission shall issue an order within 90 days of such application reinstating the electric utility's obligation to purchase electric energy under this section if the Commission finds that the conditions set forth in subparagraphs (A), (B) or (C) of paragraph (1) which relieved the obligation to purchase, are no longer met.

''(5) 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 the Commission finds that—

''(A) competing retail electric suppliers are willing and able to sell and deliver electric energy to the qualifying cogeneration facility or qualifying small power production facility; and

''(B) the electric utility is not required by State law to sell electric energy in its service territory.

''(6) 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 or pending approval before the appropriate State regulatory authority or non-regulated electric utility on the date of enactment of this subsection, to purchase electric energy or capacity from or to sell electric energy or capacity to a qualifying cogeneration facility or qualifying small power production facility under this Act (including the right to recover costs of purchasing electric energy or capacity).

''(7) RECOVERY OF COSTS.—

''(A) The Commission shall promulgate and enforce such regulations as are necessary to ensure that an electric utility that purchases electric energy or capacity from a qualifying cogeneration facility or qualifying small power production facility in accordance with any legally enforceable obligation entered into or imposed under this section recovers all prudently incurred costs associated with the purchase.

''(B) A regulation under subparagraph (A) shall be enforceable in accordance with the provisions of law applicable to enforcement of regulations under the Federal Power Act (16 U.S.C. 791 a et seq.).

''(n) RULEMAKING FOR NEW QUALIFYING FACILITIES.—

''(1)(A) Not later than 180 days after the date of enactment of this section, the Commission shall issue a rule revising the criteria in 18 C.F.R. 292.205 for new qualifying cogeneration facilities seeking to sell electric energy pursuant to section 210 of this Act to ensure

''(i) that the thermal energy output of a new qualifying cogeneration facility is used in a productive and beneficial manner;

''(ii) the electrical, thermal, and chemical output of the cogeneration facility is used fundamentally for industrial, commercial, or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility; and

''(iii) continuing progress in the development of efficient electric energy generating technology.

''(B) The rule promulgated pursuant to section (n)(1)(A) shall be applicable only to facilities that seek to sell electric energy pursuant to section 210 of this Act. For all other purposes, except as specifically provided in section (m)(2)(A), qualifying facility status shall be determined in accordance with the rules and regulations of this Act.

''(2) RULES FOR EXISTING FACILITIES.—Notwithstanding rule revisions under paragraph (1), the Commission's criteria for qualifying cogeneration facilities in effect prior to the date on which the Commission issues the final rule required by paragraph (1) shall continue to apply to any cogeneration facility that—

''(A) was a qualifying cogeneration facility on the date of enactment of subsection (m), or

''(B) had filed with the Commission a notice of self-certification, self-recertification or an application for Commission certification under 18 C.F.R. 292.207 prior to the date on which the Commission issues the final rule required by paragraph (1).''.

(b) ELIMINATION OF OWNERSHIP LIMITATIONS.—

(1) Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) is amended to read as follows:

''(C) 'qualifying small power production facility' means a small power production facility that the Commission determines, by rule, meets such requirements (including requirements respecting fuel use, fuel efficiency, and reliability) as the Commission may, by rule, prescribe.''.

(2) Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) is amended to read as follows:

''(B) 'qualifying cogeneration facility' means a cogeneration facility that the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe.''.

Subtitle E—Provisions Regarding the Public Utility Holding Company Act of 1935

This subtitle may be cited as the ''Public Utility Holding Company Act of 2003.''

SEC. 1151. DEFINITIONS.

For the purposes of this subtitle:

(1) The term ''affiliate'' of a company means any company 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.

(2) The term ''associate company'' of a company means any company in the same holding company system with such company.

(3) The term ''Commission'' means the Federal Energy Regulatory Commission.

(4) The term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing.

(5) The term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale.

(6) The terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5, 79z–5b), as those sections existed on the day before the effective date of this subtitle.

(7) The term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale)

of natural or manufactured gas for heat, light, or power.

(8) The term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.

(9) The term ''holding company system'' means a holding company, together with its subsidiary companies.

(10) The term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

(11) The term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale.

(12) The term ''person'' means an individual or company.

(13) The term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce.

(14) The term ''public-utility company'' means an electric utility company or a gas utility company.

(15) The term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public-utility companies.

(16) The term ''subsidiary company'' of a holding company means

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon subsidiary companies of holding companies.

(17) The term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

SEC. 1152. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.) is repealed, effective 12 months after the date of enactment of this Act.

SEC. 1153. FEDERAL ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission determines are relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission determines are relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

SEC. 1154. STATE ACCESS TO BOOKS AND RECORDS.

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, and subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information, a holding company or any associate company or affiliate thereof, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public-utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, accounts, memoranda, or other records, or in any way limit the rights of any State to obtain books, accounts, memoranda, or other records, under Federal law, contract, or otherwise.

(c) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

SEC. 1155. EXEMPTION AUTHORITY.

(a) RULEMAKING.—Not later than 90 days after the date of enactment of this title, the Commission shall promulgate a final rule to exempt from the requirements of section 1153 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.);

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—If, upon application or upon its own motion, the Commission finds that the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public-utility company or natural gas company, or if the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public-utility company, the Commission shall exempt such person or transaction from the requirements of section 1153.

SEC. 1156. AFFILIATE TRANSACTIONS.

Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public-utility company, public utility, or natural gas company from an associate company.

SEC. 1157. APPLICABILITY.

No provision of this subtitle shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of such officer, agent, or employee's official duty.

SEC. 1158. EFFECT ON OTHER REGULATIONS.

Nothing in this subtitle precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

SEC. 1159. ENFORCEMENT.

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this subtitle.

SEC. 1160. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this subtitle prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the date of enactment of this Act, if that person continues to comply with the terms of any such authorization, whether by rule or by order.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this subtitle limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

SEC. 1161. IMPLEMENTATION.

Not later than 12 months after the date of enactment of this title, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this subtitle; and

(2) submit to Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this subtitle and the amendments made by this subtitle.

SEC. 1162. TRANSFER OF RESOURCES.

All books and records that relate primarily to the functions transferred to the Commission under this subtitle shall be transferred

from the Securities and Exchange Commission to the Commission.

SEC. 1163. EFFECTIVE DATE.

This subtitle shall take effect 12 months after the date of enactment of this title.

SEC. 1164. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

Subtitle F—Market Transparency, Anti-Manipulation and Enforcement

SEC. 1171. MARKET TRANSPARENCY RULES.

