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Senate

The Senate met at 9:45 a.m. and was called to order by the Honorable CONRAD R. BURNS, a Senator from the State of Montana.

PRAYER

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

Let us pray.

Our Lord and our God, as the waters fill the sea, let America be filled with people who know You. Help our citizens to live for Your honor. Increase our faith, hope, and love that we may receive Your promises. Be merciful to our Nation, for You are our hope. The brightness of Your glory covers the heavens and light flashes from Your Hands. Hide not Your mighty power from us.

Empower our lawmakers today with the music of Your wisdom that they may bring hope out of despair and joy out of sadness. Teach us to celebrate, even in the darkness, because You are the God who saves us. Give us the strength to stand on the mountain. Amen.

PLEDGE OF ALLEGIANCE

The Honorable CONRAD R. BURNS led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 6, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CONRAD R. BURNS, a Senator from the State of Montana, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. FRIST. Mr. President, I do want to welcome everyone back following the Fourth of July recess. Today, we return to business for a relatively brief, under-3-week legislative period, but what I know will be a very productive legislative period. This morning we will proceed to executive session and the consideration of J. Leon Holmes to be a U.S. District Judge for the Eastern District of Arkansas. Pursuant to the agreement reached prior to adjourning, there will be up to 6 hours of debate today before the vote on the confirmation of this nomination. I anticipate that vote occurring sometime around 5:30 today, and that will be the first vote of the day.

We also expect to consider additional judicial nominations throughout this period prior to the August recess, and we will be scheduling those nominations as they become available.

Following the vote on the Holmes nomination, we will begin consideration of the class action fairness legislation, and that debate will begin after the vote and continue tonight. This class action bill is a bipartisan bill, and I hope we will be able to consider it in a fair and expeditious way. As I mentioned, this is an abbreviated legislative period due to the respective party conventions which begin later this month. There is a lot of work to do over the next 3 weeks, including consideration of the appropriations bills.

The best way for us to ensure we complete the class action measure is for the Senate to focus on related amendments on that bill. The issue has been before this body previously; therefore, I hope we can consider relevant amendments and ultimately pass this legislation with a large bipartisan vote. If this bill becomes a vehicle for every unrelated issue that is stored in people's desks and in their minds, I am afraid this abbreviated schedule will not make it possible to do that. And if we insist upon offering a lot of unrelated amendments, the ultimate consideration of the bill clearly will be impossible because of the time involved.

Having said that, I will be working with the Democratic leadership to see if we can finish this bill in a reasonable period of time. Again, I welcome back all of my colleagues. It will be a very busy session over the next 3 weeks. I ask in advance for everyone's patience and cooperation during this period.

Mr. DASCHLE. Mr. President, if the majority leader will yield?

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

Mr. DASCHLE. Let me welcome him back and express the hope that we can work together on a number of issues this work period. Could the majority leader give us some indication as to what we might expect once the class action bill has been completed? What other issues do you expect to take during this 3-week period and in what order of sequence? If the majority leader could share that with us, it would be helpful as well.

Mr. FRIST. Mr. President, as we get back and do our planning over the course of the next several hours and

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

days, we will do just that. As I mentioned, we have the class action bill. Once we complete that, we have appropriations bills. We are, at some juncture, going to consider the Federal marriage amendment, and there will be a number of other issues. But as they come forward, I would be happy to discuss it with the leader.

LEON HOLMES

Mr. FRIST. Mr. President, I want to spend a few minutes on what the Senate will be addressing over the next several hours. That is the consideration of the nomination of Leon Holmes to be a Federal district court judge in the Eastern District of Arkansas. His nomination has been languishing since January 2003. It is long past time that the Senate give Mr. Holmes the up-or-down vote he deserves.

Mr. Holmes is known in his home State of Arkansas as a brilliant and impartial jurist who follows the law. His nomination has brought substantial opposition from some liberal activists in Washington. But in Arkansas, he has earned respect and support from liberals and conservatives alike.

These supporters include Kent Rubens, who led the fight to strike down Arkansas's pro-life laws in the wake of Roe v. Wade. Rubens writes in a letter to Chairman HATCH and Senator LEAHY on March 21, 2003:

I cannot think of anyone who is better qualified to serve . . . As someone who has represented the pro-choice view, I ask that you urge your members to support this confirmation.

Or you can listen to this letter from Ellen Woods Harrison to Chairman HATCH and Senator LEAHY:

I am a female attorney in Little Rock, Arkansas. I am a life-long Democrat and am also pro-choice . . . I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.

And the editorial board of the Arkansas Democrat Gazette supports Mr. Holmes' nomination. They write:

What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment . . . He would not only bring distinction to the bench, but a promise of greatness.

I should also note that Arkansas's Democratic Senators, Mark Pryor and Blanche Lincoln, strongly support Leon Holmes.

In light of this broad support for Mr. Holmes, one wonders if some activists in Washington are more interested in a witch hunt than in fairness. This body should not erect religious tests for judges. One's personal religious beliefs—in Leon Holmes' case, his Catholic beliefs—should not disqualify anyone from serving on the bench. I fear that the arguments put forth by some of my colleagues may lead to the disqualification of judicial nominees who are Catholic or Baptist or who hold deeply held religious views.

Nominees should be judged on their temperament and their ability to impartially uphold the law. The Framers of the Constitution wisely rejected religious tests for officeholders. I would hate to see this body try to upend that wise judgment of our Founders.

A judge should know how to separate his personal views from those of the law, and Leon Holmes' record of impartiality speaks for itself.

Mr. Holmes finished law school at the top of his class. He was inducted into Phi Beta Kappa while a doctoral student at Duke University. His doctoral dissertation discusses the political philosophies of W.E.B. DuBois and Booker T. Washington, and it analyzes the effort Dr. Martin Luther King, Jr. made to reconcile their divergent views. Mr. Holmes was habeas counsel for death row inmate Ricky Ray Rector, a mentally retarded man whose execution then-Governor Clinton refused to commute during the 1992 Presidential election.

Clearly, his record speaks of a man who is compassionate, thoughtful, and fairminded. Taken together, I believe Leon Holmes will be a just and impartial jurist. He deserves the Senate's support, and I trust that my colleagues will join me in voting to confirm him later today.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The distinguished minority leader is recognized.

ON OPTIMISM AND THE ECONOMY

Mr. DASCHLE. Mr. President, we hear a lot these days about how essential optimism is to economic growth and progress. These discussions remind me of that old saying that ''an optimist is someone who believes we're living in the best of all possible worlds, and a pessimist is someone who fears this may be true.'' By those definitions, there are probably very few optimists or pessimists in America because we all know that America's economy today is not the best possible.

This morning, I want to say a few words about how we can strengthen our economy and create new jobs and a brighter future for hard-working middle-class families in America.

We are all relieved that the economy has finally started adding more jobs each month than it is shedding. After 2½ years in which our economy lost jobs every month, these new jobs are good news—especially for the millions of Americans who are looking for work. But there are still over a million fewer jobs in America today than there were 4 years ago. In addition, the latest job-growth figures, released last Friday, were considerably weaker than most analysts had predicted. That disappointing news reminds us that optimism alone is not a national economic policy. What we need is realism.

Many proposals have been introduced in this Senate to create jobs and to help people who have lost jobs find new ones. We owe it to the American people to consider a variety of ideas. And in weighing our economic options, the question we ought to ask ourselves is not whether an idea is optimistic or pessimistic. The question we should ask about every proposal is: Does it do right by America? Will it lead to the kind of economic growth that benefits all Americans, not just the fortunate few? Does it provide incentives to encourage companies to create jobs in America—rather than encouraging companies to ship American jobs overseas? Does it help the people and communities that have lost jobs these last 4 years? Does it give them the tools and the opportunities to replace those lost jobs with better jobs? Or does it just write them off? Does it do right by the millions of middle-class families who are working harder every year but are still losing ground economically? Optimism alone can't stretch a paycheck, or pay a mortgage, or put your children through college.

Some people point to the fact that the economy has finally started to create jobs as proof that we have solved the jobs problem. They say that all we have to do now is stay the course and be patient. I wish the people who say that would come to North Sioux City, SD, and some of the communities that surround it. Until very recently, North Sioux City was the headquarters for Gateway computers, one of the largest private employers in South Dakota. Four years ago, Gateway employed 6,000 people in the Siouxland area around North Sioux City. But the recession and the shakeout in the technology sector hit Gateway hard, as it did many tech companies. Today, only 1,700 people work for Gateway in the North Sioux City area.

I am not sure if it is a blessing or a curse, but the job losses at Gateway didn't come in one crushing blow. They came instead as a steady stream of layoffs. While none was large enough to grab national media attention, the cumulative impact of these layoffs on the families and communities in the Siouxland area around North Sioux City has been devastating. Some of the laid-off workers received severance packages. Some have found new jobs that pay less. Many are still looking for work. There are many more good workers today in the Siouxland area than there are good jobs.

These times are tough even for many people who are working. Over the past year, real weekly earnings actually fell for the average worker, according to the Department of Labor. In South Dakota and across America, workers are earning less than they did a year ago, but they are paying more—for gas, health care, tuition, and other basic necessities.

Even with the recent easing of prices, gas still costs 30 cents a gallon more in South Dakota today than it did a year ago.

Health care costs continue to rise by double digits every year. More employers are being forced to scale back the health care benefits they offer their workers; others are dropping health care coverage altogether. According to a new report by Families USA, 27 percent of South Dakotans today have no health insurance. Across America, 44 million people are in that category. And most of the people who are uninsured get up and go to work every day. They work hard. Some of them work two and three jobs to support their families. But they can't afford health insurance. You don't have to be an optimist to believe that we can do better than that.

Last week, the Federal Reserve raised interest rates for the first time in 4 years as protection against inflation. Most analysts predict that we will see additional rate hikes in the future. And the enormous budget deficits built up these last 4 years will put even more pressure on interest rates, making it harder and more expensive for families to borrow money and to pay off mortgages, loans and credit card balances.

The Gateway workers who have lost their jobs, and middle-class families across South Dakota and across America, don't lack for optimism. But it is not easy to be patient when you have lost your job and your unemployment benefits, and your savings are getting low. It is not easy when you are working harder every year and getting deeper in debt.

Middle-class families across America are getting squeezed between stagnant wages and rising costs. They are being hurt by an economy that is creating jobs too slowly to fill the demand, and by the fact that the new jobs pay, on average, 21 percent less than the jobs they replaced.

The choices we make must do right by these families. Middle-class families need more—and deserve more—than soothing words of optimism. They deserve action from the Federal Government—smart, sustained, realistic, bipartisan action to help people who have lost jobs find new ones and to make sure that American companies and workers can compete for, and win, the jobs of the future.

One of the fastest, easiest ways we can reduce the economic squeeze on middle-class families is by protecting overtime pay. The Senate voted overwhelmingly last year to reject the administration's outrageous effort to deny overtime pay to millions of workers, and we rejected that misguided proposal again this year when we passed the Senate version of the FSC bill. Overtime pay isn't extra money; it is essential family income and protecting it is doing right by America. We need to continue to stand together and make sure that the final FSC bill Congress sends to the President preserves overtime protections.

When it comes to helping workers whose jobs have disappeared or been shipped overseas, we don't need to create a new government bureaucracy. We just need to invest in solutions that we know work.

The Commerce Department's Trade Adjustment Assistance program is one example. It helps manufacturing workers who have lost jobs because of globalization get back on their feet. Among other things, it provides access to community college so workers can learn new job skills and it helps workers maintain their health coverage until they can find work.

The Trade Adjustment Assistance program is a good program. The only problem is, it doesn't cover service-sector workers, who are among the workers hardest hit by ''outsourcing'' and ''offshoring.'' During the debate on the FSC bill, the Senate considered a bipartisan proposal to expand the Trade Adjustment Assistance program to help service-sector workers whose jobs are being shipped to India and other low-wage countries. Not only did the administration oppose our efforts to help these workers get back on their feet, it continues to encourage companies to ship more jobs overseas.

Turning our backs on workers who are being displaced by this economic transition isn't optimism. And it isn't doing right by America. We can do better—by expanding the Trade Adjustment Assistance program to match the realities of today's economy and help more laid-off workers get back on their feet.

We should also extend Federal unemployment benefits for those workers who have exhausted their State benefits and still can't find work. It is the sensible thing to do. It is the decent thing to do. It is right for America. And with the average length of unemployment at a 20-year high, we need to do it now.

We can also do a better job of helping businesses create new jobs. Tax cuts are one tool. But they do not, by themselves, create jobs. Small businesses and start-ups need access to capital. They need technical advice. They need help developing marketing plans. In other words, they need the kind of help that is provided by innovative programs such as the Small Business Administration's lending and technical assistance programs, and the Treasury Department's Community Development Financial Institutions Fund. Both of these programs have achieved wonderful results with limited resources. Yet the President's proposed budget for next year drastically reduces or eliminates funding for many of their efforts. That is a mistake, and we should fix it.

Finally, EDA, the Economic Development Administration, which is part of the Commerce Department, was created specifically to ''alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions.'' I have seen how EDA seed money can grow into real jobs in rural areas, on Indian reservations and in other communities in South Dakota where private lenders weren't as optimistic as the EDA about the community's future. If we are looking to reward hard work and optimism, we need to make sure EDA has the resources to carry out its mission wherever it is needed.

Around the country there must be hundreds, if not thousands, of communities like North Sioux City, where well-equipped factories stand idle and well-trained, highly skilled workers are waiting for an opportunity. Even though they have had a tough time these last few years, these workers are not pessimistic about America. They believe in America. They believe the future can be better than the past and they're willing to work hard to make that happen.

Let's work together to show these workers that America believes in them. Optimistic words are not enough. We need a comprehensive economic plan that does right by all Americans. We need to reduce the squeeze on middle-class families and make sure that every American worker is able to find work that allows them to care for their family and live in dignity. We have done it before. Working together, we can do it again.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CHAMBLISS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ORDER OF BUSINESS

Mr. REID. Mr. President, will the Senator yield?

Mr. PRYOR. Yes.

Mr. REID. It is my understanding that on the matter we are about to consider there are 6 hours under the order before the Senate; is that right?

The PRESIDING OFFICER. That is correct.

Mr. REID. We are starting at approximately 10 after. We will have a little more than 2 hours before the lunch break, and we will come back at 2:15. So if all 6 hours were used, what time would we vote tonight?

The PRESIDING OFFICER. Approximately 6 o'clock.

Mr. REID. OK. So if we are going to do what the majority leader suggests, someone would have to yield back some time for us to be able to vote at 5:30. That is doable. I appreciate that.

EXECUTIVE SESSION

NOMINATION OF J. LEON HOLMES, OF ARKANSAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to executive session to consider Calendar No. 165. The clerk will state the nomination.

The legislative clerk read the nomination of J. Leon Holmes, of Arkansas, to be United States District Judge for the Eastern District of Arkansas.

The PRESIDING OFFICER. There will be 6 hours of debate equally divided.

The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, we find ourselves today considering the nomination of Leon Holmes for the Eastern District of Arkansas. I have known Mr. Holmes for a number of years. In fact, I used to practice law with him. Even though I count him as a friend, I have to go back to the criteria that I use when I consider any nomination for the Federal bench.

Basically, I have a four-part test that I apply. One: Is the nominee qualified? Two: Does the nominee have the necessary experience for the post? Three: Will the nominee, once he or she is on the bench, be fair and impartial? And the fourth criteria is more of a catchall: Are there other circumstances—maybe his or her temperament or maybe he or she has an agenda—is there something in their background that might prevent this person from serving?

Clearly, Leon Holmes is a qualified nominee. There is no doubt about that. Also, clearly he has the necessary experience to serve as a district judge in the Eastern District of Arkansas. Rightly so, people can ask and should ask: Can he be fair and impartial?

There is no question about the fact that Leon Holmes has been a strong advocate when it comes to the issue of life and choice. He is strongly on the pro-life side. He has been very clear about that point. For over two decades now, there is no question, there is no doubt about where Mr. Holmes stands on that important issue facing our Nation today.

Let's look at that issue and let's look at some statements he made and some things we have learned about Mr. Holmes during this nomination process.

First, let me say, I was attorney general in Arkansas for 4 years before I came to the Senate. As such, I can think, in 4 years of practice, of only one case of which I am aware that either my office or anybody else in the State of Arkansas handled relating to abortion and that was directly on point. The fact that he would be a judge for the Eastern District of Arkansas—we have two districts—probably would mean, given the number of Federal judges we have, given his age, it would be very unlikely for him to ever have an abortion case.

Second, even if he did have an abortion case, Mr. Holmes has represented every pro-life group in the State of Arkansas—I cannot speak to all of his clients, but he has represented them and has been very involved with them. So undoubtedly he would have a conflict if any of those cases ever came before him as a judge.

Mr. Holmes has a very deep conviction and a genuine passion about the issue of when life begins and whether this country should allow women the right to choose under any circumstance. It is a position that is based on much thought and much reason and even much prayer.

I can say this: After reviewing his record very thoroughly in the last year—by the way, this nomination has been pending in the Senate for over a year—he has made a number of inflammatory statements, and I thought what I would do is read through a few of those very briefly so my colleagues will understand what the controversy with Mr. Holmes is all about.

At one point, he wrote:

Concern for rape victims is a red herring because conceptions from rape occur with the same frequency as snow in Miami.

I could go through a series of statements he made. Let me read a couple more. He, in effect, compared the prochoice movement to some things that were going on in Nazi Germany. I think that is a fair statement without trying to get into the long background and quote on that point.

Another item which has been controversial is that he wrote a piece for a Catholic newspaper in Arkansas. He also cowrote it with his wife. In this piece it says that a wife has the obligation to ''subordinate herself to her husband'' and ''to place herself under the authority of the man.'' Here, again, this is a reflection of Catholic doctrine. It is a teaching that is found in the New Testament. It is something in which Mr. Holmes and his wife both participate. When we hear statements such as that, naturally questions are raised and people ask: Is this the kind of person we want on the Federal bench?

If we look at most of the statements he has made about abortion and other subjects, not every single one, but most are at least 15 years old. He has apologized during the course of this nomination process, and, for all I know, he has already apologized for this, but he has apologized on many occasions for some of the statements he has written and said.

In fact, if I can read some excerpts of the responses from his questionnaire he answered before the Judiciary Committee. I am not going to try to read all this because there are way too many of them and way too long. Let me take selected excerpts.

At one point he said:

The sentence about rape victims—

Which I just quoted—

which was made in a letter to the editor in 1980 is particularly troublesome to me from the distance of 23 years. Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

He goes on to say in another paragraph:

Let me be clear that Roe v. Wade, as affirmed by Casey, is the law of the land. As a district judge, I would be bound to follow it and would do so.

In another response about when it comes time for him to consider whether he should recuse in cases, he said:

I would follow 28 U.S.C. 455 and the Code of Conduct for United States Judges when making recusal decisions.

He goes on to say in another paragraph:

Roe v. Wade is the law of the land. As a judge, I would be bound by oath to follow that law. I do not see how a judge could follow the law but restrict the rights established by the law.

In other words, he is committing over and over he is going to follow the law of the land.

Again, in answer to another question:

I recognize the binding force of the court's holding in Griswold and Eizenstat recognizing the right to privacy.

Once again, people can have a legitimate, genuine concern and can ask questions about this point, but time and again he answers his critics.

He says later:

Roe v. Wade establishes that the constitutional right to privacy includes a woman's right to have an abortion.

In another section he says:

I do not understand that the Court in Roe v. Wade contended that the decision there was mandated by strict construction as the term is defined above.

He is talking about this phrase in the question.

I recognize these decisions are, once again, the law of the land. They are binding precedent on all courts. If I am confirmed, I will do my utmost to follow these and all other precedents of the Supreme Court of the United States.

Then the last couple of excerpts I would like to read are these. Here again he is talking about Roe v. Wade:

As a judge, I would follow every decision of the Supreme Court that has not been subsequently overruled.

How many times does he have to say that? How many times does he have to say he is going to follow the law?

I know Leon personally. Lawyers in Arkansas have worked with him, and they know him personally. We have a high degree of confidence that he will follow the law.

Something that comes through over and over with Mr. Holmes is he has an incredibly strong reputation for high ethical standards.

In fact, as a demonstration of this, at one point during the process he met with Senator LINCOLN and they talked about a number of issues. If we know Senator LINCOLN, we know she asked a

lot of hard questions and she expected clear and definitive answers, which she got.

At some point during the process, other things came to light he had not told Senator LINCOLN about or that he felt, in fairness to her and out of respect for her, she should know about.

So on his own volition, without being prompted by anyone or anything, on April 11, 2003—this was over a year ago because this has been pending over a year—he voluntarily wrote Senator LINCOLN a letter talking about some of these statements that had come out. He says in the 1980s he wrote letters to the editors in newspaper columns regarding the abortion issue using strident and harsh rhetoric. He goes on to say almost all of these are over 15 years old. He says, in a later paragraph:

As I stated in response to written questions from Senator DURBIN, I am especially troubled by the sentence about rape victims in a 1980 letter to the editor regarding the proposed Human Life Amendment; and as I said there, regardless of the merits of the issue, the articulation of that sentence reflects an insensitivity for which there is no excuse and for which I apologize. . . .

Here again, he is talking about something he had written over 24 years ago. If we were to apply that same standard to us, if we could think back 24 years before we ever were in office or even 24 years ago for any of us, we would probably look back on some of our statements and not be real pleased with some of the things we said.

He goes on when he talks about a 1987 effort, when he was president of Arkansas Right to Life, and he says he asked a rhetorical question in the context of some columns and things that had been written and he mentioned Nazi Germany. One thing he says to Senator LEAHY is: ''I did not intend to say that supporters of abortion rights should be equated with Nazis,'' and he spends a whole paragraph talking about this, trying to clarify and give the context for what he had said.

He also in his letter to Senator LINCOLN wrote about this article he had written in his church newspaper. He says that ''the marital relationship symbolizes the relationship between Christ and the church.'' He stated:

. . . My wife and I believe that this teaching ennobles and dignifies marriage and both partners in it. We do not believe that this teaching demeans either the husband or the wife but that it elevates both. It involves a mutual self-giving and self-forgetting, a reciprocal gift of self. This teaching is not inconsistent with the equality of all persons, male and female . . .

Then he goes on to talk about that. So when we look back at these statements he made 17 years ago, 23 years ago, 24 years ago in one case, Leon Holmes, by his own words, comes to this conclusion in the last paragraph of his letter. He says:

Some of the criticisms directed at things I wrote years ago are just; some of them are not. I hope that my legal career as a whole, spanning the years 1982 through 2003, evidences that I am now ready to assume the responsibility of a United States District Court Judge. I certainly was not ready in 1980, nor for many years thereafter, and I do not claim that I was. . . .

In other words, he is admitting he had maybe crossed a line and there are some things he wished he had not said or wished he had said differently.

I will tell my colleagues about Leon Holmes. He is a very fine person. He is a very serious and very sincere Christian man. He is a husband, he is a father, and he is a lawyer. He is a man of very deep faith. In fact, his faith permeates every aspect of his life. I say that very sincerely because I know Leon. Some people might hear those words and say, listen, that means he has this rightwing agenda that when he gets on the bench he is going to do certain things and hold certain ways.

Well, Leon is much deeper than that. His agenda is justice. The hallmark that really distinguishes Leon from so many other people is integrity. He is a great example of integrity.

I have 23 letters. I promise I am not going to read them all. There are dozens more I could have brought with me. There is a saying in the Bible that if we do not testify about it the stones will cry out. Well, what we found in Arkansas is a swelling where the stones are crying out, except in this case they are not stones, they are people who have practiced with Leon and people who have practiced against Leon.

I have personally talked with dozens and dozens of lawyers in the State of Arkansas. I have asked them: Would Leon Holmes make a good Federal judge? In almost every single conversation, there is an unequivocal yes, he would be an outstanding Federal judge.

I will read some of these excerpts. Then I would like to turn this over to my colleague, the chairman of the Judiciary Committee. One excerpt is from a Federal district judge, Bill Wilson. I actually asked him to write this letter because I asked him about whether he thought Leon Holmes could be fair and impartial. As part of the explanation, Judge Wilson says before Leon was nominated and chosen for the bench, he was ''a New Deal, new frontier, great society Democrat, and unabashedly so.'' He goes on to talk about how Leon Holmes will have a detached objectivity, that he will set a standard all judges would be proud of. He concludes by saying:

I have seen Leon Holmes in action on several other occasions, and he is a top-flight lawyer with the nicest sense of personal honor. I believe this to be his reputation with almost all the legal profession in Arkansas.

That is my impression as well.

Here is a letter from Philip Anderson. Philip Anderson may not be a household name, but Philip Anderson is the former president of the American Bar Association. He writes this paragraph:

I practiced law with Mr. Holmes for many years until he withdrew from our firm two years ago. I believe that he is superbly qualified for the position for which he has been nominated. He is a scholar first, and he has had broad experience in Federal court. He is a person of rock-solid integrity and sterling character. He is compassionate and even-handed. He has an innate sense of fairness. He is temperamentally suited for the bench. He works with dispatch. In short, he has all of the qualities that one would hope to find in a Federal judge, and seldom are they found in a person so amiable and with his degree of genuine humility.

In fact, I know Philip Anderson is a Democrat and was his law partner for a number of years.

Here is another one. This one is from Kristine Baker of Little Rock. She is a lawyer. She goes out of her way to point out she is a Democrat. She says: I do not always see eye to eye but I respect him and trust his judgment. Above all, he is fair.

She talks about his respect and his dignity, his intellect, his demeanor, his temperament, and his ability.

Here we have another letter. This one is actually from Tulsa, OK. It is from a lawyer named Dana Baldwin who used to practice in Little Rock. She is a native Arkansan. She said:

Despite occasional differences in my and Mr. Holmes' views on social and political issues, I can speak highly of his integrity and compassion for the law. . . .

She talks about his impartiality. She talks about his commitment to follow the law.

This letter is from Robin Carroll, who is a lawyer down in El Dorado, AR.

Robin happens to be the legal counsel for the Democratic Party of Arkansas. He calls Mr. Holmes:

. . . a brilliant and ethical lawyer.

He would be a fair and impartial judge. He would be fair and impartial on every issue.

Bear in mind, Mr. Carroll and Mr. Holmes have done battle in the courtroom before on election issues, and other party-type issues.

Here is another one, Nate Coulter. Nate is a very fine lawyer from Little Rock. He has been on the statewide ballot twice as a Democrat. He says:

. . . I am writing to endorse enthusiastically Mr. Holmes' nomination to the federal district court.

He says his political views and party affiliations differ, but those:

. . . do not affect my very high regard for his character and professionalism.

He says they have been opposite each other in at least six lawsuits. Mr. Coulter talks about Mr. Holmes' intellectual fitness and integrity and once again, Nate has done battle with him in the courtroom.

Also now we have a letter from Beth Deere. She again goes out of her way to talk about how she is a Democrat and how they do disagree on a number of issues. But she talks about his bright legal mind. Once again, she mentions the word ''integrity.'' That comes through over and over and over in these letters.

Margaret Dobson says:

I have met no man who respects women more.

She talks about the respect she has for Leon and Leon has for others. She says he is the partner who had most supported her career growth and her rise to the level of partner.

Here again she talks about Leon's political views and hers. They may disagree, but he is:

. . . fair and honest and diligent.

He has a commitment to follow the law. He has:

. . . impeccable morals, unquestionable ethics, and supreme intelligence.

She talks about how respected he is in the legal community in Arkansas.

Here is one from Stephen Engstrom, who is a lawyer in Little Rock. He says:

He is an outstanding lawyer and a man of excellent character.

Once again, he says:

Leon Holmes and I differ on political and personal issues such as pro-choice/anti-abortion. [In fact he says] I am a past board member of our local Planned Parenthood chapter. . . .

But he goes on to say:

. . . I am confident that Leon Holmes will do his duty as the law and facts of any given case require.

Here again, I am only reading short excerpts from a few of the letters we have received on Mr. Holmes.

Here is one from David Grace, who is a lawyer in Little Rock and practices in downtown. He has a very fine reputation. He says that he and I have had several cases. Some of these have been with him and some against him.

. . . Leon has a powerful mind and excellent judgment. He is able to be honestly objective. . . .

He goes on to say:

. . . he is among the very best and most respected lawyers in Arkansas.

Once again, he goes out of his way to say he disagrees strongly with some of Leon's political or social views, but they have not:

. . . affected his analysis of a legal problem or his performance as an attorney.

We have a law professor from the University of Arkansas Law School, where Leon was a student. This is Howard Brill. In fact, he was one of my law professors. He says:

I have no doubt that he is scrupulously fair and will be so on the bench—fair to all individuals, to all groups, to all political persuasions, to all viewpoints on the issues that divide Americans. In his judicial role and temperament, he is not a partisan.

Here is a letter from a lawyer, Field K. Wassen, Jr., who was Governor Bill Clinton's legal counsel. He says Leon Holmes has ''unquestioned integrity.''

Here is another one from a plaintiff's lawyer in the State. Her name is Eileen Woods Harrison. Her father was a Federal judge and she is a lifelong Democrat. In fact, at one point she was on the State Workers Compensation Commission and she was released from that post because she was considered to be too liberal on some of the issues. And lo and behold, who was hired to represent the State against her when she sued the State? Leon Holmes. She goes on in this letter to say, even though he was ''on the other side,'' he:

. . . conducted himself in the most professional and ethical manner throughout my case. I gained a great respect for him throughout the course of the litigation.

This isn't a lawyer who is on the other side, this is a litigant. This is a party and he is the lawyer for the other side. In fact, she closes with a Bible verse and says:

''Let Justice run down like waters, and righteousness like a mighty stream.'' It is my firm belief that Mr. Holmes is a just and righteous man who deserves the appointment to the Federal Bench.

Here is one from Bradley Jesson, from Fort Smith, a very fine lawyer who was for a short time Chief Justice of the Arkansas Supreme Court and a Democrat. He says:

My opinion is this is one of the best judicial selections that President Bush has made.

He says he has been with Leon in a number of cases.

In some we are on the same side. In others we are on opposing sides. . . . [He's] one of the best prepared lawyers around and most courteous and most professional. . . . His legal work is among the very best I observed. . . . Leon and I frankly disagree about some issues . . .

But Brad Jesson is convinced Leon will follow the law.

Here is one from Jack Lavey. He is a great lawyer in the State of Arkansas. In fact, he is one of the founding members of the State chapter of the ACLU. He calls himself, in this letter, a liberal Democrat. He talks about Leon Holmes and he says:

. . . his professional reputation is outstanding. He is very bright . . . and he's a very ethical lawyer. He is very honest. . . . he has always been very professional and very ethical.

He says he is honest and fair. He says also he will follow the law. He says:

If a Roe v. Wade issue comes before Mr. Holmes, if he is appointed as a federal district court judge, he will follow the Supreme Court's decision in that case. If I thought otherwise, I would not be writing this letter to you.

He goes on to talk about him and uses words like ''fairly,'' ''honestly,'' ''ethically,'' ''in accordance with established law.''

He says:

To conclude, I consider it a privilege to highly recommend to the United States Senate the appointment of Mr. Holmes as a federal district judge for the Eastern District of Arkansas.

Here is one from Sandy McMath. He uses words like ''integrity,'' ''compassion,'' ''scholarship.'' He says:

. . . he's an honorable and upright lawyer.

He goes on to say they have opposed each other vigorously in a case involving ERISA, but he was at all times compassionate toward the other side's client. He treated the other client with tremendous respect.

Once again, Sandy McMath, like most of these others, talks about how they are on opposite sides of the political fence, but he is confident Leon Holmes will make a good judge.

Also, here is one from Elizabeth Murray. She is with the largest law firm in Arkansas, does a lot of defense work, probably insurance defense work mostly, and corporate law work. She talks about his intelligence, his integrity, and his respect for the law. She says she does not share his opinions on a variety of issues, but nonetheless she thinks he would be a good Federal judge.

Jeff Rosenzweig offers his ''wholehearted support.'' He is a criminal defense lawyer. He calls himself a libertarian Democrat. I am not even sure exactly what that is, but that probably does sum up his political views. But he says:

He's a person of the highest character, intelligence and judgment. He's been an outstanding advocate and if confirmed will be an outstanding judge. If there is any person in the world who will apply the law without regard to what his personal beliefs might be, that person is Leon Holmes.

Time and time and time again we see that. Here is a letter from Charles Schlumberger, a great lawyer in Little Rock and a good friend of mine. He says:

I am a Democrat, I am pro-choice, and I support gender equality.

He goes on to say:

If ever there was an individual fully qualified to serve on the federal bench, it is Mr. Holmes.

He goes on to say:

I am confident that Mr. Holmes will uphold his duty as jurist to follow the rule of law, without bias or deference to his personal convictions.

We hear from a lawyer who now lives in Naples, FL, but used to practice in Little Rock, Jeanne Seewald. She gives her wholehearted endorsement. She talks about how respectful, courteous, and supportive he was of her personally at their old law firm when they practiced together. She says Leon is a gentleman and a scholar.

He has been a faithful mentor over the years. His ethics are beyond reproach.

She talks about his thoughtful and brilliant analysis of issues.

I could read a couple of paragraphs out of that letter because she says so many glowing things about him.

Here is one from Steven Shults who is, again, a lawyer in Little Rock—a very fine lawyer with a great reputation. He talks about how they have been on opposite sides of many lawsuits, but ''Mr. Holmes is one of the finest lawyers in Arkansas and a premier appellate advocate.''

He talks about his integrity. There is that word again, ''integrity.'' It comes through time and time again.

He talks about his ''integrity, judgment, courage, compassion, intellect, dedication, patience, and intellectual honesty.''

Here again, Steven Shults is on the other side of some of these issues, but, nonetheless, he thinks he would be a very good judge.

Here is one from Luther Sutter, who is a civil rights lawyer in Arkansas. In fact, he may have the largest civil rights practice in the State. I am not sure, but he is definitely among the largest. He talks about Leon Holmes being the consummate professional. He says:

I assure you that in my eight years of practice, I have learned to identify ideologues who are also lawyers. Such lawyers routinely put their personal and philosophical interests ahead of what I consider to be their clients' best interests. Mr. Holmes never did that.

He goes on to say:

I recommend Leon Holmes to the Federal bench, with a full understanding of his politics. Personally, I do not agree with some of his political views.

He goes on to talk about how he heartily recommends Leon Holmes.

This is the last letter I will read. I promise because I know I am trying the patience of everyone in the Chamber right now. But this is a letter that the majority leader referred to a few moments ago from Kent Rubens who is a very good lawyer from West Memphis, AK, which is right across the Mississippi River from Memphis, TN. Kent Rubens has been a pillar of that legal community in this part of the State for a long, long time. He says:

I cannot think of anyone who is better qualified legally or ethically to so serve.

He uses a funny phrase that I have heard in Arkansas a few times. He says, ''I will shoot dice with him over the telephone.''

He talks about his honesty and how much integrity he has.

Let me give one little bit of background. He goes on in this letter to say:

I was privileged to represent a litigant who struck down the abortion statutes here in Arkansas after Roe and Doe were decided. There is no one who will argue that my views are anything other than pro-choice.

This is the lawyer who actually litigated the cases in Arkansas right after Roe v. Wade and decided to strike down Arkansas' laws on abortion. He is unabashedly pro-choice, and he is unabashedly in support of Leon Holmes for this position.

He says in conclusion:

As someone who has represented the pro-choice view and holds the pro-choice view, I ask that you urge your Members to support his confirmation.

I have read these letters and I think I have tried everyone's patience. But I will tell you this: From the people who know him best, from the people who practice with him and practice against him, from the people who have seen him up close and know him and have had personal contacts and personal interactions and years of affiliation with him in one way or another, they wholeheartedly endorse him to be on the Federal bench.

Going back to my criteria, is he qualified? Yes. There is no doubt about it. Does he have the necessary experience? Yes, no question. You can look at his resume. It is not even close. He easily has the experience you want to see. Will he be fair and impartial? Is there anything else in his background that might raise questions such as his temperament? Does he have an agenda? Clearly, from his contemporaries and from his peers, the answer is yes to those questions.

He has the attitude of being fair and impartial, and there is nothing in his background—no circumstance, even though he has been a staunch advocate on the pro-life side, he still has the respect and the veneration of his peers in Arkansas and even around the country from other States.

I ask all of my colleagues to give him strong consideration, to wade through some of the rhetoric and look back on this with the perspective that most of these inflammatory things were written at least 10 years ago, and some as long ago as 24 years ago.

I appreciate his conviction on the issue of abortion. I appreciate his compassion and his moral certitude on that question.

In many cases, people do not always agree with Leon but they have a lot of respect for him. They think he would be a good judge in Arkansas. They would be proud to have him on the Federal bench.

With that, I yield the floor and turn this over to my wonderful colleague from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I wish to associate myself with the extensive and good remarks of the distinguished Senator from Arkansas, Mr. PRYOR regarding the nomination of J. Leon Holmes to be a United States District Court judge. Mr. PRYOR comes from the State. He knows the man. He practiced law with him. He has read newspaper editorials in support of this man. He has read a number of letters—a wide variety of letters—from Democrats as well as Republicans in the State who say this man would make an excellent judge.

Having known Mr. Holmes personally, he vouched for his integrity and his qualifications, and I think we should pay attention to the distinguished Senator.

Of course, Senator LINCOLN as well is strongly in favor of Leon Holmes for this Federal district judgeship.

In addition, this man has the highest rating by the American Bar Association that you can have—a ''well-qualified'' rating—which means he is placed among the higher echelon of great lawyers in this country.

I think we should heed Senator PRYOR's views.

Of course, I think Senator PRYOR makes an overwhelming case that this man deserves to sit on the Federal district court bench. So I rise today to express my support for the confirmation of J. Leon Holmes of Arkansas who has been nominated to be U.S. District Judge for the Eastern District of Arkansas.

Mr. Holmes is widely respected for his intelligence, his legal skills, and his commitment to the rule of law. Leon Holmes knows the value of hard work. He came from humble roots and is the only one among his seven siblings to attend college. He worked his way through college and finished law school at night while working a full-time day job in order to support his family.

Anyone would know how difficult that is to do.

Leon Holmes is an accomplished scholar and has displayed a wide-ranging academic interest. He is a distinguished graduate of Duke University, where he received a doctorate in political science, and the University of Arkansas law school. Mr. Holmes finished law school at the top of his class, was inducted into Phi Beta Kappa while a doctoral student at Duke University, and was named Outstanding Political Science Student upon graduation from college.

He has pretty terrific credentials.

Mr. Holmes is currently a partner with the Little Rock firm of Quattlebaum Grooms Tull & Burrow, specializing in complex business litigation, torts, and appellate practice. He has practiced commercial litigation at the trial and appellate level in State and Federal court for many years, and has acquired significant courtroom experience. Leon Holmes is well respected by the Arkansas Bar and is one of the finest appellate lawyers in Arkansas. In 2001, the Arkansas Bar Association bestowed its Writing Excellence award on Mr. Holmes.

In addition, Leon Holmes has been an active participant in the Arkansas Bar. He has taught continuing legal education courses to the bar on numerous occasions. He has been awarded the State bar's Best CLE award four times. He sits on the Board of Advisors to the Arkansas Bar Association's magazine and has chaired the editorial board for the bar's publication of Handling Appeals in Arkansas.

Mr. Holmes sits on the judicial nominations committee for the Arkansas State courts, which recommends attorneys to the Governor for judicial appointment in Supreme Court cases where one or more justices must recuse themselves. On two occasions, he himself has been appointed to serve as a special judge of the Arkansas Supreme Court. This is a great honor for a practicing attorney, and the justices praised Mr. Holmes for his service in those cases.