Part 11 of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''MARKET TRANSPARENCY RULES

''SEC. 218. (a) Not later than 180 days after the date of enactment of this section, the Commission shall issue rules establishing an electronic information system to provide the Commission and the public with access to such information as is necessary or appropriate to facilitate price transparency and participation in markets subject to the Commission's jurisdiction. Such systems shall provide information about the availability and market price of wholesale electric energy and transmission services to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public. The Commission shall have authority to obtain such information from any electric and transmitting utility, including any entity described in section 201(f).

''(b) The Commission shall exempt from disclosure information it determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security. This section shall not apply to an entity described in section 212(k)(2)(B) with respect to transactions for the purchase or sale of wholesale electric energy and transmission services within the area described in section 212(k)(2)(A). In determining the information to be made available under this section and time to make such information available, the Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anti-competitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

''(c) This section shall not affect the exclusive jurisdiction of the Commodity Futures Trading Commission with respect to accounts, agreements, contracts, or transactions in commodities under the Commodity Exchange Act (7 U.S.C. 1 et seq.). Any request for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas, electricity and other energy commodities) within the exclusive jurisdiction of the Commodity Futures Trading Commission shall be directed to the Commodity Futures Trading Commission.''.

SEC. 1172. MARKET MANIPULATION.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:

''PROHIBITION ON FILING FALSE INFORMATION

''SEC. 219. It shall be a violation of this Act for any person or any other entity (including entities described in section 201(f) knowingly and willfully to report any information relating to the price of electricity sold at wholesale or availability of transmission capacity, which information the person or any other entity knew to be false at the time of the reporting, to any governmental entity with the intent to manipulate the data being compiled by such governmental entity.

''PROHIBITION ON ROUND TRIP TRADING

''SEC. 220. (a) It shall be a violation of this Act for any person or any other entity (including entities described in section 201(f) knowingly and willfully to enter into any contract or other arrangement to execute a 'round trip trade' for the purchase or sale of electric energy at wholesale.

''(b) For the purposes of this section, the term 'round trip trade' means a transaction, or combination of transactions, in which a person or any other entity—

''(1) enters into a contract or other arrangement to purchase from, or sell to, any other person or other entity electric energy at wholesale;

''(2) simultaneously with entering into the contract or arrangement described in paragraph (1), arranges a financially offsetting trade with such other person or entity for the same such electric energy, at the same location, price, quantity and terms so that, collectively, the purchase and sale transactions in themselves result in no financial gain or loss; and

''(3) enters into the contract or arrangement with the intent to deceptively affect reported revenues, trading volumes, or prices.''.

SEC. 1173. MARKET TRANSPARENCY.

(a) IN GENERAL.—It shall be a violation of the Commodity Exchange Act (7 U.S.C. 1 et seq.) for a person or entity to knowingly report or manipulate any information relating to the price, quantity, sale or purchase, and counter party of any agreement, contract or transaction related to natural gas or electricity in interstate commerce, which the person or entity knew to be false at the time of reporting to any governmental entity or any person or entity engaged in the business of collecting and disseminating information.

(b) CLARIFICATION OF EXISTING CFTC AUTHORITY.—Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by designating subsection (f) as subsection (e), and adding:

''(f) COMMISSION ADMINISTRATIVE AND CIVIL AUTHORITY.—The Commission may bring administrative or civil action as provided in this Act against any person for a violation of any provision of this section including, but not limited to, false reporting under subsection (a)(2). This applies to any action pending on or commenced after the date of enactment of the Energy Policy Act of 2003.''.

(c) FRAUD AUTHORITY.—Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by striking subsection (a) and inserting the following:

''(a) PROHIBITION.—It shall be unlawful for any person, directly or indirectly in or in connection with any account, or any offer to enter into, the entry into, or the confirmation of the execution of, any agreement contract, or transaction subject to regulation or this Act—

''(1) to cheat or defraud or attempt to cheat or defraud any person;

''(2) to willfully make or cause to be made to any person any false report or statement, or to willfully enter or cause to be entered for any person any false record;

''(3) to willfully deceive or attempt to deceive any person by any means whatsoever; or

''(4) except as permitted in written rules of a designated contract market or registered derivative transaction execution facility which the agreement, contract, or transaction is traded and executed—

''(A) to bucket an order;

''(B) to fill an order by offsetting against 1 or more orders of another person; or

''(C) willfully and knowingly, for or on behalf of any other person and without the prior consent of such person, to become—

''(i) the buyer with respect to any selling order of the person; or

''(ii) the seller with respect to any buying order of the person.''.

(d) TECHNICAL CORRECTIONS.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended by adding at the end the following:

''Any request by any Federal, State or foreign government department, agency, or political subdivision, or foreign futures authority, for information to a designated contract market, registered derivatives transaction execution facility, board of trade, exchange, or market involving accounts, agreements, contracts, or transactions in commodities (including natural gas and electricity) within the exclusive jurisdiction of the Commission shall be directed to the Commission.''.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Commission for fiscal year 2004 such sums as may be necessary to carry out the additional responsibilities and obligations of the Commission under this section.

SEC. 1174. ENFORCEMENT.

(a) COMPLAINTS.—Section 306 of the Federal Power Act (16 U.S.C. 825e) is amended by—

(1) inserting ''electric utility,'' after ''Any person,''; and

(2) inserting '', transmitting utility,'' after ''licensee'' each place it appears.

(b) INVESTIGATIONS.—Section 307(a) of the Federal Power Act (16 U.S.C. 825f(a)) is amended by inserting ''or transmitting utility'' after ''any person'' in the first sentence.

(c) REVIEW OF COMMISSION ORDERS.—Section 313(a) of the Federal Power Act (16 U.S.C. 8251) is amended by inserting ''electric utility,'' after ''Any person,'' in the first sentence.

(d) CRIMINAL PENALTIES.—Section 316 of the Federal Power Act (16 U.S.C. 825o) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years'';

(2) in subsection (b), by striking ''$500'' and inserting ''$25,000''; and

(3) by striking subsection (c).

(e) CIVIL PENALTIES.—Section 316A of the Federal Power Act (16 U.S.C. 825o–1) is amended—

(1) in subsections (a) and (b), by striking ''section 211, 212, 213, or 214'' each place it appears and inserting ''Part II''; and

(2) in subsection (b), by striking ''$10,000'' and inserting ''$1,000,000''.

(f) GENERAL PENALTIES.—Section 21 of the Natural Gas Act (15 U.S.C. 717t) is amended—

(1) in subsection (a), by striking ''$5,000'' and inserting ''$1,000,000'', and by striking ''two years'' and inserting ''five years''; and

(2) in subsection (b), by striking ''$500'' and inserting ''$50,000''.