As a person who took advantage of the opportunities presented to him, Mr. Holmes believes in giving back to the community. He is committed to providing legal services to all, and has given approximately 200 hours of pro bono services during each of the last 3 or 4 years.

Among other cases, he has represented, on a pro bono basis, a terminally ill Laotian immigrant woman denied Medicaid coverage for a liver

transplant; an indigent man with a history of drug felony convictions; and a woman who lost custody of her children to her ex-husband.

He represented Ricky Rector, a mentally retarded Arkansas man whose execution then-Governor Bill Clinton refused to commute in 1992. He represents Clay Ford, who has been sentenced to life in prison for shooting at pointblank range and killing a police officer in 1981. He defended on appeal the largest jury verdict in Arkansas history, which involves a nursing home resident who allegedly died from neglect. Her family won a $78 million judgment.

Leon Holmes has given back to his community in areas outside the law as well. He was a houseparent for the Elon Home for Children while a graduate student in North Carolina. He also served as the director of the Florence Crittenton Home of Little Rock in 1986 and 1987, helping young women cope with teen pregnancy.

Those who work with and personally know Leon Holmes strongly support his nomination, as we have already heard from Senator PRYOR, the distinguished Senator from Arkansas, and expect to hear from Senator LINCOLN before the day is out. I certainly appreciate their endorsements of Mr. Holmes in his nomination hearing last year.

Let me address some of the arguments that are being put forward by Mr. Holmes' opponents: that he is extreme in his views on abortion, that he is anti-woman, and that he is insensitive on matters of race. Those are the major arguments that have been brought forth, and I believe based upon all of nothing. A full reading of Mr. Holmes' writings and, more importantly, a review of his actions in these matters, I think, will set the record straight.

There is no question that Mr. Holmes has been a pro-life activist. He served as president of Arkansas Right to Life. He was president from 1986 to 1987. He also served as secretary of the Arkansas Unborn Child Amendment Committee in 1984. Some of the statements he has made in the course of his activism he admits have been insensitive, and he has expressed regret for such remarks, but in almost every case they are decades ago when he was a much younger man.

For example, in a 1980 letter—think about that; it was 24 years ago—to the editor, Mr. Holmes criticized the argument that abortion should be available to rape victims as a red herring because ''conceptions from rape occur with approximately the same frequency as snowfall in Miami.'' Mr. Holmes has clearly apologized for this remark, which he made almost 24 years ago.

In response to a written question from Senator DURBIN, he wrote:

I have to acknowledge that my own rhetoric, particularly when I first became involved in the issue [of abortion] in 1980 and perhaps some years thereafter, sometimes has been unduly strident and inflammatory. The sentence about rape victims which was made in a letter to an editor in 1980 is particularly troublesome to me from a distance of 23 years later. Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

I believe all of us have made statements in the past that we wish we could apologize for. Many of us have apologized for statements we have made in earnest and extreme ways. He is no different. He made some mistakes and says that he was insensitive at the time, but he apologizes for them. You have to look at his overall career and realize this man has a great reputation in that State and among his people and among his peers. If he is like the rest of us, and apparently on occasion has been, he is going to make some statements for which he has to apologize. We all have to do that from time to time. There may be some perfect in this body who do not have to, but I, for one, have had to apologize from time to time myself.

In a different editorial, Mr. Holmes compared abortion to the Holocaust. On another occasion, he wrote:

The abortion issue is the simplest issue this country has faced since slavery was made unconstitutional, and it deserves the same response.

In an April 11, 2003, letter to Senator LINCOLN, Mr. Holmes explained:

In the 1980's—

Twenty-four years ago; at least two decades ago—

I wrote letters to the editor and newspaper columns regarding the abortion issue using strident and harsh rhetoric. I am a good bit older now and, I hope, more mature than I was at the time. As the years passed, I came to realize that one cannot convey a message about the dignity of the human person, which is the message I intended to convey, using that kind of rhetoric in public discussion.

Again, referring to his 1980 ''snow in Miami'' remark, Mr. Holmes wrote:

I do not propose to defend that sentence, and I would not expect you or anyone else to do so.

Based upon this letter, Senator LINCOLN reaffirmed her belief that Mr. Holmes would be a fair judge.

The fact is, regardless of any personal views, Mr. Holmes will abide by the rule of law. He understands that principle, and he is committed to it. He understands that his personal views play no role in his duty as a judge to honor stare decisis, or prior precedents, and to faithfully follow the precedents of the Supreme Court and the Eighth Circuit, within which he lives and practices.

Pro-choice attorneys and others in Arkansas who work with him have written to the committee in support of Mr. Holmes' nomination. Those who know him well strongly believe that, despite his personal views, Mr. Holmes will fairly adjudicate any abortion cases that may come before him. His supporters include Robin J. Carroll, legal counsel to the Democratic Party of Arkansas; Philip S. Anderson, a former president of the American Bar Association and a leading Arkansas trial attorney; and Stephen Engstrom, former Little Rock Planned Parenthood chapter board member.

Mr. Engstrom wrote:

I heartily commend Mr. Holmes to you. He is an outstanding lawyer and a man of excellent character. Leon Holmes and I differ on political and personal issues such as pro-choice/anti-abortion. I am a past board member of our local Planned Parenthood chapter and have been a trial lawyer in Arkansas for over twenty-five years. Regardless of our personal differences on some issue[s], I am confident that Leon Holmes will do his duty as the law and facts of any given case require.

Trial attorney Kent J. Rubens, a pro-choice attorney who successfully brought a lawsuit to strike down Arkansas' abortion statutes after Roe v. Wade was decided wrote: Q02

I cannot think of anyone who is better qualified to serve. . . . As someone who has represented the pro-choice view, I ask that you urge your members to support his confirmation.

Eileen Woods Harrison sent this letter to the committee:

I am a female attorney in Little Rock, Arkansas. I am a lifelong Democrat and am also pro-choice . . . I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.

Another letter, this one from Cathleen V. Compton, states:

I heartily recommend Mr. Holmes to you. He is an outstanding lawyer and a fine person. While he and I differ dramatically on the pro-choice/pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require.

Beth M. Deere wrote the following:

I am proud to be a Democrat. I am also proud to recommend Leon Holmes as a federal district judge for the Eastern District of Arkansas, even though he and I disagree on issues, including a woman's right to choose whether to bear a child. . . . I support Leon Holmes because he is not only a bright legal mind, but also because he is a good person who believes that our nation will be judged by the care it affords to the least and the littlest in our society. I am not troubled that he is personally opposed to abortion. Mr. Holmes is shot through with integrity. He will, I believe, uphold and apply the law with the utmost care and diligence.

Another issue which opponents have distorted is that of gender equality. Mr. Holmes cowrote an article with his wife entitled ''Gender Neutral Language.'' Let's get it straight: he wrote this article with his wife. It was for a Catholic newspaper. This article, which appeared in a religious newspaper of his faith, stated: ''The wife is to subordinate herself to her husband'' and, ''The woman is to place herself under the authority of the man.'' Mr. Holmes' opponents believe these statements indicate he will not be fair to women appearing before him.

However, let me point out those statements are derived from the New Testament in Ephesians, the 5th chapter, verses 22 through 25, and represent the orthodox teachings of his religion. Although I do not have the same

version of the Bible, I believe it would read very much the same. But if you turn to Ephesians, the 5th chapter, it is interesting because starting with verse 21 it says—well, let's start with verse 20

Giving thanks always for all things unto God and the Father in the name of our Lord Jesus Christ;

Submitting yourselves one to another in the fear of God.

Husband and wife. Then it says:

Wives, submit yourselves unto your own husbands, as unto the Lord.

For the husband is the head of the wife, even as Christ is the head of the church: and he is the Saviour of the body.

Therefore as the church is subject unto Christ, so let the wives be to their own husbands in every thing.

But then Saint Paul goes on to say:

Husbands, love your wives, even as Christ also loved the church, and gave himself for it. . . .

I do not think anybody can read this without understanding that the husbands have tremendously positive and important obligations in order to have the respect of the wives.

I don't think you could read it without understanding that Paul is comparing the husband to the head of the family, even as Christ is head of the church, more on the priesthood level than anything else. And the article seems to say that.

It says:

Husbands love your wives, even as Christ also loved the church and gave himself for it;

That he might sanctify and cleanse it with the washing of water by the word;

That he might present it to himself, a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish.

So ought men to love their wives as their own bodies. He that loveth his wife loveth himself.

It gets pretty bad around here when people misconstrue what somebody quotes in an article written for a church publication of the person's own faith, where the person and his wife quote St. Paul. You might disagree with St. Paul, but there are hundreds of millions of people who agree with St. Paul and who understand that he was trying to make the analogy between the church and Christ and between a husband and wife to show how important and sanctified the relationship of marriage is.

This article contains other statements, as I have said, supporting the equality of men and women such as:

All of us, male and female, are equally sons of God and, therefore, brothers of one another.

The distinction between male and female in ordination has nothing to do with the dignity or worth of male compared to female.

Men and women are equal in their dignity and value.

These are quotes within the article. The article, to me, was clearly trying to state why the men in the Catholic Church have the priesthood, but the women have the family. And you might have written it differently, but the fact is, they quoted St. Paul, and St. Paul deserves the dignity of respect by this great body whether you believe in the New Testament of the Bible or not. I firmly believe in the New Testament. What Leon Holmes and his wife were doing was writing about traditional Catholic values and beliefs with which I think millions of people will agree. It hardly places him outside the mainstream and certainly places him in the mainstream as a religious believer and as somebody who loves his faith and his church and his wife, by the way.

Mr. Holmes' wife wrote to the committee to explain that the article in question was specifically written for the readership of members of their faith, persons who would be familiar with the New Testament passages being referenced with regard to the relationship between husband and wife. It is just terrible to distort their writings as husband and wife. If you read the whole article, you can hardly think Mr. Holmes is anti-woman. Furthermore, Mr. Holmes' actions support the truth he fully believes that men and women are equals.

He has supported women in the legal profession and represented women as clients. Mr. Holmes' past and present female colleagues in Arkansas support his nomination to this position.

Jeanne Seewald wrote this letter to the committee:

Leon was a strong proponent of my election to the partnership and, subsequently, encouraged and supported my career advancement, as well as the advancement of other women within the firm. . . . As a colleague, Leon treated me in an equitable and respectful manner. I always have found him supportive of my career and believe he is very supportive of women in general. Leon and I have different political views; however, I know him to be a fair and just person and have complete trust in his ability to put aside any personal political views and apply the law in a thoughtful and equitable manner.

Another co-worker, Kristine Baker, wrote the following:

Leon has trained me in the practice of law and now, as my partner, works with me on several matters. His office has been next to mine at the firm for approximately two years. During that time, I worked with Leon as an expectant mother and now work with him as a new mother. Leon's daughters babysit my eleven-month-old son. I value Leon's input, not only on work-related matters but also on personal matters. I have sought him out for advice on a number of issues. Although Leon and I do not always see eye-to-eye, I respect him and trust his judgment. Above all, he is fair. While working with Leon, I have observed him interact with various people. He treats all people, regardless of gender, station in life or circumstance, with the same respect and dignity. He has always been supportive of me in my law practice, as well as supportive of the other women in our firm. Gender has never been an issue in any decision in the firm.

Lastly, with regard to issues of race, Mr. Holmes has been criticized for defending and endorsing Booker T. Washington's view that slavery was a consequence of divine providence designed to teach white people how to be more Christ-like. Some have alleged—but I hope we don't hear this misinformed view repeated during this debate—that Holmes has said that ''the Almighty said that slavery was a good thing or that he believes slavery is a good institution.'' In fact, nowhere has Mr. Holmes said he endorses slavery or that he believes slavery was a good institution.

The article at issue, written for a Christian audience, was an expression of his belief, shared by Washington, that God could bring good out of evil. So while Washington certainly condemned slavery as evil, having experienced it first-hand, he held a belief that ultimate good could come out of it. Mr. Holmes's article similarly expressed the view that good can come out of evil and that we are called upon to love all men and women.

Mr. Holmes also wrote his doctoral dissertation on the political philosophies of three major African-American thinkers and activists, W.E.B. DuBois, Booker T. Washington, and Martin Luther King, Jr. He argued that King attempted a synthesis of militant nonviolence, ultimately unsuccessful, of DuBois's advocacy of political agitation and Washington's advocacy of a Christian persuasion as means to achieve equality for black Americans.

However, Mr. Holmes left no doubt that he admired Dr. King's achievements in helping to integrate buses, schools, parks, playgrounds, lunch counters, and marriages. He noted the progress made in terms of the expansion of rights and opportunities for all Americans, stating:

Considering both the extent of the privileged status of Southern whites that has been relinquished and the amount of hate and prejudice that confronted desegregation twenty-five years ago, the accomplishment [of social change] is incredible.

Although Dr. King's vision has not been completely realized, Holmes wrote, ''in light of the unexpected changes in the past ten years, who can say that King's dreams will not all come true and 'justice will roll down like waters and righteousness like a mighty stream?' '' Mr. Holmes concluded by urging the reader not to dismiss Dr. King's vision of a promised land, quoting the last words of King's final speech before he was assassinated.

Those who know Leon Holmes know he will be an outstanding jurist. The Arkansas Democrat-Gazette, Mr. Holmes' hometown paper that knows his record best, strongly supports his candidacy. The paper, writing while his candidacy was being considered, indicated that Holmes was a well qualified, mainstream nominee:

What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment. A reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge. . . . He would not only bring distinction to the bench but promise. . . . In choosing Leon Holmes, [the President] could bequeath a promise of greatness.

That is a pretty good editorial from the local Democrat Gazette.

Considering the total record of Mr. Holmes, a record of distinction in academics, of excellence in practice, and of distinction in his community, it is not surprising that the American Bar Association gave Mr. Holmes their highest rating, a ''well-qualified'' rating. Almost everyone around here has called that the gold standard, but especially our colleagues on the other side of the Senate floor. If you get a ''well-qualified'' rating from the American Bar Association, you are qualified. Yet we have had some who have misconstrued his writings and have indicated they will vote against him.

I hope they will listen to what we have had to say and look at the real record. There is no way that anybody who really understands that record would vote against this man.

My colleagues should know—and most of them will agree—that Mr. Holmes is a well-qualified nominee and will make a fine jurist. I urge the Senate to join me, as well as both Democratic home State Senators, BLANCHE LINCOLN and MARK PRYOR, who strongly support Leon Holmes' nomination, to confirm this outstanding candidate for the Federal bench.

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. HATCH. 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. HATCH. How much time remains on both sides?

The PRESIDING OFFICER. The Senator's side has 152 minutes remaining. The other side has 144 minutes remaining.

Mr. HATCH. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be divided equally.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. LINCOLN. 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. LINCOLN. Mr. President, as the senior Senator from Arkansas, I am proud to come to the floor and join my colleague Senator MARK PRYOR today to introduce Leon Holmes to my colleagues here in the Senate and express my support for his nomination.

Mr. Holmes is a native of Hazen, AR, in Prairie County, which is not too far from my hometown of Helena. He is the fourth of seven children and the first in his family to go to college. He has been married to his wife Susan Holmes for 32 years, and he is the proud father of five children and has seven grandchildren.

Most of us having been home not only working during the Fourth of July recess but hopefully spending some time with our families understand how important our families and our children and future generations are to all of us. I know Mr. Holmes has certainly expressed that to me.

After high school, Leon graduated with special distinction from Arkansas State University in 1973. He continued his education by earning a law degree from the University of Arkansas where he graduated first in his class.

Mr. Holmes later received a master's degree in political philosophy from Northern Illinois University and a doctorate in political science from Duke University where he was inducted into Phi Beta Kappa.

Leon's professional career is equally impressive. In addition to being named a partner in the law firm of Quattlebaum, Grooms, Tull, and Burrow in Little Rock, Mr. Holmes has held a variety of positions, including law clerk for Justice Frank Holt on the Arkansas Supreme Court, assistant professor at Augustana College in Rock Island, IL, and adjunct faculty member of the University of Arkansas at Little Rock School of Law.

As an attorney in private practice, Leon has had a wide-ranging legal practice, representing large corporations, small businesses, and individual litigants, and although I am not a part of the legal community in my home State of Arkansas as a lawyer like my colleague Senator PRYOR is, I have heard from a number of practicing lawyers, judges, and others throughout our State who have worked with Leon and have the utmost confidence in his ability to administer the rule of law.

But Leon has not spent his whole life in the library or at a law firm. As you well know, Mr. President, that certainly is something that is important to me. You may be interested to know that in his youth, Leon actually chopped and picked cotton over in our part of the State in eastern Arkansas. He worked as a farm laborer in the fields of Prairie County and served as a carpenter's helper. While pursuing his education, he worked as a door-to-door salesman and as a newspaper carrier to help make ends meet.

In short, during his academic and professional career, Leon has distinguished himself as a scholar and an accomplished lawyer. In the process, he has earned the trust, admiration, and respect of his friends and colleagues with whom he has lived and worked.

As a farmer's daughter from eastern Arkansas, I believe the fact that Mr. Holmes knows the value of an honest day's work both as a lawyer and a laborer is a good indication that he has the life experience required to administer the law in a very fair and impartial manner, regardless of who the litigants are before him.

If that were the only part of the record before us, the debate we are having today would be a very short one. As some of my colleagues have said or will say during the consideration of this nomination, Leon is also a devoutly religious man who has written articles and made statements that are a reflection of his faith, but they are also somewhat controversial. We all know that for many of us our faith is very important. It is important for us to have an opportunity to express our faith, to talk about it, to speak about it, to live it in a way that is very important to us and reflective of our own ministry.

There is no doubt I have been troubled by some of the statements attributed to Mr. Holmes, particularly one regarding the role of a woman in a marital relationship. As a mother and a wife, I can assure you, I consider myself equal in every way to my husband. Our marriage is based on mutual love and respect, which sustains our union as a man and a wife.

I think it is so important in this day and age as we talk about marriage and its importance to our family, to our children, to the stability of the fabric of this great country, that we understand marriage does not just happen; it has to be those two individuals who come together, a man and a woman, working equally as hard at making sure that union is strong and that it is working.

However, I fully respect the right of Mr. Holmes to practice and express his religious beliefs freely, even those with which I may not agree, just as I expect others to respect my right to do the same.

Mr. Holmes also made a comment 20-plus years ago about how women who were raped do not get pregnant, which I think most would agree was inappropriate and offensive. But Mr. Holmes has apologized for that comment. He has acknowledged it was wrong and said he regrets saying it. We have all said things we should not and wished we had not said in our lives and I, for one, accept his apology. I do believe it is very critical we understand the complications, the emotions, and everything else that are wrapped up in the circumstances when women find themselves in those circumstances of rape or incest or being abused. Again, I do accept Mr. Holmes' apology.

Mr. President, I ask unanimous consent that a letter from Leon Holmes to me apologizing for this remark and responding to the criticism of other statements be printed in the RECORD.

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

QUATTLEBAUM, GROOMS,
TULL & BURROW,
Little Rock, AR, April 11, 2003.

Hon. BLANCHE LINCOLN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LINCOLN: Certain issues have surfaced about my nomination since we met, and because they have arisen since we met, you and I have not had the opportunity to discuss them personally. Out of respect for you personally, and out of respect for the

important constitutional role of the Senate in the appointment process for federal judges, I wanted to write to you this letter to address some of these issues.

In the 1980's I wrote letters to the editor and newspaper columns regarding the abortion issue using strident and harsh rhetoric. I am a good bit older now and, I hope more mature than I was at that time. As the years passed, I came to realize that one cannot convey a message about the dignity of the human person, which is the message I intended to convey, using that kind of rhetoric in public discussion. While I cannot speak for those who raise these issues, my impression is that my statements about the abortion issue that they criticize are all more than fifteen years old.

As I stated in response to written questions from Senator Durbin, I am especially troubled by the sentence about rape victims in a 1980 letter to the editor regarding the proposed Human Life Amendment; and, as I said there, regardless of the merits of the issue, the articulation of that sentence reflects an insensitivity for which there is no excuse and for which I apologize. I do not propose to defend that sentence, and I would not expect you or anyone else to do so. My impression is that, in fulfilling your responsibilities in this matter, you have spoken with or heard from many Arkansans, male and female, who know me well. I hope, and I believe, that their comments have and will give your assurance that this 23 year old sentence is not indicative of how I have conducted myself in the past several years and not indicative of how I would conduct myself as a judge.

In 1987, when I was President of Arkansas Right to Life, that organization was attacked in a guest column in a newspaper on the ground that its members allegedly defined life too narrowly and were, as I read the column, hypocrites. That same column stated that abortion involves a taking of human life. In response, I wrote that, if the author believed that abortion takes a human life, he should start his own pro-life organization but should not use our defects as a reason not to act on his beliefs. In that context, I asked rhetorical question, what if someone had advanced such a basis as a reason not save lives during the holocaust? I did not intend to say that supporters of abortion rights should be equated with Nazis. I have never intended anything that I said to give that impression, and I do not think my comments, which now are criticized, were taken to mean that when they were written. From 1983 through 1988, when I was active in pro-life activity and was writing most of the columns that are now criticized, I was an associate at a large law firm, and I worked for and with many lawyers who are pro-choice. Since then, most of my partners have been pro-choice. I have had many cases with and against lawyers who are pro-choice. No one raised this concern at that time nor at any time prior to the past two weeks. I believe that no one raised this concern because everyone who knows me recognizes that I did not intend such a thing. The letters written on my behalf by pro-choice colleagues are strong testimony of their confidence in me.

While I expected that my past activities relating to the abortion issue would draw scrutiny, and properly so, I did not expect that my religious beliefs would draw similar scrutiny, but they have. I am aware that some concern has been expressed about a 1997 column co-authored by my wife and me for our local Catholic newspaper or historic teachings of the Catholic Church. The Catholic faith is pervaded with the view that the visible things symbolize aspects of the spiritual realm. This pervasive element of the faith is manifest in the teaching that the marital relationship symbolizes the relationship between Christ and the Church. My wife and I believe that this teaching ennobles and dignifies marriage and both partners in it. We do not believe that this teaching demeans either the husband or the wife but that it elevates both. It involves a mutual self-giving and self-forgetting, a reciprocal gift of self. This teaching is not inconsistent with the equality of all persons, male and female, and, in fact, in that column we say, ''[a]ll of us, male and female, are equally sons of God and therefore brothers of one another.'' This aspect of my faith—the teaching that male and female have equal dignity and are equal in the sight of God—has been manifest, I believe, in my dealings with my female colleagues in our firm and in the profession as a whole. While I am not at all ashamed of my faith, or any part of it, I do not believe that the historic Catholic teaching that the martial relationship symbolizes Christ and the Church is or has been relevant to my conduct in my professional life, nor would it affect my conduct as a judge, should I be fortunate enough to be confirmed.

Another aspect of my faith is that God brings good out of evil. I wrote about this belief, as taught by Booker T. Washington, in the context of a 1981 article in a religious magazine. Washington taught that God could and would bring good out of evil. Washington, who was born in slavery, recognized it as evil, not only in theory but as part of his earliest experience. Yet, his faith was so great that he believed that God could bring good from that evil; and his love was so great that he hoped that those of his race would become a beacon of God's love to their oppressors. My article combines his view of providence—that God brings good out of evil—with his view that we all are called to love one another. This teaching can be criticized only if it is misunderstood.

Some of the criticisms directed at things I wrote years ago are just; some of them are not. I hope that my legal career as a whole, spanning the years 1982 through 2003, evidences that I am now ready to assume the responsibility of a United States District Court Judge. I certainly was not ready in 1980, nor for many years thereafter, and I do not claim that I was. My impression is that my colleagues in the Arkansas bar—those who know me well and who represent clients in federal court—believe that my legal career as a whole manifests a readiness to assume the responsibilities of a district court judge, and I hope that you believe so as well.

With best wishes and warmest regards, I am

Very truly yours,

J. LEON HOLMES.

Mrs. LINCOLN. In making my decision to support Mr. Holmes' nomination, I have considered many factors. There is no question he has the necessary legal skills and intellect to perform the duties of the position. More importantly, I have been impressed with the overwhelming support Leon has received from his friends, coworkers, and colleagues in Arkansas' legal community who have firsthand knowledge of his temperament, his character, and abilities as a lawyer. I have received countless letters, e-mails, and phone calls from all over the State expressing strong support for Leon's nomination. Many of these contacts are from people I know personally and several, if not most, are from very active, self-described, very strong Democrats.

Those from Arkansas who have contacted me and the Judiciary Committee in support of this nomination include a past president of the American Bar Association, a former president of the Arkansas Trial Lawyers Association, a founder of the Arkansas affiliate of the ACLU, sitting Federal judges who are familiar with Leon's work, female attorneys who have argued cases with and against Leon, and many others.

One letter from a self-described liberal Democrat who is also decidedly pro-choice summed up how Mr. Holmes is viewed in Arkansas' legal community when he wrote that after litigating ''with and against Leon for a number of years'' he had so much faith and trust in him that he would ''shoot dice with him over the telephone.'' Now that might not sound too common to folks up here, but in Arkansas it is a pretty good saying, and it certainly indicates a great deal of trust on that gentleman's part of the gentleman with whom he was dealing, and that was Mr. Leon Holmes.

In conclusion, I do not determine my support or opposition to a nominee based solely on whether we share the same philosophy, ideology, or beliefs. Fundamentally, I am interested in knowing a judicial nominee can fulfill his or her responsibility under the Constitution to apply the law fairly without political favor or personal bias.

I am satisfied Mr. Leon Holmes has met that standard based on the strong support he has received from those who know him the best and his assurances to me when we met personally. He assured me personally he is willing and able to set aside his personal beliefs to fulfill his duties as a Federal district court judge.

Senator PRYOR and I are here to support Leon Holmes. He has done a good job in Arkansas.

He is a good man, a good friend, and a well-trusted lawyer among his colleagues. We encourage our colleagues in the Senate to look at the evidence we have presented and certainly judge this man on the basis of all of these incredible character witnesses, as well as his own testimony, in being sure that we can all have the confidence that Mr. Holmes will, without a doubt, implement the law, the rule of law, according to the rule of law, and not based on his own personal views.

I thank my colleagues for their attention, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, let me first congratulate both Senators from Arkansas for their eloquent statements and their strong defense of Mr. Holmes. It speaks volumes of the qualifications and credibility of this nominee that these two Senators would step forward and speak as straightforwardly as they have and to reflect the values of the people in Arkansas who know him best. This is a man who has strong support from across the ideological spectrum in Arkansas, again, from the people who know him.

I have had the privilege of standing before the Senate in the last 3 years to speak on behalf of 20 nominees from Pennsylvania who we have moved through here and into confirmation. I have seen many of these men and women come under assault through this judicial process. It has become increasingly contentious, personal, and is reaching a point where we almost have a situation where people are now unwilling to step forward and enter into this arena of judicial nominations because of this attitude that has crept up in the Senate over the last few years.

I have seen really good people, who obviously otherwise would not be nominated for the Federal bench, come under assault for things they have said years and years ago, things they may have done years and years ago. I have pored through FBI records, as many members of the Judiciary Committee have, and seen blemishes, indiscretions of youth that have disqualified people from this office that heretofore would never have disqualified some of them.

This is a pretty tough place to put your name in nomination these days. One person who has gone through probably as much as anyone over the past year has been Leon Holmes. His nomination has been out there for well over a year. He is someone who has had a lot of challenges made about things he has said and positions he has held. He has stood firm in defense of statements that were defensible and apologized for those that were not. That sounds to me like a pretty balanced way of approaching things. When you believe you were right in saying what you were saying, you stand by the feelings you articulated, and when you believe you made a mistake and were in error, you have the courage to stand up and say you were wrong. I don't think we could ask for any more out of someone.

In the case of Leon Holmes, specifically where he said he was wrong, as referred to by the Senator from Arkansas a minute ago, was his comments about rape and pregnancy. He was in error. He made a mistake. I would argue that he has paid dearly over the past year for that statement. However, that is not what he believes and he has not believed that for quite a long time. The statement was made over 20 years ago.

Again, I remind the Senate how we need to look at the whole person, not a statement made 20-plus years ago for which the person has subsequently apologized, not just to this body but has said over the years that that was a statement in error. We want to look at the whole person, as the Senators from Arkansas, Senator HATCH, our leader, has described, the whole person, with whom I had a chance to meet a few months ago, someone who is a very impressive man, a man who is obviously very gifted as a lawyer, a man who is a strong family person, believes in the centrality of the family, the importance of his role as a husband and father.

He understands his role in the community. He is someone who gives to the community and is an active person in the community as well as in the bar, in his profession, and has earned the respect of people throughout his community for the tremendous effort he gives and the equanimity with which he deals with difficult situations.

The one thing that struck me when meeting him was—everyone has visions of when you meet someone what they are going to look like and what they will sound like. He was just a very gentle, kind, knowledgeable, professional lawyer, someone with whom I would have felt comfortable representing me because I don't share necessarily all those qualities. He would be a nice complement to someone representing me in the courtroom. This was someone I thought: If I had to appear before a judge, I sort of would like to appear with someone who had these kinds of qualities and temperament. So he fits in very nicely with what has been described by the Senators from Arkansas, at least from my personal meeting.

So what is the problem? You have the two home State Senators of the opposite party in support of him. You have the Arkansas Bar and all of his colleagues who have come out and been supportive. People who are liberal Democrats have said some of the most flattering things I have ever heard about people on the floor of the Senate. So what is the problem? Is it a statement he made 20-plus years ago? Do you think that could cause the defeat of a man who has a record and a distinguished career and service to his community and faithfulness to his family and a good father? Does that one statement 24 years ago disqualify him from being a judge?

I don't think that is it. What else is out there? There are only two issues I have heard of that are out there. The second was an article he wrote, an article he wrote with his wife for his diocese, for his church, the Roman Catholic Church in Arkansas. It was an article about a particular passage in one of Paul's letters discussing marriage and the role of husbands and wives. He simply went through with his wife and described what you would see described in reading any text describing and explaining those verses from the Bible. You would see it described in any Vatican text, any text that is in line with the teaching of the Catholic Church that would use the same arguments and say the same things that Leon Holmes and his wife said in this article. What he gave was the orthodox Catholic interpretation of those sections of the Bible.

It is what I have heard in many a Sunday sermon. When that section of the Bible has been read and the priest would get up and talk about it, he would give almost chapter and verse the explanation that Leon Holmes and his wife gave in that dissertation. So was Leon Holmes expressing his opinion? Yes. In some respects he was. But as a believing Catholic, he was expressing the opinion of the church. As a believing Catholic, he was merely reflecting the teachings that he has been taught over the years from the church.

Now, if this were a writing by an individual who took this passage of Scripture and took it off in a different direction—something alien to the church—then you might be able to say you can criticize him for not being a faithful Catholic. You could say, look, this is a man who has his own ideas; he wants to reinterpret Scripture to mean something that is potentially degrading to men, or women, or both. But that is not what he did. What he did—and I didn't ask him this, but I suspect that he did what I would have done, which is, as a Catholic, if I am going to look at interpreting Scripture, I am going to look at what the church says about these writings in the Bible, because the Catholic Church has a very rich history of interpreting the Bible. So what I would do is go back and look and see what the church has said about this and how it interprets these passages and then reflect that in what I was going to write, because to me that is what the role of a Catholic is.

Again, that is what the Catholic Church teaches; that is what I believe. That is what the Catholic Church teaches; that is what Leon Holmes believes.

Now, what he is being criticized for is for holding these beliefs—beliefs shared by a billion people. You can say that may be out of the mainstream. I don't know. But it is shared by a billion people. It is an interpretation that has been around for a couple thousand years. If you say, because you hold these beliefs that are central to the faith, that you are disqualified for writing an article for your church—not writing a political article, not writing a judicial opinion, not writing in a secular magazine, but writing an article about Scriptural interpretation for your church, that if you do that and it is not politically correct, it is not seen as being within the mainstream of political dialog today, you cannot be a Federal judge. I find that to be rather chilling.

There was an article in the Washington Times. I have the quote:

> I will tell you, as a person with a Catholic background, that these are troubling statements for him to make.

This is regarding the statements I talked about on the role of women and men in marriage.

> Mr. Holmes' statements reflect a narrow view of Catholic theology and do not embody contemporary standards that would be followed by any Federal judge in any State.

Think about that. Because of his Catholic faith, because he holds these beliefs that the Catholic Church teaches, he cannot be a Federal judge. Is that what freedom of religion means in our Constitution? Is that what the term ''free exercise of religion'' means in our Constitution—that we are going

to eliminate anybody who is nominated for a Federal judgeship who actually exercises their religious beliefs and states them for his own church, and that now disqualifies them? Let's start to take sandpaper out and scratch out ''in God we trust'' over there; let's start sanitizing this place of any faith that is not politically correct or of contemporary standards. Isn't that what faith is about, contemporary standards? It changes. If your faith doesn't change, you are out. If your faith doesn't adapt to the contemporary mores of today in America, you are disqualified.

Mr. President, that is what is being said here today. If you hold a traditional religion and stand by it, live it, practice it, espouse it, you need not apply, because your religion hasn't adapted to contemporary standards and, therefore, you cannot be a judge.

Imagine what our Founders would be doing right now. Imagine. Free exercise of religion. What does ''exercise'' mean? Does it mean sitting here like this? Is that exercise? How about going to church on Sunday, sitting in the pew, or staying at home and reading your Bible; is that exercise? We all know what exercise means. It means to get out and do it. They used an active word here. What was Leon Holmes doing? He was simply exercising his fundamental constitutional right to express his beliefs—not as a member of the legal community, not as a citizen of the State of Arkansas, but as a faithful Catholic to other Catholics in his Catholic community. And for that we say he cannot be a judge?

Some in this body today will vote against this man because he had the audacity to practice his faith. So we now understand the religious litmus test. If you belong to a religion that has not ''adapted,'' has not stayed with the times, if you are one of these old-fashioned religions who believes the truth was actually laid out and the truth doesn't change, and we actually have people who believe—incredibly, to some in this body—that God laid out certain truths, communicated them, and they have not changed because God has not changed. But if you feel that way, you are out. You are out because the narrow views that do not embody contemporary standards—God's ''narrow view''—at least some believe that, and I argue they have the right to believe in these ''narrow views'' that have been around for a couple thousand years, but they are narrow views. That is right, the path is narrow. Maybe now it is too narrow to get you through the Senate. Imagine. Imagine that here in a country that professes, as one of its highest ideals, the freedom of religion, in a country that, as we try to build a republic and a democracy in Iraq, that we had letters signed by people on both sides of the aisle in large numbers encouraging religious pluralism in Iraq, that we now say religious pluralism doesn't necessarily apply here anymore in the Senate.

This is a dangerous moment for us in the Senate. It is a dangerous moment, where a man may not become a judge simply because he holds religious tenets that have not kept up with contemporary mores.

Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. There are 109½ minutes on the majority side, and 110 minutes on the minority side, with time expiring for the noon recess.

Mr. SANTORUM. I thank the Chair.

Mr. President, I conclude by saying this is an important vote. This is not just a vote to confirm a district judge in Arkansas. I know that does not sound like a big deal to people who are hearing my voice. It is a district court, a small court, Arkansas. It is not Washington, DC, or New York City. It is not a glamourous place to serve, just like western Pennsylvania and central Pennsylvania are not glamourous places to serve. But we do justice in these communities because we get good people who are from the community, who are good, decent, moral people, who live their faith as they are allowed to do by our Constitution.

If we send a message out today that living your faith, espousing your faith, exercising your religion is now cause for defeat on the floor of the Senate, if we send the word out today that unless your religious beliefs are contemporary or have been contemporized, unless you have adapted the popular culture into your faith, you are no longer suitable to hold that office, then I think we make a dangerous statement, not just to people in this country, but to the world.

This is a big vote. Anybody who thinks this is not a big vote, let me assure them, I will remind people here for quite some time how big a vote this was. This is a vote about religious freedom. This is a vote about the free exercise of religion, and this is a vote about tolerance.

We hear so much from the other side about tolerance—tolerance, tolerance, tolerance. Where is the tolerance of people who want to believe what has been taught for 2,000 years as truth. You have a right to disagree with that teaching. You have a right to adapt your contemporary mores to that teaching. But where is the tolerance of people who choose to keep that faith?

We will have a vote on Judge Leon Holmes, but it will be a bigger vote than just on that judge. It will be a vote on the soul of the free exercise of religion clause and of tolerance to religion.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m. today.

Thereupon, the Senate, at 12:33 p.m., recessed until 2:17 p.m. and reassembled when called to order by the Presiding Officer (Mr. SMITH).

NOMINATION OF J. LEON HOLMES, TO BE UNITED STATES DISTRICT JUDGE—Continued

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. We are under controlled time. The Senator from Vermont controls 110 minutes, and the Senator from Utah has 106 minutes remaining.

Mr. LEAHY. I thank the Chair.

Mr. President, the Senator from California, Mrs. BOXER, wishes to speak on a matter of personal concern to her State. I believe she mentioned this to the Senator from Utah. I ask unanimous consent that she be yielded 8 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California is recognized.

(The remarks of Mrs. BOXER are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield myself such time as I may need.

I welcome the distinguished Presiding Officer back from his break, and I hope he enjoyed his as much as I did, being in Vermont. In fact, I must say I hated to leave Vermont today; it was so nice.

But as the Senate resumes our deliberations for this session, I would like to make note of some matters that occurred on this floor as we were adjourning for the recess. The Senate confirmed six more judicial nominees. That brings to 197 the total confirmations since President Bush took office.

The distinguished Presiding Officer and others may recall, we only had one roll call vote on a judicial nominations that week. At the request of the distinguished majority leader, I agreed to have five judicial confirmation votes done by a voice vote. As often happens when we consider the judges by voice vote, I think the public, many Senators, and the press have little opportunity to take note of our actions or, as in this case, the extraordinary achievement. I say extraordinary because, when the Republicans controlled the Senate in the 1996 session, the last year of President Clinton's first term, they allowed only 17 judges to be confirmed that whole session and they refused to allow any circuit court nominees to be confirmed that entire time. If one Republican Senator objected, it was in effect a filibuster of the whole Republican caucus. They would not allow any circuit court nominees to go through during the 1996 session, not one. I mention that because that was the most recent year, besides this year, in which a President was seeking reelection.

Of course, this year alone, by the end of June, we far exceeded the number of judicial nominees confirmed, including circuit judges, for this President. We

confirmed 28 of President Bush's judicial nominees by the end of June, including 5 to the circuit courts. Again, I note that—notwithstanding the more than 60 judicial nominees who were blocked by the Republican leadership under President Clinton and the fact they allowed only 17 judges during the 1996 session in his reelection year, and not a single circuit court judge—we have so far confirmed 28 judicial nominees of President Bush, including 5 circuit court nominees.

In fact, the Senate has confirmed nearly 200 judicial nominees of President Bush. In this Congress alone, the Senate has confirmed more Federal judges than were confirmed during the 2 full years, 1995 and 1996, when Republicans first controlled the Senate and President Clinton was in the White House. We also exceeded the 2-year total at the end of the Clinton administration when Republicans held the Senate majority in 1999 to 2000.

While the Republican-controlled Senate, during its 25 months in the majority, has not confirmed quite as many as the 100 nominees the Democrat-led Senate confirmed in our 17 months, the total of 197 is still the fourth highest 4-year total in American history.