SEC. 1175. REFUND EFFECTIVE DATE.

Section 206(b) of the Federal Power Act (16 U.S.C. 824e(b)) is amended by—

(1) striking ''the date 60-days after the filing of such complaint nor later than 5 months after the expiration of such 60-day period'' in the second sentence and inserting ''the date of the filing of such complaint nor later than 5 months after the filing of such complaint'';

(2) striking ''60 days after'' in the third sentence and inserting ''of'';

(3) striking ''expiration of such 60-day period'' in the third sentence and inserting ''publication date''; and

(4) striking the fifth sentence and inserting the following: ''If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding

pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision.''.

Subtitle G—Consumer Protections

SEC. 1181. ELECTRIC UTILITY MERGERS.

(a) Section 203(a) of the Federal Power Act (16 U.S.C. 824(b)) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000,

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other persons, by any means whatsoever, or

''(C) purchase, acquire, or take any security of any other public utility of a value in excess of $10,000,000.

''(2) No holding company in a holding company system that includes an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with an electric utility company, a gas utility company, or a holding company in a holding company system that includes a public-utility company of value in excess of $10,000,000 without first having secured an order of the Commission authorizing it to do so.

''(3) Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest. In evaluating whether a transaction will be consistent with the public interest, the Commission shall consider whether the proposed transaction—

''(A) will adequately protect consumer interests,

''(B) will be consistent with competitive wholesale markets,

''(C) will not impair the ability of the Commission or the ability of a State commission having jurisdiction following the completion of the transaction over any public utility that is a party to the transaction or an associate company of any party to the transaction to protect the interests of consumers or the public,

''(D) will not impair the financial integrity of any public utility that is a party to the transaction or an associate company of any party to the transaction, and

''(E) satisfies such other criteria as the Commission considers consistent with the public interest.

''(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4). The Commission shall provide expedited review for such transactions. The Commission shall grant or deny any other application for approval of a transaction within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the Commission does not act within 90 days, such application shall be deemed granted unless the Commission finds, based on good cause, that further consideration is required to determine whether the proposed transaction meets the standards of paragraph (4) and issues one or more orders tolling the time for acting on the application.

''(6) For purposes of this subsection, the terms ''associate company'', ''electric utility company'', ''gas utility company'', ''holding company'', ''holding company system'', and ''public-utility company'' have the meaning given those terns in the Public Utility Holding Company Act of 2003.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect 12 months after the date of enactment of this section.

SEC. 1182. MARKET-BASED POLICY.

Within six months of the enactment of this section, the Commission shall issue a policy statement establishing the conditions under which public utilities may charge market-based rates for the sale of electric energy subject to the jurisdiction of the Commission. Such policy statement should consider consumer protections and market power, as well as any other factors the Commission may deem necessary, to ensure that such rates are just and reasonable.

SEC. 1183. INTER-AGENCY REVIEW OF COMPETITION IN THE WHOLESALE AND RETAIL MARKETS FOR ELECTRIC ENERGY.

(a) TASK FORCE.—There is established an inter-agency task force, to be known as the ''Electric Energy Market Competition Task Force'' (referred to in this section as the ''task force''), which shall consist of—

(1) one member each from—

(A) the Department of Justice, to be appointed by the Attorney General of the United States;

(B) the Federal Energy Regulatory Commission, to be appointed by the chairman of that Commission;

(C) the Federal Trade Commission, to be appointed by the chairman of that Commission;

(D) the Department of Energy, to be appointed by the Secretary of Energy; and

(E) the Rural Utilities Service, to be appointed by the Secretary of Agriculture.

(b) STUDY AND REPORT.—

(1) STUDY.—The task force shall perform a study and analysis of competition within the wholesale and retail market for electric energy in the United States.

(2) REPORT.—

(A) FINAL REPORT.—Not later than 1 year after the effective date of this subtitle, the task force shall submit a final report of its findings under paragraph (1) to the Congress.

(B) PUBLIC COMMENT.—At least 60 days before submission of a final report to the Congress under subparagraph (A), the task force shall publish a draft report in the Federal Register to provide for public comment.

(c) CONSULTATION.—In performing the study required by this section, the task force shall consult with and solicit comments from its advisory members, the States, representatives of the electric power industry, and the public.

SEC. 1184. CONSUMER PRIVACY.

The Federal Trade Commission shall issue rules protecting the privacy of electric consumers from the disclosure of consumer information in connection with the sale or delivery of electric energy to a retail electric consumer. If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 1185. UNFAIR TRADE PRACTICES.

(a) SLAMMING.—The Federal Trade Commission shall issue rules prohibiting the change of selection of an electric utility except with the informed consent of the electric consumer or if determined by the appropriate State regulatory authority to be necessary to prevent loss of service.

(b) CRAMMING.—The Federal Trade Commission shall issue rules prohibiting the sale of goods and services to an electric consumer unless expressly authorized by law or the electric consumer.

(c) STATE AUTHORITY.—If the Federal Trade Commission determines that a State's regulations provide equivalent or greater protection than the provisions of this section, such State regulations shall apply in that State in lieu of the regulations issued by the Commission under this section.

SEC. 1186. DEFINITIONS.

For purposes of this subtitle—

(1) the term ''State regulatory authority'' has the meaning given that term in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)).

(2) the tern ''electric consumer'' and ''electric utility'' have the meanings given those terms in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

Subtitle H—Technical Amendments

SEC. 1191. TECHNICAL AMENDMENTS.

(a) Section 211 (c) of the Federal Power Act (16 U.S.C. 824j(c)) is amended by—

(1) striking ''(2)';

(2) striking ''(A)'' and inserting ''(1)''';

(3) striking ''(B)'' and inserting ''(2)''; and

(4) striking ''termination of modification'' and inserting ''termination or modification''.

(b) Section 211(d)(1) of the Federal Power Act (16 U.S.C. 824j(d)) is amended by striking ''electric utility'' the second time it appears and inserting ''transmitting utility''.

(c) Section 315 (c) of the Federal Power Act (16 U.S.C. 825n(c)) is amended by striking ''subsection'' and inserting ''section''.

SA 1413. Mr. BINGAMAN proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

On page 41, after line 17 strike all that follows through p. 43, line 10, and insert the following:

SEC. ELECTRIC UTILITY MERGERS.