I am actually saying this to compliment the work of my Republican colleagues for this Republican President. During their 25 months in the majority, 97 of the judicial nominees of President Bush have been confirmed. During the 17 months Democrats lead the Senate, we confirmed 100 judicial nominees of President Bush.

In all, we have confirmed more lifetime appointees for this President than were allowed to be confirmed in the most recent 4-year Presidential term, that of President Clinton, from 1997 to 2000. We have actually confirmed more judicial nominees of this President than the first President Bush had confirmed by the Senate from 1989 through 1992, and we have confirmed more of President George W. Bush's judicial nominees than were confirmed during President Reagan's entire first term from 1981 through 1984, when he had a Republican majority in the Senate. One can't help but think that maybe if he had a Democratic majority part of the time he may have had even more confirmations.

I would also note that the five circuit court nominees of President Bush confirmed this year are five more than Republicans allowed to be confirmed during President Clinton's reelection year.

These may seem like just numbers, but I think Democratic Senators did what I said we would do when I became chairman of the committee: that we would work to lower the partisan divide by treating President Bush's judicial nominees more fairly than Republicans treated President Clinton's nominees, by working harder to fill vacancies in the federal courts. Under the leadership of TOM DASCHLE who at that time was the Senate majority leader, we confirmed 100 judicial nominees in 17 months, a much faster pace than the previous period of Republican control of the Senate.

The number of Federal judicial vacancies for the whole country is only 27, the lowest it has been in decades. I mention that because when you look at the period from 1995 to 2001 when the Republicans controlled the Senate with the Democrats in the White House, vacancies on the federal courts reached over 100 and through systematic blocking of nearly two dozen circuit court nominees of President Clinton, circuit vacancies more than doubled. Despite additional retirements since then, after 197 judicial nominees of President Bush have been confirmed there are now little more than two dozen vacant seats left in the federal judiciary.

A second development was the statement of the Democratic leader urging bipartisan communications and cooperation. Senator DASCHLE's proposal to seek a politics of common ground should be commended. It should be built upon by both sides. I think many Republican partisans treated Senator DASCHLE most unfairly during his years as the Democratic leader. It is a measure of that good man and a reflection of his understanding of the Senate that he has sought out common ground. It is a reflection of Senator DASCHLE's understanding and love for our system of Government that he disdains bitterness and rejects retaliation. Instead, he advocates counsel, cooperation, and respect. I commend my friend, the senior Senator from South Dakota, for that.

Many in this Chamber might also recall that one of President Clinton's first acts upon reelection was to bestow the Presidential Medal of Freedom on his political opponent, Senator Bob Dole. I consider myself very fortunate to be one of the Senators who Senator Dole invited to the White House for that ceremony. I remember the grace shown both by Senator Dole and by President Clinton.

We would also do well to remember Senator Bob Dole's address to Members of the Senate as part of the leadership series of speeches in the Old Senate Chamber. In that address, he observed the Senate should proceed through bipartisanship.

Democrats have acted with bipartisanship toward judicial nominations and a record number of this President's judicial nominations have been confirmed. A few have not. Some of the nominations the President has proposed for lifetime seats on the federal bench have been extremely controversial, extremely troubling. Today the Senate is debating President Bush's controversial nomination of J. Leon Holmes to a lifetime position to the Federal court in Arkansas. For some reason, he is finally coming up for a vote today. The Republican leadership could have brought him up at any time in the last 14 months since his nomination was reported out of the Judiciary Committee. The Democratic leadership had no objection to him coming up. Many of us oppose the nomination, but we had no objection to bringing him up. For some reason, the Republican leadership refused to do so for almost 14 months.

As you look at the public record of this nomination, you can almost see why they were embarrassed to bring it up before now. In fact, this controversial nomination was not only denied consideration by the Republican leadership for over a year, but on a remarkable day last spring the Republican-controlled Judiciary Committee didn't even give him a positive recommendation. They voted him out without recommendation. On the few occasions that has happened with lower court nominees in the past, that pretty much determined you would not get a vote on the floor.

Can you imagine how troubling the record must be if the majority were Republicans, the nominee was of a Republican President, and a majority of the Republicans were not willing to vote for him in the Senate Judiciary Committee? So the leadership held him back for over a year.

I think I understand why. I think I understand why some of my friends on the other side of the aisle pay lip service to this nomination and are rather embarrassed by it.

If you look at the record of this nominee, it is quite clear he has made numerous strident, intemperate, and insensitive public statements over the years regarding school desegregation, political emancipation, school prayer, voting rights, women's equal rights, gay rights, the death penalty, the Bill of Rights, and privacy, among other issues.

For example, he has argued in the area of reproductive privacy law that ''concern for rape victims is a red herring because conceptions from rape occur with the same frequency as snow falls in Miami . . . ''

I prosecuted a lot of rape cases when I was a prosecutor, and a lot of child abuse cases where the child was raped—something that is rape under the law of every State in this Union. I find the statement of this nominee on this issue to be insensitive and appalling. Speak to the family of a 13-year-old girl who is pregnant after being raped by her family's best friend, the next-door neighbor, and in some instances by her father, and tell them that pregnancy does not happen from rape. I prosecuted some of those cases. They are the most sickening and appalling things.

But I tell Mr. Holmes, if he is confirmed and cases come before his court, I hope he will open his eyes. I hope he will open his eyes to reality and realize these things do happen—not just in this country. What would he say to the women who are being raped in Sudan for the purpose of forcing them to have babies of a certain hue as part of the genocide that is going on in Sudan? It is genocide. Our administration doesn't want to admit it is, but it is.

Rape is a serious matter. Mr. Holmes called concerns about pregnant rape victims ''trivialities.'' That is his word—''trivialities.'' Ask a pregnant rape victim if they consider this a trivial matter.

By making such remarks, Mr. Holmes has revealed how tightly closed his mind is to seeing the realities of this world. But worse than that, his statements also reveal a callous disregard for the trauma of women who are raped and a disturbingly willful ignorance of the facts.

An interesting matter is that according to the Weather Almanac, it did snow one time in Miami, Florida during a freak cold spell in 1977. But a more disturbing statistic is that, according to the American Journal of Preventive Medicine, there were more than 25,000 pregnancies that resulted from rape in 1998 in our country alone. Not 1, 2, 3, or 4; it was 25,000. And this nominee says such things don't occur. He says that people who express such concerns are focused on trivialities.

Where in heaven's name has he been living? What kind of a mindset would he bring to a Federal bench? Why in heaven's name did the President nominate him?

In fact, according to the medical journals, as many as 22,000 of those pregnancies could have been prevented if the women had received emergency contraceptive treatment. Instead, with more than 300,000 rapes each year in the United States, more than 25,000 women each year find that not only were they violated, but they are pregnant as a result. One can barely imagine the trauma and heartache of such a circumstance.

For many rape victims, the girl is under 18 or the victim of incest. It is hard to imagine the pain and difficult decisions these young women face. But Mr. Holmes has called concerns about these women ''trivialities.''

This type of statement and attitude makes one wonder what kind of judge he would make, and federal judgeships are for life. Can you imagine if such cases were before a judge like this? In my own conscience, I could not reward a lifetime position of power to such a person with power over women and men alike.

I think this sort of judgmental and intemperate approach is opposite of the qualities needed for the Federal bench. Indeed, given Mr. Holmes' strong commitment to various political causes of the right wing over these past two decades, a Republican Senator was moved to ask this nominee: ''Why in the world would you want to serve in a position where you have to exercise restraint and you could not, if you were true to your convictions about what the role of a judge should be, feel like you have done everything you could in order to perhaps achieve justice in any given case?''

Mr. Holmes, for his part, conceded:

I know it is going to be difficult for this Committee to assess that question, and I know it is a very important question.

But for this Senator, a member of that committee, it is a very difficult question, especially with a record like Mr. Holmes'. And it is certainly not a question I would answer by giving somebody a lifetime appointment to a position of such enormous power.

In fact, the question is so difficult that at the Judiciary Committee business meeting, where Democrats were prepared to vote on Mr. Holmes' nomination, Republican Senators asked for more time to review Mr. Holmes' record. I think perhaps that at that meeting some of them heard for the first time some of the statements made by Mr. Holmes in the material he submitted to the Senate Judiciary Committee. Eventually, in May of last year, they reported him out provided they did not have to vote for him, provided they could vote him out without recommendation. That does not happen very often.

The last time I can remember that happening was with Judge Clarence Thomas. His nomination was reported without recommendation in order to allow a vote before the full Senate when he could not achieve a majority in the committee.

Like Justice Thomas, Mr. Holmes has been a proponent of what is known as a ''natural rights'' or ''natural law'' theory of interpreting our Constitution in order to achieve judicial recognition of rights he believes should exist. He has been supportive of reading new and undefined rights into the Constitution based on his personal or political conception of ''justice.'' This sounds to me like the judicial activists the President has said he does not want to see on the bench. I guess if they are very conservative Republican judicial activists, it is OK.

Mr. Holmes has supported efforts to require that the language of the Constitution be trumped by language he prefers in the Declaration of Independence in order to advance a social agenda against choice and against the separation of church and state. This method of interpreting the Constitution, the fundamental charter of our democratic nation, represents an approach which has been advocated by the far right in its effort to erode the longstanding separation of church and state that assures all Americans their first amendment freedoms.

The idea of ''natural law'' is what led to the tyrannical period of judicial activism at the turn of the last century in which the Supreme Court struck down numerous State and Federal laws written to protect the health and safety of working Americans. Those decisions are discussed at length in law school. In the activist Supreme Court decision of Lochner v. New York federal judges found a ''natural right'' to contract in employment decisions that trumped any legislative efforts to end child labor—which in many cases was basically child slavery—sweatshops, and the terribly unsafe workplaces at the beginning of the Industrial Revolution. The Supreme Court's reliance on ''natural rights'' was repudiated in 1937—70 years ago.

Mr. Holmes has been critical of the dissenting opinion in the Lochner decision, and he seemingly embraces the idea that the activism of the Supreme Court almost 100 years ago was justified.

Again, I mention this because President Bush has spoken repeatedly against judicial activism while simultaneously nominating people likely to be judicial activists for his social and political agenda, people such as Mr. Holmes. This approach is one of those: Watch what we say; don't watch what we do. Republicans will say we are against judicial activists with the one hand, and with the other hand quietly nominate judicial activists.

One of the most troubling things Mr. Holmes has written is his criticism of what is known in our law as ''substantive due process.'' As even Mr. Holmes conceded in his answers to my questions, substantive due process is the means by which the rights in the Constitution's Bill of Rights apply to protect individuals from State governments that would deprive them of those rights, such as the right to freedom of religion, freedom of speech, freedom of the press. Mr. Holmes concedes that as a scholar he disagreed with the idea of substantive due process, but now, when he is facing a vote on his nomination in the Senate, he says basically: Oh, by the way, of course now I see it as settled law. He did not see it that way a few short years ago.

That reminds me again of another nomination. These issues rose during the hearings on Clarence Thomas's hearings on his nomination to the Supreme Court. He had given many speeches praising natural law principles, but then disavowed them during his Supreme Court confirmation hearings. For example, he praised Lew Lehrman's article, ''The Declaration of Independence and the Right to Life,'' as ''a splendid example of applying natural law.'' That article looked to the Declaration of Independence as the basis for overturning Roe v. Wade. Then, despite his assurances to the Senate Judiciary Committee that he would follow the law in this area if he was confirmed, of course, Justice Thomas immediately voted to overturn Roe v. Wade—just the opposite of what he said—as soon as he was confirmed. The Senate trusted him, and we saw what happened.

Now, Mr. Holmes wishes to regard this issue as one in which we should just trust him to set aside what he himself calls his ''history of activism.'' He admitted to a reporter that the ''only cause that I have actively campaigned for and really been considered an activist for is the right-to-life issue.'' But then he told the Senate Judiciary Committee that he would not promise to recuse himself from those

cases in which he has a history of activism. What he said was: Just trust me.

Well, I do hope that if the Senate Republicans disagree with me and Mr. Holmes is confirmed, that he will keep his word and he will not impose his political views on others as a judge, especially as he was under oath when he made that promise. But I have seen too many, even though they were under oath, go back on their word as soon as they were confirmed.

This debate is not about his position on right to life issue. We have confirmed numerous judicial nominees of President Bush who have been active in the right-to-life movement or litigation, such as Judge Lavenski Smith, confirmed to the Eighth Circuit; Judge John Roberts, confirmed to the DC Circuit; Judge Michael McConnell, confirmed to the Tenth Circuit; Judge Ron Clark, confirmed to the District Court in Texas; Judge Ralph Erickson, confirmed to the District Court in North Dakota; Judge Kurt Englehart and Judge Jay Zainey, confirmed to the District Court in Louisiana; and Judge Joe Heaton, confirmed to the District Court in Oklahoma—among the 197 judicial nominees of President Bush who have been confirmed.

I have voted for many judges who made it very clear in their public record that they had taken a right-to-life position. In fact, the judges I just mentioned have been at the forefront of efforts to reverse Roe v. Wade as lawyers, and all were confirmed.

So it is unequivocally false to claim that Democrats have employed a pro-choice litmus test in voting on judicial nominees—not with all the ones we have voted for who would fall in that area. But the same, about the litmus test, cannot be said of the choices made by President Bush. It seems he has sought out individuals who share his pro-life views and who have strong pro-life credentials for these lifetime positions as Federal judges. In fact, I cannot think of a single judicial nomination President Bush has made of an individual who has been active on the pro-choice side of this issue. Senate Democrats have shown we do not have a litmus test. The White House has shown it does.

I am also saddened to note Mr. Holmes has attacked efforts to enforce the Supreme Court's decision in Brown v. Board of Education, the landmark case which declared that separate is inherently unequal. As a nation we have just celebrated the 50th anniversary of this unanimous decision of the Supreme Court—a unanimous decision with conservative and liberal justices joining together, but here we have a nominee who has criticized efforts to enforce this decision.

Brown v. Board of Education helped break the shackles of Jim Crow that had bound the Nation's dream of racial equality and the Constitution's promise of the 14th amendment. Instead, Mr. Holmes suggested that the Federal courts should not have the power to order school districts to take actions to remedy segregation that was blatantly unconstitutional. But I would remind him that, fortunately, there were judges who did not take this twisted, I might say, cowardly view of Brown v. Board of Education.

There were countless judges appointed by Republicans and Democrats who had courage in their efforts in the South because they did not believe our federal courts lacked the power to enforce a remedy to the violation of a fundamental constitutional right. Because of their courage, Brown v. Board of Education was enforced. One has to ask, if Mr. Holmes, based on his statement, would have shown that courage.

I respect the legacy of Judge Ronald Davies, who ordered that Little Rock Central High be integrated and had the independence and the strength of character to stand up to Governor Orval Faubus and insist on the enforcement of our Constitution as interpreted by the Supreme Court. We do not honor his legacy—his great, great legacy on this issue—by voting for this nominee.

In fact, Mr. Holmes has suggested that Booker T. Washington was correct to teach that slavery in the United States, which resulted in the inhumane, involuntary servitude and often brutal deaths of millions of African Americans, was part of divine providence. Mr. Holmes who wrote his dissertation on Mr. Washington's controversial ideas, stated that ''what we need to learn from Booker T. Washington is that not everything that parades under such banners as 'liberation' and 'freedom' is genuine.''

My grandparents and great-grandparents came to this country because they believed that the freedom promised by the Constitution in America is genuine. They believed liberation is genuine. They believed that this was a country that guaranteed it. I was sorely disappointed to hear Mr. Holmes' statement.

I do not think Mr. Holmes is simply out of step with reasonable interpretations of liberty, privacy, and equality. He is marching backward in the direction of an era in which individual rights under our Constitution were not fully endorsed by the courts and were often empty promises. While such a narrow approach may once have been in favor among a few, his hostility to modern understandings about civil rights and human rights is eccentric, to say the least. It is the Senate's job under our Constitution to serve as a check on the executive branch in nomination and it is our job to protect the rights of the American people by trying to ensure that we have a fair and an independent Federal judiciary.

Given his views of equality and freedom, it is perhaps not surprising that Mr. Holmes has also been critical of full endorsement of voting rights. For example, he represented the Republican Party of Arkansas before the Arkansas Supreme Court in late 2002 to reverse a lower court order allowing voting hours to extend beyond statutory times set in Pulaski County, in Little Rock. In the Republican Party of Arkansas v. Kilgore, Mr. Holmes was the party's lawyer in its emergency petition to the Arkansas Supreme Court.

According to his questionnaire, the Democratic Party ''obtained on order at 6:46 p.m. on election night extending the voting hours from 7:30 p.m., the statutory time for concluding voting, to 9:00 p.m. for Pulaski County.''

Subsequently, Mr. Holmes was able to get all 300 ballots cast after 7:30 thrown out, even though many of those people, working people, who voted had been waiting in long lines, waiting for their right to vote. According to press accounts, many of these long lines were in precincts with large numbers of African Americans. I think we should all be concerned when votes are not counted, when the American citizens who exercise their right to vote are disenfranchised. Mr. Holmes does not give much weight to this concern.

During the Bush v. Gore recount litigation, Mr. Holmes wrote a letter to the editor strongly opposing the accurate counting of Presidential ballots. Why? Such a recount would result in more votes to the Democratic candidate. I do not believe that with the record of this nominee that he will be impartial on such issues in Federal court. I would hate to be a Democrat to have to come before his court with views like this, but it appears that this is a case where the White House is saying: We do not want an independent Federal judge. We want somebody who we hope will be an arm of the Republican Party from the bench.

Finally, I note that among the many very troubling things this nominee has said, he has written that he does not think the Constitution was made for people of different views. I believe our Constitution's tolerance and protection for a diversity of views is one of the things that has made our Nation strong. Just look at the first amendment, the beginning of our Bill of Rights. The first amendment says you have the right to practice any religion you want or none if you want. It says very clearly you have a right of free speech. What it says is that we will have diversity because people have freedom of conscience. People have different ideas. Not only does the Constitution inherently value diversity, but also it guarantees that diversity will be protected. Anywhere you have diversity protected, you can have a strong democracy.

I cannot think of anything I have heard by any nominee that goes so much against our vision of America than to say that our Constitution was not for people of different views. Mr. Holmes seems to think the Constitution is meant only for people who share his own views of the world. I cannot imagine a fairminded person suggesting, as this nominee has, that Justice Oliver Wendell Holmes erred when

he wrote that the judicial activism of a century ago was wrong. Justice Holmes stood up against other judges who were substituting their personal, political, and economic views for those of legislators. Justice Holmes observed our Constitution is made for people of different views, but Mr. Holmes specifically objects to that vision of our Nation's charter.

I cannot imagine a fairminded and open-minded person staking out the ground that Mr. Holmes has. Mr. J. Leon Holmes has taken issue with that bedrock principle of our law. It is abundantly clear from the nominee's own writings and record why this nomination has stirred such controversy in the Senate and among the American people. Mr. Holmes might be one of the most intolerant nominees we have had before the Senate for a confirmation vote in the time I have been in the Senate. I can see why, even with a Republican-controlled Judiciary Committee, he could not get a majority vote to support him. He should not get a majority vote in the Senate.

Ask yourselves, men and women of this Senate, can you really vote to give somebody a lifetime appointment when they interpret the laws of this Nation—somebody who says that the laws are not made to protect diversity in America? Tell my Irish grandfather and my Italian grandfather, both of whom were stonecutters in Vermont, that our Constitution should not protect people from diverse backgrounds. I cannot believe that a judicial nominee would take issue with this core value because he wants to impose his own political views on the Constitution.

What we have before us is a very troubling nomination. Here, the President, who campaigned against the idea of judicial activism, has nominated somebody who is unabashedly an activist in a wide range of issues taking a narrow view of individual rights. The President, who has said he wants to respect all views in the country, has nominated somebody who does not believe in such diversity.