Section 203(a) of the Federal Power Act (16 U.S.C. 824b) is amended to read as follows:

''(a)(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

''(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $10,000,000,

''(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with the facilities of any other person, by any means whatsoever,

''(C) purchase, acquire, or take any security of any other public utility, or

''(D) purchase, lease, or otherwise acquire existing facilities for the generation of electric energy unless such facilities will be used exclusively for the sale of electric energy at retail.

''(2) No holding company in holding company system that includes a transmitting utility or an electric utility company shall purchase, acquire, or take any security of, or, by any means whatsoever, directly or indirectly, merge or consolidate with a transmitting utility, an electric utility company, a gas utility company, or a holding company in holding company system that includes a transmitting utility, an electric utility company, or a gas utility company, without first having secured an order of the Commission authorizing it to do so.

''(3) Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable.

''(4) After notice and opportunity for hearing, 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 interests of consumers of electric energy of any public utility that is a party to the transaction or is an associate company of any party to the transaction;

''(C) will not impair the ability of the Commission or any State commission having jurisdiction over any public utility that is a party to the transaction or an associate company of any party to the transaction to protect their interest of consumers or the public; and

''(D) will not lead to cross-subsidization of associate companies or encumber any utility assets for the benefit of an associate company.

''(5) The Commission shall, by rule, adopt procedures for the expeditious consideration of applications for the approval of dispositions, consolidations, or acquisitions under this section. Such rules shall identify classes of transactions, or specify criteria for transactions, that normally meet the standards established in paragraph (4), and shall require the Commission to grant or deny an application for approval of a transaction of such type within 90 days after the conclusion of the hearing or opportunity to comment under paragraph (4). If the Commission does not act within 90 days, such application shall be deemed granted unless the Commission Finds that the proposed transaction does not meet the standards of paragraph (4) and issues one or more orders tolling the time for acting on the application for an additional 90 days.

''(6) For purposes of this subsection, the terms 'associate company', 'electric utility company', 'gas utility company', 'holding company', and 'holding company system' have the meaning given those terms in section 1151 of the Energy Policy Act of 1003.''.

SA 1414. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 197, strike line 3 and all that follows through page 202, line 9, and insert the following:

SEC. 607. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following:

''SEC. 6005. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.

''(a) DEFINITIONS.—In this section:

''(1) 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.

''(2) 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.

''(3) RECOVERED MINERAL COMPONENT.—The term 'recovered mineral component' 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 mineral component 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 section, 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 section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

''(2) PRIORITY.—In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

''(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

''(c) FULL IMPLEMENTATION STUDY.—

''(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and 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 environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

''(2) MATTERS TO BE ADDRESSED.—The study shall—

''(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

''(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

''(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components 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 mineral component in those cement or concrete projects; and

''(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

''(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, and Committee on Transportation and Infrastructure of the House of Representatives a report on the study.

''(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other difficulties described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date of submission of the report under subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

''(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

''(2) eliminate barriers identified under subsection (c).

''SEC. 6006. USE OF GRANULAR MINE TAILINGS.

''(a) MINE TAILINGS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat', for—

''(A) cement or concrete projects; and

''(B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

''(2) REQUIREMENTS.—In establishing criteria under paragraph (1), the Administrator shall consider—

''(A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and

''(B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

''(3) PUBLIC PARTICIPATION.—In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

''(4) APPLICABILITY OF CRITERIA.—On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

''(b) EFFECT OF SECTIONS.—Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle F the following:

''Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.

''Sec. 6006. Use of granular mine tailings.''.

SEC. 608. UTILITY ENERGY SERVICE CONTRACTS.

SA 1415. Mr. INOUYE submitted an amendment intended to be proposed by him to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

In Division B, on page 263, after line 18, 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:

''(l) 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 1416. Mr. FEINGOLD (for himself and Mr. WYDEN) submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 35, strike line 10 and all that follows through page 35, line 10, and insert the following:

SEC. 1156. AFFILIATE, ASSOCIATE COMPANY, AND SUBSIDIARY COMPANY TRANSACTIONS.

Section 204 of the Federal Power Act (16 U.S.C. 824c) is amended by adding at the end the following:

''(i) TRANSACTIONS WITH AFFILIATES AND ASSOCIATED COMPANIES.—

''(1) DEFINITIONS.—In this subsection, the terms 'affiliate', 'associate company', 'public utility', and 'subsidiary company' have the meanings given the terms in section 1151 of the Energy Policy Act of 2003.

''(2) REGULATIONS.—

''(A) IN GENERAL.—The Commission shall promulgate regulations that shall apply in the case of a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility.

''(B) CONTENTS.—At a minimum, the regulations under subparagraph (A) shall require, with respect to a transaction between a public utility and an affiliate, associate company, or subsidiary company of the public utility, that—

''(i) the affiliate, associate company, or subsidiary company shall be an independent, separate, and distinct entity from the public utility;

''(ii) the affiliate, associate company, or subsidiary company shall maintain separate books, accounts, memoranda, and other records and shall prepare separate financial statements;

''(iii)(I) the public utility shall conduct the transaction in a manner that is consistent with transactions among nonaffiliated and nonassociated companies; and

''(II) shall not use its status as a monopoly franchise to confer on the affiliate, associate company, or subsidiary company any unfair competitive advantage;

''(iv) the public utility shall not declare or pay any dividend on any security of the public utility in contravention of such rules as the Commission considers appropriate to protect the financial integrity of the public utility;

''(v) the public utility shall have at least 1 independent director on its board of directors;

''(vi) the affiliate, associate company, or subsidiary company shall not acquire any loan, loan guarantee, or other indebtedness, and shall not structure its governance, in a manner that would permit creditors to have recourse against the assets of the public utility; and

''(vii) the public utility shall not—

''(I) commingle any assets or liabilities of the public utility with any assets or liabilities of the affiliate, associate company, or subsidiary company; or

''(II) pledge or encumber any assets of the public utility on behalf of the affiliate, associate company, or subsidiary company;

''(viii)(I) the public utility shall not cross-subsidize or shift costs from the affiliate, associate company, or subsidiary company to the public utility; and

''(II) the public utility shall disclose and fully value, at the market value or other value specified by the Commission, any assets or services by the public utility that, directly or indirectly, are transferred to, or otherwise provided for the benefit of, the affiliate, associate company, or subsidiary company, in a manner that is consistent with transfers among nonaffiliated and nonassociated companies; and

''(ix) electricity and natural gas consumers and investors shall be protected against the financial risks of public utility diversification and transactions with and among affiliates and associate companies.