I still cannot get out of my mind the comments about rape and pregnancy. I still have nightmares when I think of some of the cases I prosecuted, some of the children I counseled, some of the families who grieved in my office, some of the lives I saw shattered by children who had been raped, became pregnant from that rape, and also were abused.

I will soon yield the floor so others may speak. I will vote against Mr. Holmes. He is not a man who should be on the federal bench with a lifetime post interpreting the rights of others, a man whose mind is so set against women's rights no matter how polite he may be, so set against the idea of protecting diversity, so set against the way our Constitution should be interpreted. His writings are a throwback to darker days in our Nation's approach to the law and the fundamental freedoms promised by our Constitution.

I yield the floor.

Mr. HATCH. Mr. President, I have been here a long time. I sat through the comments of the Senator. I have heard a lot of remarks on the floor of the Senate with regard to judges. In fact, I have heard them for the last 28 years. I have to say that not only do I totally disagree with everything the distinguished Senator from Vermont has said, but I believe he has seriously distorted this man's record. Let me just answer these distortions with maybe a few points.

No. 1, this man has the support of virtually everybody who counts in Arkansas—Democrats and Republicans.

No. 2, he has the support of the leading newspapers in Arkansas, which are not necessarily known for supporting Republicans.

No. 3, this man is an intellectually profound man who earned a Ph.D. from Duke University before he got his law degree. He graduated with honors with his law degree as well.

No. 4, this man has the blessing of the American Bar Association, with the highest rating a person can have.

No. 5, Leon Holmes is a very religious person, and virtually everybody who writes in his favor—virtually everybody I have seen, including many Democrat leaders in Arkansas—state that he is totally capable of putting aside his deeply held personal beliefs in order to act with dispassion and fairness on the bench.

No. 6, a number of Democrat prochoice women lawyers have written in and informed us that he has been their mentor, their advocate to partnership in his law firm; that he has not only been fair, he has been decent, honorable, and he has been their friend, even though they disagree with some of his personal views.

My gosh, if we are going to bring up every case an attorney has tried, because we differ with his particular clients, and paint the attorney as somebody who is not a good person, as has been done here, we would not have very many judges confirmed.

I could go on and on. Let me say that you don't get the well-qualified highest rating from the ABA because you are a jerk, as has been painted here. You don't get the support of Democrats and Republicans in your home State if you are a partisan who won't obey or follow the law. You don't get a Ph.D. from Duke unless you are a very bright person and somebody who has earned the right to a Ph.D. His studies were mainly of three great Black leaders, including DuBois, Washington, and Martin Luther King, Jr.

I could go on and on. I am just saying that I guess we could find a way to decry anybody who has ever tried a case, or at least a controversial case. Attorneys do that. I know the distinguished Senator from Vermont has done that. I have done that. If this body cannot understand why a person, when they are very young, makes some statements they are sorry they made later, then what body can? Many of the statements that have been described today are statements that were made almost 24 years ago, for which Leon Holmes has apologized and has received forgiveness from the people of Arkansas, and especially the two Senators from Arkansas, who know him more than anybody else here. They are both strong advocates for Leon Holmes.

Yet we sit here and hear very inappropriate comments and, in my opinion, highly distorted, about a man who is considered one of the better lawyers in Arkansas, maybe one of the better lawyers in the country. Look, it is time we quit playing these games with judges. Our side should not do it and the other side should not do it. If you disagree with Leon Holmes, vote against him, but you don't have to distort his record. Virtually every legitimate criticism he has had has been answered, and answered substantively. In fact, every legitimate question that has been raised has been answered.

This is a fine man who has the support of his media, which is pretty unusual for a pro-life Republican. He has the support of the bar down there. He has the support of Democratic women, as well as Republican women. He has the support of people who live religious lives. He has the support of his partners, many of whom are Democrats who don't agree with his personal views—although I think many would agree with his personal views. His personal views are legitimate, but there is room to disagree. But I don't know anybody of substance in Arkansas who thinks this man is unworthy to be on the Federal district bench, or thinks he will not obey the law when he gets on the Federal district bench, or thinks he will not uphold the law when he gets on the Federal district bench.

I could go through every argument that has been made and every one is not unanswerable but I think overwhelmingly answerable. It comes down to some statements he made a long time ago for which he has apologized, which he has said were insensitive. He was a young man dedicated to the prolife movement and he made some insensitive statements, as some do on both sides in pro-life or pro-choice contingencies.

This man deserves a vote up or down. I hope he will receive that and I hope he will be confirmed. But those who vote against him, I think, are doing so without the consideration of the high qualities this man offers, and without the recognition of the many Democrats who have written in favor of him. Many pro-choice Democrats have written in favor of him. If we are going to debate, we should debate the facts, not distortions of the facts. He has apologized and made amends. He asked forgiveness for some of his remarks that were insensitive.

I hope around here we are not of the persuasion or opinion that everybody who comes to the Federal bench has to be perfect from the time they graduate from law school on, or even before

that, or because we differ with them on one or two positions that may be very important issues to one side or the other, they do not have a right to serve on the bench, or that there may be people of deeply held religious views who are unwilling to admit, because I think of some of the stereotypes around here, they can do a great job on the bench in spite of their religious views.

In this particular case, this man is a very religious man who has made it more than clear that he will abide by the law even when he differs with it. This is a trial judge position. This is not the Supreme Court. But it is an important position, and I compliment my colleagues on both sides for scrutinizing all of these judgeships. But if they scrutinize fairly this man's record and what he has done, his reputation, his ability in the law, and his honesty and decency, then they are going to have to vote for him. If my colleagues do not do that, then I suppose they can vote against him. If they do so, they really have not looked at the record, have not been fair, and they have allowed buzz issues that have long since been answered to take a precedent position in the arguments that should not be permitted.

Mr. LEAHY. Mr. President. I began this day calling for bipartisanship and civility in this Chamber. It seems that call has fallen on deaf ears with Republicans renewing their baseless charges that Democrats are anti-Catholic. Some Republicans keep recycling these reckless charges even though they are false. They do so in order to play wedge politics, the type of dirty politics preferred by the President's strategist Karl Rove. I have called on the White House to disavow these charges of religious bigotry. After all, President Bush ran for office claiming that he would change the tone in Washington and ''be a uniter, not a divider.'' His repeated actions to the contrary speak louder than his words. I have called on the Republican administration to disavow these anti-Catholic claims. Everyone knows that the President's father's counsel is pushing these false and partisan charges against Democrats. The White House has not stopped these charges. Its allies continue to throw this mud. It is beneath the dignity of this body.

Anyone who reviewed the public submissions of the 197 judicial nominees of President Bush we have confirmed would see that many of these nominees have been active volunteers in their communities, including their parishes and other faith-based organizations. For example, the judges we have confirmed have been active members of their Diocesan Parish Council, the Friends of Cardinal Munich Seminary, the Altar and Rosary Society, the Knights of Columbus, the Archdiocese Catholic Foundation, Catholic Charities, the Archbishop's Community Relief Fund, the Catholic Metropolitan School Board, Serra Club, their Parish and Pastoral Councils, the Homebound Eucharistic Ministers Program, the St. Thomas More Catholic Lawyers Association, the John Carroll Society, the Guild of Catholic Lawyers, the Catholic League for Religious and Civil Rights, and the U.S. Catholic Conference, among other organizations. How dare Republicans come to this floor and claim that Democrats oppose Catholics or others active in their church when the public records of the 197 nominees confirmed absolutely refute these false and hurtful claims.

I stand against the religious McCarthyism being used by some Republicans to smear Senators who dare to vote against this President's most extreme nominees for lifetime positions on the federal courts. We should come together to condemn their injection of religious smears into the judicial nomination process. Partisan political groups have used religious intolerance and bigotry to raise money and to punish and broadcast dishonest ads that falsely accuse Democratic Senators of being anti-Catholic. I cannot think of anything in my 29 years in the Senate that has angered me or upset me so much as this. Earlier this session I recall emerging from mass to learn that one of these advocates had been on C–SPAN at the same time that morning to brand me an anti-Christian bigot.

As an American of Irish and Italian heritage, I remember my parents talking about days I thought were long past, when Irish Catholics were greeted with signs that told them they did not need apply for jobs. Italians were told that Americans did not want them or their religious ways. This is what my parents saw, and a time that they lived to see as long passed. And my parents, rest their souls, though this time was long past, because it was a horrible part of U.S. history, and it mocks the pain—the smears we see today mock the pain and injustice of what so many American Catholics went through at that time. These partisan hate groups rekindle that divisiveness by digging up past intolerances and breathing life into that shameful history, and they do it for short-term political gains. To raise the specter of religious intolerance in order to try to turn our independent federal courts into an arm of the Republican party is an outrage. They want to subvert the very constitutional process designed to protect all Americans from prejudice and injustice. It is shocking that they would cavalierly destroy the independence of our federal courts.

It is sad, and it is an affront to the Senate as well as to so many, when we see senators sit silent when they are invited to disavow these abuses. Where are the fair-mined Republican Senators? Where are the voices of reason of moderate Members of this body? Do they agree with this wedge campaign by the more extreme elements in the Republican party to cause further divide in our nation along religious lines? What has silenced these Senators who otherwise have taken moderate and independent stands in the past? Are they so afraid of the White House that they would allow this religious McCarthyism to take place? Why are they allowing this to go on? The demagoguery, divisive and partisan politics being so cynically used by supporters of the President's most extreme judicial nominees needs to stop.

These smears are lies, and like all lies they depend on the silence of others to live, and to gain root. It is time for the silence to end. The administration has to accept responsibility for the smear campaign; the process starts with the President. We would not see this stark divisiveness if the President would seek to unite, instead of to divide, the American people and the Senate with his choices for the Federal courts.

And those senators who actively join in this kind of a religion smear; they may do it to chill debate on whether Mr. Holmes can be a fair and impartial judge, but they do far more. They hurt the whole country. They hurt Christians and non-Christians. They hurt believers and non-believers. They hurt all of us, because the Constitution requires judges to apply the law, not their political views, and instead they try to subvert the Constitution. And remember, all of us, no matter what our faith—and I am proud of mine—no matter what our faith, we are able to practice it, or none if we want, because of the Constitution. All of us ought to understand that the Constitution is there to protect us, and it is the protection of the Constitution that has seen this country evolve into a tolerant country. And those who would try to put it back, for short-term political gains, subvert the Constitution, and they damage the country.

These baseless and outrageous claims harken back to dark days in our nation's history. I was just a young man growing up in Montpelier, VT when Senator Joseph McCarthy rose to power and ignomy as one of our country's worst demagogues through his spectacular brand of the politics of destruction. Senator McCarthy first claimed to a Republican Party club in West Virginia that he had a list of 205 known communists in the State Department. The next day, in Salt Lake City, he claimed he had a list of 57 ''card-carrying communists'' at the State Department. At other times he claimed there were 81. You see, the facts do not really matter to McCarthyists—so long as the claim is spectacular and causes voters alarm.

I think many Americans believed because they could not imagine why someone would make such false allegations and smear the reputations of innocent people. That is the advantage of the demagogue, but we must be ever vigilant that such a lie does not become the truth through the alchemy of repetition.

Shortly afterward his remarks in Utah, Senator McCarthy came to the floor of the Senate, this floor, and asserted that he had dossiers on federal

employees who were un-American, changing descriptions as he read them. For example where one person was described as ''liberal'' on paper, Senator McCarthy substituted the infammatory ''communistically inclined.'' That year, in 1950, a Senate Committee investigating Senator McCarthy's charges issued a report, known as the Tydings Committee Report after Maryland Senator Millard Tydings who chaired the subcommittee looking into the lies that were being spread. A critical piece of that report from 1950 has relevance today, more than 50 years later so I would like to quote a paragraph in full:

At a time when American blood is again being shed to preserve our dream of freedom, we are constrained fearlessly and frankly to call the charges, and the methods employed to give them ostensible validity, what they truly are: A fraud and a hoax perpetrated on the Senate of the United States and the American people. They represent perhaps the most nefarious campaign of half-truths and untruth in the history of the Republic. For the first time in our history, we have seen the totalitarian technique of the ''big lie'' employed on a sustained basis. The result has been to confuse and divide the American people at a time when they should be strong in their unity, to a degree far beyond the hopes of the Communists whose stock in trade is confusion and division. In such a disillusioning setting, we appreciate as never before our Bill of Rights, a free press, and the heritage of freedom that has made this Nation great.

This quote is from the Report of the Committee on Foreign Relations pursuant to S. Res. 231, a resolution to investigate whether there are employees in the State Department disloyal to the United States, dated July 20, 1950.

The Tydings Report also noted that ''few people, cognizant of the truth in even an elementary way, have, in the absence of political partisanship, placed any credence in the hit-and-run tactics of Senator McCarthy.'' Similarly, the Report sagely observed that ''the oft-repeated and natural reaction of many good people . . . goes something like this—'Well there must be something to the charges, or a United States Senator would never have made them!' The simple truth now is apparent that a conclusion based on this premise, while normally true, is here erroneous. . . .'' Unfortunately, we face a similar situation today.

It was not until 1954 that Senator McCarthy's deceitful campaign earned the censure of the full Senate for conduct unbecoming a Member of the Senate. I do remember that year when one of the greatest Senators of Vermont, Ralph Flanders, stood up on this floor, even though he was a Republican, sort of the quintessential Republican and condemned the tactics of Joe McCarthy on several occasions.

For example, on June 1, 1954, Senator Flanders renewed his deep concerns about the allegations of Senator McCarthy and made some observations that are particularly relevant, unfortunately, to the recnt religious smear of Republicans in 2003. He noted how Senator McCarthy's political agenda involved sowing division and fear among people of different faiths—Jews, Protestants, and Catholics. After instilling fear in Jewish Americans, McCarthyists ''charged the Protestant ministry with being, in effect, the center of Communist influence in this country.'' As Senator Flanders observed, ''the ghost of religious intolerance was not laid'' by the departure of a few close allies of Senator McCarthy who had been rebuked for attacking a majority faith in this country. As Senator Flanders noted, ''Clearer and clearer evidence of the danger of setting church against church, Catholic against Protestant. . . . [Senator McCarthy's] success in dividing his country and his church'' was paralleled only by his divisiveness to the Republican party.

Later that summer, Senator Flanders offered resolution of censure condemning the conduct of Senator McCarthy, who had smeared so many innocent people with his false claims and treated some of his colleagues in this body with contempt in his zeal. He noted Senator McCarthy's penchant for breaking rules, ''The Senator [McCarthy] can break rules faster than we can make them.'' When the Senate considered the matter, it censured Senator McCarthy, and rightly so.

History properly condemns him and his cohorts, even though it has become fashionable for right-wing extremists such as Ann Coulter to attempt to rewrite history and call him a brave hero who saved America. The fact is that our Nation and Constitution are lucky to have survived his divisive, destructive and manipulative tactics which were then and remain, the words of Senator Flanders, a blot on the reputation of the Senate. He was a ruthless political opportunist who exploited his position of power in the Senate to smear hundreds of innocent people and win headlines and followers with his false assertions and innuendo, without regard to facts, evidence, rules and human decency.

Senator Flanders of Vermont stood up and fearlessly condemned what Joseph McCarthy was doing. And it stopped. I hope some will stand up and condemn these McCarthyist charges of anti-Catholic bigotry leveled at Catholics and others who are members of he Senate Judiciary Committee and Members of this Senate.

The reality is that not one of the Democratic Senators in Committee who voted against Mr. Holmes did so because he is Catholic. Half of the Democratic Members of the Judiciary Committee are Catholic. We would not vote for him or vote against him because of his religious affiliation. What we cared about was Mr. Holmes long history of statements that he himself admits have been inflammatory and unfortunate. Among the many concerns are his statements that the Constitution, our Constitution, is not meant for people of different views. His intolerance of the views of others is manifest in numerous statements he has made. His insensitivity to rights of others is also apparent, no matter how polite a person he may be.

His statements against efforts to implement the Supreme Court's decision in Brown v. Board of Education, his opposition to Federal law intended to restore basic civil rights rules that had been modified by conservative activist judges, his denigration of political rights for African Americans, his active work to limit people exercising their right to vote or to have their vote counted, and his screeds against women's rights are just too much to overlook. The President has marked the anniversary of the landmark Civil Rights Act of 1964 with public speeches while below the radar screen he has put forward nominee after nominee with records of hostility toward civil rights, toward women's rights, toward environmental protections, and toward human rights. This President knows what he is looking for in the legacy he wants to leave with the lifetime appointees he has put forward. He has nominated more people active in the Federalist Society, such as Leon Holmes, than African Americans, Latinos or Asians combined. He is more committed to ideological purity than to diversity or full enforcement of civil rights.

President Bush has claimed that he wants judges who will interpret the law and not make the law, but in the aftermath of the administration's re-interpretation of the laws against torture that assurance is meaningless. Just look at the torture memo written by Jay Bybee, who was confirmed for a lifetime seat on the Ninth Circuit after stonewalling the Senate on his legal work and views. It is not fair to the American people that this President's judicial nominees be given the benefit of the doubt. Here, in Leon Holmes, we have a nominee whose views are well known. There is little doubt what kind of activist judge he was chosen to be and will be if confirmed.

Senator HATCH has claimed that asking about whether a nominee will follow Supreme Court precedent on privacy and choice is out of bounds because in his view ''the great majority of people who are pro-life come to their positions as a result of their religious convictions. We hold this view as a religious tenet, and this is part and parcel of who we are.'' Under Senator HATCH's view that it is improper to ask judicial nominees about their view of legal issues that may also relate somehow to a religious position. I ask, however, would it be wrong for the Senate to ask a nominee for a lifetime position for their views on racial discrimination? Of course that would be absurd and an abdication of our responsibility to serve as a check on the nominees put forward by this or any President. As Senator DURBIN has mentioned based on the tragic shootings instigated by the racist World Church of the

Creator in Illinois, it would be irresponsible for the Senate in its advice-and-consent role to ignore, for example, questions of racial discrimination if those views can be cloaked in religious garb.

The Senate has considered the views of nominees since the beginning of our Nation, when Justice John Rutledge's nomination to be Chief Justice of the Supreme Court was rejected for a speech he gave expressing his views on a treaty. To assert suddenly that although President Bush and his advisors can consider a judicial candidate's views, such as on race or choice, the Senate is forbidden from doing so is a terrible manipulation of the process. The Constitution gives the Senate an equal role in the decision about who serves on the Federal courts, not a lesser rule and certainly not that of a rubber stamp. With these religious assertions, Republicans may think that they have found a loophole to avoid public questions to and answers by their hand-picked judicial nominees about their views that both Democrats and Republicans actually consider to be significant areas of law. Support for protecting racial discrimination should be allowed no loophole from scrutiny. A nominee's beliefs and views about constitutional rights should not be hidden from public view until after a nominee is confirmed to a lifetime seat on the bench.

The truth is that Mr. Holmes' affiliation with the Catholic Church neither disqualifies him nor qualifies him for the Federal bench. And this is how it should be, how it must be, under our Constitution. Mr. Holmes' record is what causes grave concerns. He has been active and outspoken with rigid and radical views about the meaning of the Constitution, the role of the Federal Government, equality rights and other liberties.

Republicans have falsely claimed that Democrats have an anti-Catholic bias because we oppose the nomination of Leon Holmes for a lifetime job as a Federal judge. The opposition to Mr. Holmes is not based on his religious affiliation. No matter his faith, Mr. Holmes' record does not demonstrate that he will be fair to all people on most legal issues that affect the rights of all Americans. Mr. Holmes' religious affiliation is irrelevant to these serious matters of concern about whether he would be a fair judge. He has no meaningful judicial experience that would demonstrate his ability to set aside his views and apply the law fairly. To suggest otherwise is low and base.