''(3) NO PREEMPTION.—This subsection does not preclude or deny the right of any State or political subdivision of a State to adopt and enforce standards for the corporate and financial separation of public utilities that are more stringent that those provided under the regulations under paragraph (2).

''(4) PROHIBITION.—It shall be unlawful for a public utility to enter into or take any step in the performance of any transaction with any affiliate, associate company, or subsidiary company in violation of the regulations under paragraph (2).''.

SA 1417. Mr. DAYTON (for himself, Ms. CANTWELL, and Mrs. BOXER) submitted an amendment intended to be proposed to amendment SA 1412 proposed by Mr. DOMENICI (for himself, Ms. LANDRIEU, Mr. THOMAS, Ms. MURKOWSKI, Mr. CAMPBELL, Mr. SMITH, Mr. ALEXANDER, Mr. KYL, Mr. NELSON of Nebraska, Mr. HAGEL, Mr. TALENT, Mr. BUNNING, and Mr. COLEMAN) to the bill S. 14, to enhance the energy security of the United States, and for other purposes; which was ordered to lie on the table; as follows:

On page 30 of the amendment, strike line 24 and all that follows through page 36, line 24.

SA 1418. Mr. BINGAMAN proposed an amendment to the bill S. 14, to enhance the energy security of the United States, and for other purposes; as follows:

On page 9, line 23 through 24, strike ''including any rule or order of general applicability within the scope of the proposed rulemaking,'' and insert: ''nor any final rule or order of general applicability establishing a standard market design,''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, July 29, 2003, at 9:30 a.m., in open session to consider the nominations of General Peter J. Schoomaker (Ret.), USA, for appointment as Chief of Staff, U.S. Army and appointment to the grade of general; and Lieutenant General Bryan D. Brown, USA, for appointment as Commander, U.S. Special Operations Command and appointment to the grade of general.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on July 29, 2003, at 10 a.m., to conduct a hearing on ''Consumer Awareness and Understanding of the Credit Granting Process.''

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, July 29 at 9 a.m. to examine climate history and its implications, and the science underlying fate, transport, and health effects of mercury emissions. The hearing will be held in SD 406 (hearing room).

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

COMMITTEE ON FOREIGN RELATIONS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, July 29, 2003, at 9:30 a.m., to hold a hearing on ''Iraq: Status and Prospects for Reconstruction—Resources.''

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Tuesday, July 29, 2003, at 9:30 a.m., to consider the nominations of Joe D. Whitley to be General Counsel, Department of Homeland Security; and Penrose C. Albright to be Assistant Secretary for Homeland Security for Plans, Programs, and Budget, Department of Homeland Security.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to

meet on Tuesday, July 29, 2003, to begin immediately following a 9:30 a.m. hearing, to consider the nomination of Joel David Kaplan to be Deputy Director of the Office of Management and Budget.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on Howard Radzely, of Maryland, to be Solicitor for the Department of Labor during the session of the Senate on Tuesday, July 29, 2003, at 10 a.m., in SD–430.

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

COMMITTEE ON THE JUDICIARY

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Tuesday, July 29, 2003, at 9:30 a.m., in Dirksen Room 226. The markup will be a continuation of Committee action on S.J. Res. 1, the victims' rights amendment.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Tuesday, July 29, 2003, for a hearing on U.S. Army policies on the award of the Combat Medical Badge, and on pending legislation relating to VA-provided health care services including the following:

S. 613, a bill to authorize a construction project at the former Fitzsimmons Army Medical Center, Aurora, CO;

S. 615, a bill relating to the naming of a VA outpatient clinic in Horsham, PA;

S. 1144, a bill relating to the naming of a VA medical center in Chicago, IL;

S. 1156, the proposed ''Department of Veterans Affairs Long-Term Care and Personnel Authorities Enhancement Act of 2003'';

S. 1213, section 2, a section of a bill relating to eligibility of U.S.-resident Filipino veterans for VA health care benefits;

S. 1283, a bill to require advance notification of Congress regarding any action proposed to be taken by the Secretary of Veterans Affairs in the implementation of the Capital Asset Realignment for Enhanced Services initiative of the Department of Veterans Affairs; and

S. 1289, a bill to name the Department of Veterans Affairs Medical Center in Minneapolis, MN, after Paul Wellstone.

The hearing will take place in room 418 of the Russell Senate Office Building at 3 p.m.

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

SPECIAL COMMITTEE ON AGING

Mr. BOND. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Tuesday, July 29, 2003, from 10 a.m. to 12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON ENERGY

Mr. BOND. Mr. President, I ask unanimous consent that the Subcommittee on Energy of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, July 29, 2003, at 9:30 a.m. The purpose of this hearing is to highlight the unique role that the DOE's Office of Science plays in supporting basic research in the physical sciences.

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

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

Mr. BOND. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Immigration and Border Security be authorized to meet to conduct a joint hearing on ''The L1 Visa and American Interests in the 21st Century Global Economy'' on Tuesday, July 29, 2003, at 2:30 p.m., in SD226.

Panel I: Patricia Fluno, former Siemens Technologies employee, Lake Mary, FL; Michael W. Gildea, Executive Director, Professional Employees Section, AFL–CIO, Washington, DC; Beth R. Verman, President, Systems Staffing Group, Member, National Association of Computer Consultant Businesses, Bala Cynwyd, PA; Daryl R. Buffenstein, General Counsel, Global Alliance Personnel, Atlanta, GA; Austin T. Fragomen, Jr., Chairman, American Counsel on International Personnel, Washington, DC; and Stephen W. Yale-Loehr, Adjunct Professor, Cornell Law School, Ithaca, New York.

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

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that the following interns and fellows from the Finance Committee be granted floor privileges for the remainder of the debate on the energy bill: Mick Wiedrick, Constantine Tujios, Matt Linstroth, Jeff Klein, Stephanie Beck, Renee Johnson, Mark Kirbabas, Alisa Blum, and Rhonda Sinkfield.

I also ask that the following staff from the Joint Committee on Taxation be granted floor privileges for the remainder of the debate: George Yin, Thomas Barthold, Ray Beeman, John Bloyer, Nikole Flax, Roger Colinvaux, Harold Hirsch, Deirdre James, Lauralee Matthews, Patricia McDermott, Brian Meighan, John Navratil, Joseph Nega, David Noren, Cecily Rock, Carol Sayegh, Gretchen Sierra, Ron Schultz, Mary Schmitt, Allison Wielobob, Barry Wold, and Tara Zimmerman.

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

Mr. BINGAMAN. I ask unanimous consent that Antonio Gonzales, Daniel Archuleta, Jasmine Fallstitch, Christine Nelson, Ryan Davies, James Guttierrez, Frank Murray, Tara Peterkin, and Scott Pearsall be granted the privilege of the floor during debate on the Energy bill this week.

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

DR. YANG JIANLI

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 233, S. Res. 184.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 184) calling on the Government of the People's Republic of China immediately and unconditionally to release Dr. Yang Jianli, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the amendments to the resolution be agreed to; that the resolution, as amended, be agreed; further, that the amendment to the preamble be agreed to, and the preamble, as amended, be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD.

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

The amendments to the resolution were agreed to.

The resolution (S. Res. 184), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution, as amended, with its preamble, as amended, reads as follows:

(The bill will be printed in a future edition of the RECORD.)

COMMENDING THE SIGNING OF THE UNITED STATES-ADRIATIC CHARTER

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 234, H. Con. Res. 209.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 209) commending the signing of the United States-Adriatic Charter, a charter of partnership among the United States, Albania, Croatia, and Macedonia.

There being no objection, the Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on Foreign Relations, with amendments, amendments to the preamble, and an amendment to the title, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

H. CON. RES. 209

Whereas the United States has an enduring interest in the independence, territorial integrity, and security of Albania, Croatia, and The Former Yugoslav Republic of Macedonia and supports their full integration in the community of democratic Euro-Atlantic states;

Whereas Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia have taken clear and positive steps to advance their integration into Europe by establishing close cooperative relations among themselves and with their neighbors, as well as their promotion of regional cooperation;

Whereas Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia have already contributed to European security and to the peace and security of southeast Europe through the resolution of conflicts in the region and their regional cooperation in the Southeast Europe Defense Ministerial;

Whereas on May 2, 2003, the United States-Adriatic Charter was signed in Tirana, Albania, by Secretary of State Colin Powell, [Albanian Foreign Minister Ilir Meta, Croatian Foreign Minister Tonino Picula, and Macedonian Foreign Minister] Albania Foreign Minister Ilir Meta, Croatia Foreign Minister Tonino Picula, and The Former Yugoslav Republic of Macedonia Foreign Minister Ilinka Mitreva;

Whereas the Adriatic Charter affirms the commitment of Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia to the values and principles of the North Atlantic Treaty Organization (NATO) and to joining the Alliance at the earliest possible time;

Whereas Secretary of State Powell stated that the Adriatic Charter ''reaffirms our partners' dedication to work individually, with each other, and with their neighbors to build a region of strong democracies powered by free market economies . . . [i]t underscores the importance we place on their eventual full integration into NATO and other European institutions . . . [a]nd most importantly, the Charter promises to strengthen the ties that bind the peoples of the region to the United States, to one another, and to a common future within the Euro-Atlantic family''; and

Whereas [Albanian special forces troops were sent to Iraq as part of the coalition forces during Operation Iraqi Freedom, 29 Macedonian special forces troops were sent to Iraq as part of the postwar stabilization force, and Albania, Croatia, and Macedonia] 75 special forces troops of Albania were sent to Iraq as part of the coalition forces during Operation Iraqi Freedom, 29 special forces troops of The Former Yugoslav Republic of Macedonia were sent to Iraq as part of the postwar stabilization force, and Albania, Croatia, and The Former Yugoslav Republic of Macedonia all contributed to the stabilization forces in Afghanistan, as signs of their commitment to promote international freedom and security: Now, therefore, be it

Resolved, That Congress—

(1) strongly supports the United States-Adriatic Charter and commends Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia for their continued efforts to become full-fledged members of the North Atlantic Treaty Organization (NATO) and the European Union;

(2) urges NATO to invite Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia to join NATO as soon as each of these countries respectively demonstrates the ability to assume the responsibilities of NATO membership through the Membership Action Plan;

(3) welcomes and supports the aspirations of Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia to join the European Union at the earliest opportunity;

(4) recognizes that Albania, Croatia, and *The Former Yugoslav Republic of* Macedonia are making important strides to bring their economic, military, and political institutions into conformance with the standards of NATO and other Euro-Atlantic institutions; and

(5) commends Secretary of State Powell for his personal support of the Adriatic Charter.

Amend the title so as to read: ''A bill commending the signing of the United States-Adriatic Charter, a charter of partnership among the United States, Albania, Croatia, and The Former Yugoslav Republic of Macedonia.''.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the amendments to the concurrent resolution be agreed to, that the concurrent resolution, as amended, be agreed to, that the amendments to the preamble be agreed to, and that the preamble, as amended, be agreed to, that the amendment to the title be agreed to; further, that the motion to reconsider be laid upon the table, with no intervening action or debate.

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

The amendments to the concurrent resolution were agreed to.

The concurrent resolution (H. Con. Res. 209), as amended, was agreed to.

The amendments to the preamble were agreed to.

The preamble, as amended, was agreed to.

The amendment to the title was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

Resolved, That the resolution from the House of Representatives (H. Con. Res. 209) entitled ''Concurrent resolution commending the signing of the United States-Adriatic Charter, a charter of partnership among the United States, Albania, Croatia, and Macedonia.'', do pass with the following amendments:

(1) Page 3, line 4, after ''and'' the second time it appears insert: *The Former Yugoslav Republic of*

(2) Page 3, line 8, after ''and'' insert: *The Former Yugoslav Republic of*

(3) Page 3, line 14, after ''and'' insert: *The Former Yugoslav Republic of*

(4) Page 3, line 16, after ''and'' insert: *The Former Yugoslav Republic of*

Amend the preamble as follows:

(5) Page 1, unnumbered line 6, after ''and'' insert: *The Former Yugoslav Republic of*

(6) Page 2, unnumbered line 4, after ''and'' insert: *The Former Yugoslav Republic of*

(7) Page 2, unnumbered line 11, strike out all after ''Powell,'' down to an including ''Minister'' in unnumbered line 13 and insert: *Albania Foreign Minister Ilir Meta, Croatia Foreign Minister Tonino Picula, and The Former Yugoslav Republic of Macedonia Foreign Minister*

(8) Page 2, unnumbered line 15, after ''and'' the first time it appears insert: *The Former Yugoslav Republic of*

(9) Page 2, unnumbered line 29, strike out all after ''Whereas'' over to an including ''Macedonia'' in unnumbered line 2 on page 3 and insert: *75 special forces troops of Albania were sent to Iraq as part of the coalition forces during Operation Iraqi Freedom, 29 special forces troops of The Former Yugoslav Republic of Macedonia were sent to Iraq as part of the postwar stabilization force, and Albania, Croatia, and The Former Yugoslav Republic of Macedonia*

Amend the title so as to read: ''Concurrent resolution commending the signing of the United States-Adriatic Charter, a charter of partnership among the United States, Albania, Croatia, and The Former Yugoslav Republic of Macedonia.''.