It is also untrue to claim that Democrats have a pro-choice litmus test. Many of the 197 judicial nominees of President Bush have been active in pro-life issues or organizations according to the public record, and most have been confirmed unanimously, such as Ron Clark, a pro-life former Texas State legislator, Ralph Erickson, who was active in pro-life groups in North Dakota, Kurt Englehardt, a former pro-life leader in Louisiana, and Joe Heaton, a pro-life former Oklahoma legislator. The public record shows that it is obviously false to claim that Democrats have employed a pro-choice or anti-Catholic litmus test in voting on judicial nominees.

Why anyone would tell such lies, claiming that Democrats are anti-Catholic or anti-pro-life, and sow such seeds of division and hate. Why, as Senator Tydings asked in regard to McCarthy, why would anyone on the floor of the Senate or in a committee or in a hallway press conference in the Capitol or anywhere make such charges if there were not something to them? Conservative columnist Byron York noted that Republicans are working closely with some organizations to press the debate: '' 'The issue is playing very well in the Catholic press and in Catholic e-mail alerts,' the [unnamed] Republican says. 'You tap into an entire community that has its own press, its own e-mail systems, and that has been tenderized by anti-Catholicism, which they consider to be the last permissible bias in America.' '' This religious McCarthyism of Republican partisans is bad for the Senate. It is bad for the courts. And it is bad for the country.

Mr. President, I suggest the absence of a quorum and ask that the time be divided equally.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. FEINSTEIN. Mr. President, I come to the floor to share my views on this nominee to the Federal district court. I heard our distinguished chairman, a man who I greatly respect and admire, mention he was recommended as well qualified by the American Bar Association, and that he in fact could distance himself from his personal beliefs; that he is a deeply religious man, and the chairman believed he would be able to truly distance himself.

I have a very hard time believing that. If I look at his personal beliefs, they are extraordinary and they are way out of line with the mainstream of American thinking. I want to comment a little bit about them. They are not only outside the mainstream of American thinking, but they are outside the mainstream of American judicial thought as well.

Mr. Holmes has no real judicial experience. That is what makes it difficult, because there is no way we know whether he can distance himself from many of the comments he has made over many years. He is a native of Arkansas. He is a practicing lawyer at a law firm. He has done some teaching at the University of Arkansas and at the Thomas Aquinas College in my State: California.

With the exception of two instances where he served as a special judge on the Arkansas Supreme Court, he has no judicial experience. But that is not my main objection. My main objection is over the past 24 years he has put forward in word and writing philosophies that are far from U.S. mainstream opinion on a whole series of subjects, from women's rights, to choice, to race, and to the separation of church and state. These statements make him a very troubling nominee, and I have never—again, never—before voted ''no'' on a nominee to the district court. This is my first ''no'' vote in the 12 years I have been on the Judiciary Committee.

Let me give you a few examples. Let me take a subject, women's rights. Seven years ago—it is not too long ago—seven years ago he wrote:

> ''The wife is to subordinate herself to her husband,'' and that ''the woman is to place herself under the authority of the man.''

This belief, if sustained, clearly places this nominee in a place apart. But this is not merely my own view, it is the view of the equal protection clause of the 14th Amendment of the Constitution, which I would hope any Federal judge would uphold.

It is also the view of numerous Federal civil rights laws, including the Civil Rights Act of 1964, for which the Nation celebrated its 40th anniversary on July 2. How can I or any other American believe that one who truly believes a woman is subordinate to her spouse can interpret the Constitution fairly? When women are parties to claims of job discrimination, sexual harassment, domestic violence, and a host of other issues involving the role of women in society, how can I be assured they can get a fair hearing from Leon Holmes? What will a plaintiff think when she finds out the judge hearing her case thinks women should subordinate themselves to men?

That is a fairly crisp view. It is a view I have not seen presented, certainly in the last 20 years, in any serious way.

Let's take a woman's right to choose. Again and again over decades, Mr. Holmes has made comments that show he is solidly opposed to a woman's right to choose, even in the case of rape. Let me give an example.

In a letter that he wrote to the Moline Daily Dispatch—this is a letter he writes to a newspaper—Mr. Holmes called rape victims who become pregnant ''trivialities.''

How is a rape victim ever a triviality?

He wrote in that same letter that ''concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.''

That might be a cute phrase but, in fact, it is grossly incorrect. Snow falls in Miami about once every 100 years, but, according to the American Journal of Obstetrics and Gynecology, each

year in America over 30,000 women become pregnant as a result of rape or incest. This is hardly a trivial matter.

Mr. Holmes' letter wasn't a one-time comment. I can excuse a lot of one-time comments. I understand how they happen. I understand how they can be taken out of context. But he has also been an opponent of a woman's right to choose for decades. Other comments he has made on the very sensitive issue of abortion are equally insensitive. For example, he said:

I think the abortion issue is the simplest issue this country has faced since slavery was made unconstitutional, and it deserves the same response.

In other words, end it. It is a very precise point of view.

Mr. Holmes has stated:

The pro-abortionists counsel us to respond to these problems by abandoning what little morality our society still recognizes. This was attempted by one highly sophisticated, historically Christian nation in our history—Nazi Germany.

In a 1987 article written to the Arkansas Democrat, Mr. Holmes wrote:

[T]he basic purpose of government is to prevent the killing of innocent people, so the government has an obligation to stop abortion.

Seven years later, in a 1995 interview, with the Arkansas Democrat Gazette, Mr. Holmes stated:

I would like to appear before the Supreme Court of the United States, and I would like to have argued Roe v. Wade.

In response to Senator DURBIN's written question asking what Supreme Court cases Mr. Holmes disagrees with, he answered: Dred Scott v. Sanford, Buck v. Bell, and Roe v. Wade.

Dred Scott held that blacks were not people under the Constitution. As you know, Buck v. Bell held that a woman could be sterilized against her will. Those cases were abominations.

To include Roe v. Wade with these two decisions clearly indicates that he holds Roe as a decision to be abolished. This is simply not a mainstream perspective.

These comments don't sound as if they come from a man with an open mind about a most sensitive issue. Rather, they sound as if they come from a man with an agenda to eliminate the constitutional rights of American women to choose.

That is a problem for me because I don't believe someone who has these views can fairly hand out justice. I don't believe such a person should be a Federal judge for the rest of his life.

Mr. Holmes is not merely opposed to a woman's constitutionally protected right to choose. He has also lashed out at contraception, against women generally, and against the rights of gays and lesbians. He wrote in 1997:

It is not coincidental that the feminist movement brought with it artificial contraception and abortion on demand, with recognition of homosexual liaisons soon to follow.

That is emotion-laden language. It is offensive to a whole host of a number of people. It is extraordinary language. It certainly is not a line of thinking with which I can agree. These are all areas where the Federal courts play a vital role.

He has also made some shocking statements about race in America. Specifically, in a 1981 article, he wrote for a journal called Christianity Today about Booker T. Washington. This is what he wrote:

He taught that God had placed the Negro in America so it could teach the white race by example what it means to be Christlike. Moreover, he believed that God could use the Negroes' situation to uplift the white race spiritually.

Mr. Holmes first wrote those words 23 years ago. But he still stands by them. In April of last year, Leon Holmes wrote to Senator LINCOLN:

My article combines [Washington's] view of providence—that God brings good out of evil—with his view that we are all called to love one another. This teaching can be criticized only if it is misunderstood.

Are these the words of a man who should be confirmed to interpret the equal protection clause of our Constitution without prejudice, to interpret the due process clause, to interpret Federal civil rights statutes?

In my view, Mr. Holmes' statements also indicate that he can't separate his own religious views from the Federal law he will be charged with interpreting. This is a trait that is particularly dangerous, given the strong views he has taken.

On religion, in a speech he delivered 2 years ago in Anne Arbor, MI, he stated:

Christianity, unlike the pagan religions, transcends the political order.

That is really food for thought.

He continues:

Christianity, in principle, cannot accept subordination to the political authorities, for the end to which it directs men is higher than the end of the political order; the source of its authority is higher than the political authority.

I guess one could say that all depends on what he means by the political order. The political order produces the law and the court interprets the law.

If he is saying the political order which produces the law is subservient to Christianity, how can we feel this is going to be an open-minded judge?

He also stated in the same speech that he was ''left with some unease about this notion that Christianity and the political order should be assigned to separate spheres, in part because it seems unavoidably ambiguous.''

I have no desire to cause Mr. Holmes any additional ''unease.'' But if he is confirmed today, that is what he will have, whenever a question about the separation of church and state comes before him. The First Amendment in reality is not ''ambiguous.'' It clearly states that there shall be ''no law respecting an establishment of religion.''

My concerns go further than First Amendment cases. If Mr. Holmes becomes a U.S. district court judge, how can we be sure he will separate his faith from the law? How will the parties before him know he is basing his rulings on the U.S. Constitution rather than on his spiritual faith?

This is not a statement on belief. I respect Mr. Holmes' right to his own faith, and I generally believe that a strong and abiding faith is a positive, not a negative, factor in reviewing an individual for public service. But here, where a nominee has himself said that faith must trump the law, it would be troubling at best to grant that nominee a lifetime seat on a Federal bench where law must trump all else, if our system of justice is to work.

Mr. Holmes' disconcerting views about the Constitution go beyond what he thinks about a particular area of law. He has expressed support for the concept of natural law, which holds there are laws that trump the law of the Constitution.

Natural law, simply put, holds that the Constitution is not the supreme law of the land. Rather, those who believe in natural law would subordinate the Constitution to some higher law. This concept is starkly at odds with the role of a Federal judge, who must swear to uphold the Constitution. But Mr. Holmes says that natural law trumps, as I understand it, the Constitution which he takes an oath to uphold.

In an article three years ago, in 2001, he wrote:

[T]he Constitution was intended to reflect the principles of natural law.

In response to a written question from Senator DURBIN, Mr. Holmes wrote:

[M]y view of natural rights derives from the Declaration of Independence.

Now the Declaration of Independence, which all Americans joyfully celebrated this past weekend, is the source of our Nation's liberation. The Constitution is the source of our Government and our laws. So they are separate and distinct from one another. This is a critical distinction, and I am not sure Mr. Holmes appreciates that. If he reads natural law into the Constitution, then he is not reading the same Constitution as the rest of America.

There is one final issue I would like to address. At the end of last month, on June 24, we confirmed six judges in a single day. Since the accommodation of the White House, the Senate has confirmed 24 of the 25 judges to which we agreed to proceed to floor votes. We have confirmed 28 nominations this year alone, including 5 circuit court nominations. And the Senate has confirmed 197 judges since President Bush was elected as our President.

I have always maintained my own counsel when it comes to the confirmation of judicial nominees. I do not use my blue slip. I do not make a decision until after the individual has a hearing and generally until after he or she has answered the written questions. I have always tried to see the potential for

good in the nominees who come to us. When the President nominates a person to the Senate, it is my feeling we should do everything we can to respect the President's choices, while still taking with the utmost seriousness our own constitutional obligation to advise and consent.

To that end, as I said before, I have never before opposed a nominee to a U.S. district court. I have also supported nominees to the Court of Federal Claims—Susan Braden, Charles Lettow, and Victor Wolski—whom other Democrats opposed.

Even at the level of the U.S. Court of Appeals, I have supported nominees whom others have opposed. I supported the nomination of Jeffrey Sutton to the Sixth Circuit, and I was the only Democrat on the Judiciary Committee to do so. I supported the nomination of John Roberts to the DC Circuit, even though three Democrats on the Judiciary Committee opposed him. I supported the nomination of Deborah Cook, also to the Sixth Circuit, when many of my colleagues voted against her.

In all of these instances, I had confidence the nominees would interpret the Constitution and the Nation's laws fairly and without bias. And that is all I ask. I would expect these nominees to be conservative, and that is not a problem, as long as their views are not contrary to what a majority of Americans believe and the judicial thinking of a majority of mainstream judges. But I do not feel that way about Mr. Holmes.

I have no doubt he is a man of deep and sincere beliefs, and in this great Nation he is entitled to those beliefs. I commend him for his faith. But how can I entrust protection of separation of church and state, protection of the civil rights laws, protection of a woman's right to choose—all of the major values which come before a Federal court judge—with the comments he has made? Because these comments are robustly extraordinary. I would never dream of these comments being made by someone who aspires to be on a Federal court of law. And if you have no judicial experience by which to evaluate whether he can in fact separate himself from his views, it is a very difficult nomination to swallow.

As a woman, how can I possibly vote for someone to go on to a Federal district court who believes women should be subordinate to men, when that judge is going to have to look at employment discrimination, sexual harassment cases, who in the modern day and age, as a practical tenet of public thinking, believes—and believes strongly enough to write about it and say it to the world—that women should be subordinate to men and a wife should be subordinate to her husband, and expect any woman who comes before that judge is going to have fair and even treatment?

For over 20 years, Mr. Holmes has been making extremist statements on women, on race, on abortion, on the role of religion in society. His statements in each individual area, as I have said, are startling. Taken together, he has given us more than enough reason to fear he will continue to make radical statements when his words have the force of law. And that is a risk I, for one, do not want to take.

So I urge my colleagues today to join me in opposing this confirmation and voting no. It will be my first one in 12 years.

I yield the floor.

Mr. SESSIONS. Mr. President, I believe the Senator from New Mexico is to be next.

Mr. DOMENICI. Mr. President, I inquire, how much time does the Senator have remaining on the subject matter at hand?

The PRESIDING OFFICER. The Senator from Alabama has 83½ minutes, almost 84 minutes, under his control; and the opposition has about 31½ minutes.

Mr. DOMENICI. Mr. President, I ask the Senator if he will yield me up to 10 minutes.

Mr. SESSIONS. Mr. President, I am delighted to yield the Senator from New Mexico up to 10 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that I be permitted to speak for 10 minutes as in morning business.

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

(The remarks of Mr. DOMENICI are printed in today's RECORD under ''Morning Business.'')

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

Mrs. HUTCHISON. Mr. President, I yield myself up to 10 minutes off the side of Senator LEAHY.

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

Mrs. HUTCHISON. Mr. President, I rise to discuss Leon Holmes' nomination to the bench of the U.S. District Court for the Eastern District of Arkansas. Article II, section 2 of the Constitution imposes profound responsibility on the U.S. Senate to advise and consent on appointments of individuals to lifetime positions.

I rarely voted against a judicial nominee or even opposed one under President Clinton. I have never opposed one under President Bush. On the rare occasion when I did oppose a judicial candidate, it was because a nominee had failed to show proper judicial temperament, or if questions about judicial philosophy arose, and there was no judicial record on which to base a vote of confidence.

I take very seriously the responsibility of confirming an individual for a lifetime appointment. These Federal judges do not answer to anyone after they take office. So when someone's views raise a question or concern and there is no record as a judge to show he or she can set personal views aside, I believe caution is warranted. For my vote, such is the case with Leon Holmes.

Dr. Holmes is a gifted man and a capable attorney. He has had a strong career and demonstrated commitment to his community. His rich spiritual conviction and work ethic are traits for which he is commended. I have listened to Dr. Holmes' supporters. I read statements in support of his candidacy presented by the Department of Justice. I know his distinguished career. I have read carefully his writings and public statements, including those for which he has subsequently clarified or apologized. I met Dr. Holmes to talk about his nomination.

Mr. President, we have made mistakes like this in the past. Last month a judge on the Second U.S. Circuit Court of Appeals, a judge who was confirmed unanimously by the Senate in 1994 with my vote, made a disturbing public speech. In it, he compared President Bush's election in 2000 to the rise of power of Mussolini. The judge has, of course, apologized. We have all made remarks we wish we had not made. But in this case, coming from a judge, the blatant partisanship and political bias revealed by this remark, reduced the value of the subsequent apology. Now, it is a fair question, if a Republican-oriented litigant comes to the Second Circuit, can he or she be assured of an impartial justice by that judge?

In 1980, Leon Holmes wrote:

> The concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.

I differ with him absolutely on this issue.

If one rape victim is pregnant, she deserves protections and rights. She is a victim our society must acknowledge. What of the 14-year-old pregnant girl—a victim of incest from her father? Should she be cast aside as inconsequential? If you talk to any person who has served on a grand jury, in any urban area of our country, they have seen such a case. It happens. Thousands of rape victims in our country become pregnant every year. The Houston Chronicle recently reported that the American Journal of Preventive Medicine estimates 25,000 rape-related pregnancies occur annually. Are these victims to be ignored by our laws and society?

To his credit, Dr. Holmes has acknowledged that these comments were insensitive, but in conjunction with his other writings, that isn't enough for a lifetime appointment to a federal judgeship.

My vote will not be in any way related to his views on abortion or his personal religious beliefs. It is based on his body of statements over a 25-year period that lead me to conclude he does not have a fundamental commitment to the total equality of women in our society.

I have supported all of President Bush's previous nominees. In each instance, if there has been a controversy, I have tried to make an independent judgment without employing a litmus

test, and without employing my own discrimination based on the nominee's personal practices or ideologies. In each case, I felt the candidate met the requirements. But I have a constitutional role that I must, in good conscience, uphold as I see it. I believe in the overwhelming majority of cases, the President should be granted his appointments to the bench. The role given to the Senate was to allow all possible information about a nominee to come forward to assure that a person is fit. Personally, I doubt that the writings of this nominee were known to the Administration when the appointment was made. But since his statements have come to the attention of the Senate, we must use our judgment about the overall ability of this nominee to give impartial justice in all cases.

I conclude that I cannot provide my consent for Leon Holmes.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I want to share some thoughts about the Holmes nomination. I feel very deeply about it. I respect so much my friend, the Senator from Texas, and her service in this body. I will say that she and I have talked about it before. I think we are missing something here. I urge her to reconsider the position she has taken, although I know she has taken it carefully and I doubt that is likely. But I urge her and others to consider what we are doing here, about how we vote on judges.

Let me just say that Americans and people around the world have various beliefs, and to some people different beliefs are viewed as strange. Those with religious beliefs may have different views on some issues than those who don't have religious beliefs. There is quite a lot of that. We don't all agree. We have different views about whether there is a Trinity, or what do you think about the virgin birth, and issues of all kinds. We have a lot of differences of opinion.

We have a view in this country that there cannot be a religious test for a judge or any other position in Government. There cannot be a religious test that you can put on them, saying you have to have a certain religion or certain belief before you can be an official in this Government. No, that is not true. We should not do that.

I guess what I will first say—and I hope I can be clear about this—we differ in our religious principles. It has been suggested that Mr. Holmes' religious principles are extreme. I say to you that his principles are consistent with the Catholic Church's principles. What he has said in every writing I have seen, and as I understand it, they are perfectly consistent—in fact, he defended classic Catholic doctrine. He defended classic Catholic doctrine. Regardless of whether he had a personal view that was somewhat unusual about his religious faith, that is not the test we have here. The question is, Will his personal religious beliefs he may adhere to strongly interfere with his ability to be a good judge?

He and his wife wrote a letter to a church in a church newspaper to discuss how they have ordered their marriage, and they have ordered it in the classical terms of Christianity. As a matter of fact, I think the Baptist Church recently affirmed a similar position in their denomination. It is the second largest denomination in the U.S.—second to the Catholic Church. That is not an extreme view. Whether you agree with it, it is scriptural, it is Christian doctrine. He defended and explained and wrote about that.

Isn't it good that we have a nominee for the Federal bench who is active in his church, who thinks about the issues facing his country and writes about them and talks about them? That is a healthy thing. The question is—and it is legitimate for those who are concerned about those views—if they don't agree with his view on abortion or on how marriage is arranged, to inquire of the nominee whether those views are so strong they would affect his or her opinions from the bench. That is the test. If we get away from that, we have a problem.

What is going to happen when we have a Muslim who has been nominated here or an Orthodox Jew, or any other denomination that doesn't agree with us on religious beliefs? Are we going to demand that they come before the Senate Judiciary Committee and renounce their faith as a price to be paid before they can be a Federal judge? No, sir, that is wrong. This is big-time stuff; this is not a little iddy-biddy matter, Mr. President. We should not be in that position. Yes, inquire if the person's views are so strongly held that they would impair his ability to be a Federal judge. Yes, ask whether they are a good lawyer, or do they have a good reputation among the bar, or do people respect their integrity, do they have good judgment, do people like and admire them. Ask those things. Ask whether the person has lack of judgment. But don't say: I don't agree with your theology on marriage; I don't agree with your church's view on abortion; therefore, I am not going to vote for you. That is a dangerous thing. It should not be done. It is a mistake for us to head down that direction. I cannot emphasize that too much.