POSTMASTER EQUITY ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 235, S. 678.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 678) to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 678

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 ''Postmaster Equity Act of 2003''.

[SEC. 2. POSTMASTERS AND POSTMASTERS ORGANIZATIONS.

[(a) IN GENERAL.—Section 1004 of title 39, United States Code, is amended—

[(1) in subsection (a), by inserting '', postmaster,'' after ''supervisory'' both places it appears;

[(2) in subsection (b)—

[(A) in the first sentence, by inserting '', postmaster,'' after ''supervisory''; and

[(B) in the second sentence—

[(i) by striking ''or that a managerial organization (other than an organization representing supervisors)'' and insert ''that a postmaster organization represents a substantial percentage of postmasters (as defined under subsection (j)(3)), or that a managerial organization (other than an organization representing supervisors or postmasters)''; and

[(ii) by striking ''relating to supervisory'' and inserting ''relating to supervisory, postmasters,'';

[(3) in subsection (c)(1), by inserting '', and the Postal Service and the postmasters organization (or organizations),'' after ''supervisors' organization'';

[(4) in subsection (d)—

[(A) in paragraph (1)—

[(i) in the matter preceding subparagraph (A), by inserting ''and the postmasters organization (or organizations)'' after ''the supervisors' organization'' both places it appears;

[(ii) in subparagraph (B), by striking ''organization'' and inserting ''organizations''; and

[(iii) in subparagraph (C), by striking ''organization'' and inserting ''organizations'';

[(B) in paragraph (2)—

[(i) in subparagraph (A), by inserting ''and the postmasters organization (or organizations)'' after ''supervisors' organization''; and

[(ii) in subparagraph (B), by striking ''organization'' and inserting ''organizations'';

[(C) in paragraph (3)—

[(i) in subparagraph (A), by inserting ''and the postmasters organization (or organizations)'' after ''supervisors' organization''; and

[(ii) in subparagraph (B), by striking ''organization'' and inserting ''organizations''; and

[(D) in paragraph (4), by inserting '', and the Postal Service and the postmasters organization (or organizations),'';

[(5) in subsections (e)—

[(A) in paragraph (1), by inserting ''and the postmasters organization (or organizations)'' after ''supervisors' organization'';

[(B) in paragraph (2), by inserting '', the postmasters organization (or organizations),'' after ''The Postal Service''; and

[(C) in paragraph (3), by inserting ''and the postmasters organization (or organizations)'' after ''supervisors' organizations'';

[(6) in subsection (h)—

[(A) in paragraph (1), by striking ''and'' after the semicolon;

[(B) in paragraph (2), by striking the period and inserting a semicolon; and

[(C) by inserting after paragraph (2) the following:

[''(3) 'postmasters organization' means, with respect to a calendar year, any organization whose membership on June 30th of the preceding year included not less than 20 percent of all individuals employed as postmasters on that date; and

[''(4) 'postmaster' means an individual who is the manager-in-charge, with or without the assistance of subordinate managers or supervisors, the operations of a post office.''; and

[(7) by redesignating subsection (h) as subsection (j), and inserting after subsection (g) the following:

[''(h)(1) If, notwithstanding the mutual efforts required by subsection (e) of this section, the postmasters organization (or organizations), believes that the decision of the Postal Service is not in accordance with the provisions of this title, the organization may, within 10 days following its receipt of such decision, request the Federal Mediation and Conciliation Service to convene a fact-finding panel (in this subsection referred to as the 'panel') concerning such matter.

[''(2) Within 15 days after receiving a request under paragraph (1) of this subsection, the Federal Mediation and Conciliation Service shall provide a list of 7 individuals recognized as experts in supervisory and managerial pay policies. The postmasters organization (or organizations) and the Postal Service shall each designate 1 individual from the list to serve on the panel. If, within 10 days after the list is provided, either of the parties has not designated an individual from the list, the Director of the Federal Mediation and Conciliation Service shall make the designation. The first 2 individuals designated from the list shall meet within 5 days and shall designate a third individual from the list. The third individual shall chair the panel. If the 2 individuals designated from the list are unable to designate a third individual within 5 days after their first meeting, the Director shall designate the third individual.

[''(3)(A) The panel shall recommend standards for pay policies and schedules and fringe benefit programs affecting the members of the postmasters organization (or organizations) for the period covered by the collective bargaining agreement specified in subsection (e)(1) of this section. The standards shall be consistent with the policies of this title, including sections 1003(a) and 1004(a) of this title.

[''(B) The panel shall, consistent with such standards, make appropriate recommendations concerning the differences between the parties on such policies, schedules, and programs.

[''(4) The panel shall make its recommendation no more than 30 days after its appointment, unless the Postal Service and the postmasters organization (or organizations) agree to a longer period. The panel shall hear from the Postal Service and the postmasters organization (or organizations) in such a manner as it shall direct. The cost of the panel shall be borne equally by the Postal Service and the postmasters organization (or organizations), with the Service to be responsible for one-half the costs and the postmasters organization (or organizations) to be responsible for the remainder.

[''(5) Not more than 15 days after the panel has made its recommendation, the Postal Service shall provide the postmasters organization (or organizations) its final decision on the matters covered by factfinding under this subsection. The Postal Service shall give full and fair consideration to the panel's recommendation and shall explain in writing any differences between its final decision and the panel's recommendation.

[''(i) Not earlier than 3 years after the date of the enactment of this subsection, and from time to time thereafter, the Postal Service or the postmasters organization (or organizations) may request, by written notice to the Federal Mediation and Conciliation Service and to the other party, the creation of a panel to review the effectiveness of the procedures and the other provisions of this section and the provisions of section 1003 of this title. The panel shall be designated in accordance with the procedure established in subsection (h)(2) of this section. The panel shall make recommendations to Congress for changes in this title as it finds appropriate.''.

[(b) TECHNICAL AND CONFORMING AMENDMENT.—

[(1) SECTION HEADING.—The section heading for section 1004 of title 39, United States Code, is amended to read as follows:

[''§ 1004. Supervisory, postmaster, and other managerial organizations''.

[(2) TABLE OF SECTIONS.—The table of sections for chapter 10 of title 39, United States Code, is amended by striking the item relating to section 1004 and inserting the following:

[''1004. Supervisory, postmaster, and other managerial organizations.''.

[SEC. 3. EFFECTIVE DATE.

[The amendments made by this Act shall take effect 60 days after the date of enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Postmasters Equity Act of 2003''.

SEC. 2. POSTMASTERS AND POSTMASTERS' ORGANIZATIONS.

(a) PERCENTAGE REPRESENTATION REQUIREMENT.—The second sentence of section 1004(b) of title 39, United States Code, is amended—

(1) by inserting ''that an organization (other than an organization representing supervisors) represents at least 20 percent of postmasters,'' after ''majority of supervisors,''; and

(2) by striking ''supervisors)'' and inserting ''supervisors or postmasters)''.

(b) CONSULTATION AND OTHER RIGHTS.—Section 1004 of title 39, United States Code, is amended—

(1) by redesignating subsection (h) as subsection (i); and

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

''(h)(1) In order to ensure that postmasters and postmasters' organizations are afforded the same rights under this section as are afforded to supervisors and the supervisors' organization, subsections (c) through (g) shall be applied with respect to postmasters and postmasters' organizations—

''(A) by substituting 'postmasters' organization' for 'supervisors' organization' each place it appears; and

''(B) if 2 or more postmasters' organizations exist, by treating such organizations as if they constituted a single organization, in accordance with such arrangements as such organizations shall mutually agree to.

''(2) If 2 or more postmasters' organizations exist, such organizations shall, in the case of any factfinding panel convened at the request of such organizations (in accordance with paragraph (1)(B)), be jointly and severally liable for the cost of such panel, apart from the portion to be borne by the Postal Service (as determined under subsection (f)(4)).''.

(c) DEFINITIONS.—Subsection (i) of section 1004 of title 39, United States Code (as so redesignated by subsection (b)(1)) is amended—

(1) in paragraph (1), by striking ''and'' after the semicolon;

(2) in paragraph (2), by striking the period and inserting a semicolon; and

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

''(3) 'postmaster' means an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors;

''(4) 'postmasters' organization' means an organization recognized by the Postal Service under subsection (b) as representing at least 20 percent of postmasters; and

''(5) 'members of the postmasters' organization' shall be considered to mean employees of the Postal Service who are recognized under an agreement—

''(A) between the Postal Service and the postmasters' organization as represented by the organization; or

''(B) in the circumstance described in subsection (h)(1)(B), between the Postal Service and the postmasters' organizations (acting in concert) as represented by either or any of the postmasters' organizations involved.''.

(d) THRIFT ADVISORY COUNCIL NOT TO BE AFFECTED.—For purposes of section 8473(b)(4) of title 5, United States Code—

(1) each of the 2 or more organizations referred to in section 1004(h)(1)(B) of title 39, United States Code (as amended by subsection (b)) shall be treated as a separate organization; and

(2) any determination of the number of individuals represented by each of those respective organizations shall be made in a manner consistent with the purposes of this subsection.

SEC. 3. EFFECTIVE DATE.

The amendments made by this section shall take effect 60 days after the date of the enactment of this Act.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the committee amendment be agreed to, that the bill, as amended, be read a third time and passed, and that the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 678), as amended, was read the third time and passed.

AUTHORIZING COMMITTEES TO REPORT LEGISLATIVE AND EXECUTIVE MATTERS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that notwithstanding the recess or adjournment,

committees be authorized to report legislative and executive matters on Tuesday, August 26, from 10 a.m. to 12 noon.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the today's Executive Calendar: Calendar Nos. 285, 312, 313, and all nominations on the Secretary's desk.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

DEPARTMENT OF STATE

Roger Francisco Noriega, of Kansas, to be an Assistant Secretary of State.

UNITED STATES INSTITUTE OF PEACE

Stephen D. Krasner, of California, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 2005.

Charles Edward Horner, of the District of Columbia, to be a Member of the Board of Directors of the United States Institute of Peace for a term expiring January 19, 2007.

FOREIGN SERVICE

PN778 Foreign Service nominations (101) beginning James M. Cunningham, and ending Howard M. Krawitz, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD of June 25, 2003.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ORDERS FOR WEDNESDAY, JULY 30, 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Wednesday, July 30; I further ask unanimous consent that following the prayer and pledge, the Journal of proceedings be approved, the time for the two leaders be reserved for their use later in the day, and the Senate then resume consideration of S. 14, the Energy bill, as provided under the previous order.

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

Mr. MCCONNELL. I further ask unanimous consent that there be 2½ hours of debate in relation to the Cantwell amendment, with 30 minutes under the control of the chairman; further, that following the use or yielding back of time, the Senate proceed to a vote in relation to the Cantwell amendment.

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

Mr. MCCONNELL. I further ask unanimous consent that following that vote, the Senate proceed to 60 minutes of debate, with 30 minutes under the control of Senator LEAHY and 30 minutes under the control of myself, and that following that debate, the Senate proceed to the vote on the motion to invoke cloture on the Estrada nomination.

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

PROGRAM

Mr. MCCONNELL. For the information of all Senators, tomorrow the Senate will resume consideration of S. 14, the Energy bill. Under the previous order, there will be 2½ hours of debate remaining on the Cantwell amendment. Following the disposition of that amendment, there will be 60 minutes prior to the cloture vote on the Estrada nomination. This will be the seventh cloture vote on the Estrada nomination. Following that vote, the Senate will resume consideration of the electricity amendment. It is expected that the Senate will be able to act on the two Bingaman second-degree amendments in a relatively short period of time. It is hoped that following those amendments, we will be able to reach an agreement as to when the Senate can dispose of the underlying electricity amendment, and the chairman will continue to work toward that agreement tomorrow. Senators should expect a very busy day tomorrow as the Senate continues to work through the energy-related amendments.

RECESS UNTIL 9 A.M. TOMORROW

Mr. MCCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate recess under the previous order.

There being no objection, the Senate, at 8:49 p.m., recessed until Wednesday, July 30, 2003, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 29, 2003:

DEPARTMENT OF STATE

ROGER FRANCISCO NORIEGA, OF KANSAS, TO BE AN ASSISTANT SECRETARY OF STATE (WESTERN HEMISPHERE AFFAIRS).

UNITED STATES INSTITUTE OF PEACE

STEPHEN D. KRASNER, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 2005.

CHARLES EDWARD HORNER, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 2007.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

FOREIGN SERVICE NOMINATIONS BEGINNING JAMES M. CUNNINGHAM AND ENDING HOWARD M. KRAWITZ, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON JUNE 25, 2003.