This is wrong. We should not do this. It is not the right way to evaluate Federal judges. I understand when somebody says: I just feel strongly about this deal on marriage that he and his wife wrote. I feel, feel, feel. We need to stop thinking like that and not be so much worried about how we feel, and we better think about the consequences of our actions and our votes.

This is a dangerous precedent. I respect Judge Holmes. He is a man who has reached out to the poor, helped women lawyers to an extraordinary degree, helped them become partners in his firm. He has a wonderful wife who respects him and defended him in a real hot letter in response to the criticism of the article that she and Judge Holmes wrote. I think we ought to look at that.

We have confirmed people to the bench that have made big mistakes in my judgement—we have confirmed people to the bench that have used drugs, yet, we are now debating keeping this man off the bench for his religious writings. Would Mr. Holmes be in a better position with members of this body if he had smoked dope instead of written religious articles? That should not be so.

Let's look at his basic background and reputation for excellence. Of course, we know the two Democratic Senators from his home State of Arkansas support his nomination. So he has home State support.

We know the American Bar Association rated him their highest rating, ''well-qualified.''

We know he is probably the finest appellate lawyer in the State of Arkansas.

We know the Arkansas Supreme Court, when at various times they need a lawyer to sit on that court, they have called him two or three times to sit on the court.

He is one of the most respected lawyers in the State of Arkansas.

He was Phi Beta Kappa at Duke University. I think he was No. 1 in his class in law school.

This is a man of integrity, of religious faith and conviction, who is active in his church, who has reached out to the poor all his life, tried to do the right thing, and he is the one who comes up here and gets beaten up.

This is what his hometown newspaper, the Arkansas Democrat Gazette, said. These are the kinds of comments from the people who know him:

> What distinguishes Mr. Holmes is a rare blend of qualities he brings to the law—intellect, scholarship, conviction, detachment, a reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge. He would not only bring distinction to the bench, but promise. In choosing Leon Holmes, the President could bequeath a promise of greatness.

I think that is high praise. That is a beautiful comment. I suggest that is something anyone would be proud to have said about them.

He has practiced commercial litigation at the trial and appellate level in State and Federal courts. He has acquired significant courtroom experience. He is currently a partner at Quattlebaum, Grooms, Tull & Burrow in Little Rock. He was rated ''well-qualified'' by the ABA.

He knows the value of hard work. He came from humble roots and is the only one of his seven siblings to attend college. He worked his way through college, finished law school at night while working a full-time job to support his family.

He is an accomplished scholar. As I said, he finished at the top of his class, was inducted into Phi Beta Kappa while a doctoral student at Duke University. He was named outstanding political science student upon graduation from the college. That is pretty good. Duke University is a pretty fine university.

During the academic years of 1990 to 1992, he taught a variety of courses at Thomas Aquinas College in California. He taught law at the University of Arkansas during the year he clerked for Justice Holt of the Arkansas Supreme Court. One does not get selected to be a law clerk for a supreme court judge if one is not good. He displayed wide-ranging academic interest. His doctoral dissertation discussed the political philosophies of W.E.B. Debois and Booker T. Washington. It analyzed the efforts of Martin Luther King, Jr., and has made efforts to reconcile their views. He has written substantial essays dealing with the subjects of political philosophy, law, and theology. He has been active in the bar in Arkansas. He taught continuing legal education courses on numerous occasions. He has been awarded the State bar's best CLE award four times. He sits on the board of advisers of the Arkansas Bar Association. He chaired the editorial board for the bar's education for handling appeals in Arkansas.

That is pretty good. The Arkansas Bar does a publication on how to handle appeals in Arkansas. He was chosen to chair the editorial board for that publication. I submit to my colleagues that his peers think he is a good lawyer.

He sits on the judicial nominations committee for the Arkansas State courts which recommends attorneys to the Governor for judicial appointment in supreme court cases where one or more justices recuse themselves. He is one of a top handful of appellate lawyers in Arkansas, and in 2001, the Arkansas Bar Association bestowed its writing excellence award on Mr. Holmes.

On two occasions Leon Holmes has been appointed to serve as a special Arkansas Supreme Court judge, which is a real honor for a practicing attorney. The judges have praised his service in those cases, and more than one has urged him to run for a seat on the Arkansas Supreme Court. So he is well respected by the plaintiffs bar in Arkansas.

Mr. Holmes is currently defending on appeal the largest jury verdict ever awarded in Arkansas history. It is the case of a nursing home resident who allegedly died from neglect. He is representing the plaintiffs side on appeal.

If you are a plaintiff lawyer and you won in trial the largest civil judgment in Arkansas history, and it is on appeal and you want a lawyer to represent you, you want the best lawyer you can get, and you have the money to get that lawyer, you have a verdict worth millions, probably hundreds of millions of dollars—I do not know. Who did they choose out of the whole State of Arkansas? Leon Holmes. What does that say? They put their money on him. Their case was put on his shoulders.

Look, he has given back to the community. This is not a man who is selfish as a practicing lawyer just to see how much money he can make. He was a habeas counsel for death row inmate Ricky Ray Rector, the mentally retarded man who was attempting to avoid execution. It came before then-Arkansas Governor Bill Clinton. He refused at that time to commute the death sentence. But Holmes helped prepare the case for the evidentiary hearing in Federal court after habeas had already been filed.

Not many big-time civil lawyers give their time to represent poor people, or mentally retarded people on death row. Holmes represented a Laotian immigrant woman suffering from terminal liver disease when Medicaid refused to cover treatment for a liver transplant. Do my colleagues think he made a bunch of money off that case? He did it because he thought it was the right thing to do. He helps people who are weak and do not have fair access to the courts.

He represented a woman who lost custody of her children to her ex-husband, who could not afford counsel on appeal. He represented an indigent man with a methamphetamine felony history in connection with traffic misdemeanors.

He has given back to his community outside the law, also. He was a house parent for the Elan Home for Children while a graduate student in North Carolina. He served as director of the Florence Critten Home of Little Rock, helping young women cope with pregnancy.

He is partner with Philip Anderson, a former president of the American Bar Association who does not share Judge Holmes' views on a lot of issues politically, but he strongly supports him as an excellent judge, as do a large number of women.

Let me read some of the people who know him. This is what his history shows. Some say, well, we do not know. He has these religious beliefs. What do we know about him in practice? Will he get on the bench and do all of these horrible things? It is not his record to do that kind of thing.

Female colleagues from the Arkansas bar who know him support him strongly. This is what one said:

> During my 7 years at Williams & Anderson, I worked very close with Leon. We were in contact on a daily basis and handled many cases together. I toiled many long hours under stressful circumstances with Leon and always found him to be respectful, courteous and supportive. I was the first female associate to be named as a partner at Williams & Anderson. Leon was a strong proponent of my election to the partnership and, subsequently, encouraged and supported my career advancement, as well as the advancement of other women within the firm.

So they say, well, he and his wife wrote this article quoting St. Paul and we think he does not like women. What about him being a strong supporter of this woman being the first female partner at his law firm?

Continuing to quote from the letter:

> . . . Leon treated me in an equitable and respectful manner. I always have found him to be supportive of my career . . . Leon and I have different political views; however, I know him to be a fair and just person and have complete trust in his ability to put aside any personal or political views and apply the law in a thoughtful and equitable manner.

That is Jeanne Seewald in a letter to Chairman HATCH and Senators LEAHY and SCHUMER dated April 8 of last year when this issue came up. So this lady does not share his political views, or I assume his views maybe on abortion or other issues, but she knows he will be a fair and good judge.

Here is another letter:

> Leon has trained me in the practice of law and now, as my partner, works with me on several matters. His office has been next to mine at the firm approximately two years. During that time, I worked with Leon as an expectant mother and now work with him as a new mother. Leon's daughters babysit my 11-month-old son.
>
> I value Leon's input, not only on work-related matters but also on personal matters. I have sought him out for advice on a number of issues. Although Leon and I do not always see eye-to-eye, I respect him and trust his judgment. Above all, he is fair.
>
> While working with Leon, I have observed him interact with various people. He treats all people, regardless of gender, station in life, or circumstance, with the same respect and dignity. He has always been supportive of me in my law practice, as well as supportive of the other women in our firm. Gender has never been an issue in any decision in the firm.

That is a letter from Kristine Baker, April 8, to Senators HATCH, SCHUMER, and LEAHY.

Another female attorney in Little Rock, AR, Eileen Woods Harrison, states:

> I am a life-long Democrat and also pro-choice. I commend Mr. Holmes to you. He is a brilliant man, a great lawyer and a fine person.

That was a letter sent to Senators HATCH, SCHUMER, and LEAHY.

Another one states:

> I heartily recommend Mr. Holmes to you. He is an outstanding lawyer and a fine person. While he and I differ dramatically on the pro-choice, pro-life issue, I am fully confident he will do his duty as the law and facts of a given case require.

One more—well, let me ask right there, has there been any instance shown where he has failed to comply with the law in his practice, in any way shown disrespect to the court, or in any way said a judge or a lawyer should not obey the law and follow the law? No, and these letters say that.

Beth Deere, in a letter dated March 24, 2003, to Senators HATCH and LEAHY, states:

> I support Leon Holmes because he is not only a bright legal mind, but also because he is a good person who believes that our nation will be judged by the care it affords the least

and the littlest in our society. I am not troubled that he is personally opposed to abortion. Mr. Holmes is shot through with integrity. He will, I believe, uphold and apply the law with the utmost care and diligence.

Well, I do not know what else can be said. The only thing I can see is that people do not like his views on abortion, they do not like the views on family he and his wife have, and they are holding him up for that. His views are not extreme. His views are consistent with the faith of his church, not only his church, but the majority of Christendom.

Now does that make someone unqualified to be a Federal judge? Is the rule that no true believers in Catholic doctrine need apply for a Federal judgeship? They say that is not it; they say that they are not anti-Catholic. I am not saying anybody is anti-Catholic. I am saying a lot of people do not agree with the doctrine of a lot of Christian churches and that should not affect how they vote on a nominee if the nominee is proven to be committed to following the law.

It is all right, of course, for a person to have a religious faith; everybody says that. We would never discriminate against anybody who has religious faith. But if their faith calls on them to actually believe something and they have to make choices and those choices are not popular or politically correct at a given time, but they adhere to them because they believe in them, it is part of the tenets of their faith and the church to which they belong—and I would note parenthetically no church spends more time studying carefully the theology of its church and the doctrines of its church than the Catholic church—if they are consistent with that church's beliefs, they now no longer can be confirmed as a Federal judge?

It is all right if one goes along and does not ever do anything to actually affirm aggressively the doctrine of their church. In other words, if one goes to mass and never says anything about the question of abortion or family or other issues outside of the church doors, then they are all right, but if someone actually writes an article somewhere and says, I believe in this, they risk being punished. Actually, in this case it was an article written from one Catholic couple to other Catholics discussing in depth some of the doctrines of the church and how they believed in them. So the Holmes shared their thoughts within their church family about how the church's views ought to be interpreted and expressed their personal views about how it ought to be, does that disqualify them from being a Federal judge? No. I think this is a bad policy.

The question should simply be this: Will he follow the law of the U.S. Supreme Court on abortion even if he does not agree with it? And the answer is, yes. He has already stated that unequivocally. His record shows that.

The lawyers who practice with him who are pro-choice, women lawyers who affirm him so beautifully and so strongly, say he is going to follow the law. The American Bar Association, which is pro-choice and to the left of America on a host of issues, gave him their highest rating of well qualified.

The Arkansas Supreme Court has asked him to sit on their court at various times because they respected him. In 2001, he wrote the best legal writing in the State.

Some say they are worried because he has never been a judge. So he has not sat on the bench before. I do not think that is a matter that disqualifies him. Most people who become judges have not been a judge before on the district bench.

So what do we do to assess how he will act as a Judge? We talk to the lawyers, talk to the American Bar Association, talk to other judges in the State, and ask: What is this person like?

They all say he is first rate. Both Democratic Senators from Arkansas, who know this man, known lawyers who know this man and are familiar with his reputation, support him.

As one of our Members said earlier, in criticizing him, they asked: How can I vote for someone who believes women should be subordinated to men in this modern age?

That is not the gist of the Pauline doctrine in Ephesians. Mrs. Holmes wrote to tell us that she is not subordinate and she believes in equality and that their joint article did not mean anything other than that.

The Catholic Church does believe in ordination of only males. Some may disagree with that. I am a Methodist. We, I am pleased to say, ordain women. There are many women ministers in our church. But I want to ask again, if a person agrees with the doctrine of his church, which has been discussed and considered by the finest theologians for hundreds of years, and he agrees with that, and we don't agree with that, we don't think that is right, do we now think we should vote against that person because we don't agree with his religious beliefs? It is very dangerous to do that. We should not do it.

I ask again, what about other denominations and other faiths that have different views from ours? We may find them far more offensive than this. Are we going to refuse to vote for them? Are we going to insist that those people renounce the doctrines of the church to which they belong as a price to be paid before they can become a Federal judge? I hope not. I think we are making a mistake.

If there was something which would show that Judge Holmes could not follow the law, was not a first-rate attorney, did not have the respect of his colleagues, did not have the respect of the American Bar Association, had women lawyers who thought he was a sexist and unfair in the treatment of them and they came forward and said so, OK, I might be convinced. But none of that occurs here. That is not what we have. We have nothing but his personal beliefs that are consistent with the faith of his church. Some people don't agree with his views regarding his faith and tell us that they are going to vote against him because of that. That is not a good idea; that is not a good principle for us in this body to follow.

This is what his wife wrote. The first thing I will just note in here, she said, ''The article is a product of my''—she italicized ''my''—''my Bible study over many years of my marriage.''

But it was a joint article. She says this:

> I am incredulous that some apparently believe my husband views men and women as unequal when the article states explicitly that men and women are equal. The women who have worked with my husband, women family members, women friends, can all attest to the fact that he treats men and women with equal respect and dignity. I can attest to that in a special way as his wife.

She noted this was an article from a Catholic couple to Catholic laypeople. ''It has no application to anyone who is not attempting to follow the Catholic Christian faith.'' She also notes that Leon cooks his share of meals, washes the dishes, does laundry, and has changed innumerable diapers, and she has worked many years outside the home, although right now she does not.

I would like to have printed in the RECORD an article from the Mobile Press-Register of the State of Alabama. It notes the similarity to the treatment given to Alabama's attorney general, Bill Pryor, when he was nominated to the Federal court of appeals, a man who also is a thoughtful, intelligent, committed Christian Catholic. This is what the Mobile Press-Register says:

> The example of Bill Pryor should be illustrative in the case of Leon Holmes as well. When a nominee enjoys strong bipartisan support from the home-state folks who know him best, and from some of the top non-partisan legal officers in the country, that support should weigh far more heavily than should the out-of-context criticisms from ideological pressure groups whose fund-raising prowess depends on how much havoc they wreak on the nomination process.

I know Attorney General Bill Pryor was asked about his personal religious views on issues such as abortion. He answered honestly and truthfully and consistently with his faith, a faith that he studied carefully. People didn't like it: Well, I don't agree with you on abortion, they say.

So what. We don't have to agree on abortion to support somebody for a Federal judgeship. He affirmed and had demonstrated that he would follow any Supreme Court rulings and could demonstrate as attorney general of Alabama he followed those rulings. That wasn't enough for them. They weren't satisfied.

I ask unanimous consent this article dated July 5, 2004, be printed in the RECORD.

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

[From al.com, July 5, 2004]

PRYOR'S EXAMPLE BEARS ON HOLMES CONTROVERSY

U.S. Senators considering how to vote Tuesday in a new judicial nomination battle should reflect on a lesson provided by a decision just written by Judge William Pryor of the 11th U.S. Circuit Court of Appeals.

Judge Pryor, of course, is the Mobile native and former Alabama attorney general whose own nomination to the bench was long blocked by smear tactics employed against him by liberal opponents. When Senate Democrats used a questionable filibuster to deny Mr. Pryor the ordinary lifelong term as a judge, President George W. Bush gave him a special ''recess appointment'' to the bench that lasts only through the end of 2005.

One of the many cheap shots launched at Mr. Pryor during the confirmation battle was the charge that he was insensitive to women's rights. The allegation, based on a legal brief he filed on one technical aspect of a federal law, ignored the overwhelming bulk of his legal and volunteer work to secure protections for women.

One of Mr. Pryor's first decisions as a federal judge, released last Wednesday, proves again the illegitimacy of the original charge against him. The case involved a woman in Delray Beach, Fla., who claimed she was the victim of two counts of sex discrimination by her former employer. The district court had thrown out both of her claims on ''summary judgment,'' meaning it found so little legal merit to her allegations that the case wasn't even worth a full trial.

On appeal, however, Mr. Pryor reinstated one of the woman's claims and ordered it back to trial at the district level. His willingness—on well-reasoned legal grounds, we might add—to force the woman's case to be heard provides yet more evidence refuting the allegation that he somehow is hostile to women's rights.

HOLMES IS LIKE PRYOR

As it happens, another Bush nominee is facing similar, and similarly baseless, allegations. Arkansas lawyer and scholar Leon Holmes is due for a Senate vote on Tuesday. While no filibuster is planned against him, opponents hope to defeat him on a straight up-or-down vote by highlighting past statements of his that supposedly touch on women's rights.

The parallels to the Pryor nomination battle are striking, both because opponents are taking the nominee's statements out of context and because much of the opposition stems from factors emanating from the nominee's Catholic faith.

In the most prominent controversy, Mr. Holmes and his wife together wrote an article for a Catholic magazine that touched on Catholic theological teachings concerning marriage and gender roles in the clergy. Included was an explication of the famous lines in St. Paul's letter to the Ephesians that say, ''Wives, submit to your husbands as to the Lord.''

Aha! Sen. Dianne Feinstein of California asserted that this passage makes Mr. Holmes antagonistic towards women's rights. Never mind that in the very same article, the Holmes couple wrote: ''The distinction between male and female in ordination has nothing to do with the dignity or worth of male compared to female,'' and ''Men and women are equal in their dignity and value.''

Never mind that Mr. Homes has elsewhere written that ''Christianity and the political order are assigned separate spheres, separate jurisdictions.'' Never mind that a host of pro-choice, liberal women from Arkansas have written in favor of Mr. Holmes' nomination, nor that the Arkansas Democrat-Gazette has praised the ''rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment.''

And so on and so forth: For every out-of-context allegation against Mr. Holmes, there is a perfectly good answer.

BIPARTISAN SUPPORT

Philip Anderson, a recent president of the American Bar Association and a long-time law partner of Leon Holmes, endorsed Mr. Holmes: ''I believe that Leon Holmes is superbly qualified for the position for which he has been nominated. He is a scholar first, and he has had broad experience in federal court. He is a person of rock-solid integrity and sterling character. He is compassionate and even-handed. He has an innate sense of fairness.''

Finally, in what in less contentious times would end all questions about Mr. Holmes' fitness, both senators from his home state, Blanche Lincoln and Mark Pryor (no relation to Bill), have endorsed his nomination—even though he and President Bush are Republicans, while both of them are Democrats.

It would be virtually unprecedented for the Senate to turn down a candidate nominated by one party and supported by both of his home-state senators from the other party.

The example of Bill Pryor should be illustrative in the case of Leon Holmes as well: When a nominee enjoys strong bipartisan support from the home-state folks who know him bests, and from some of the top non-partisan legal officers in the country, that support should weigh far more heavily than should the out-of-context criticisms from ideological pressure groups whose fund-raising prowess depends on how much havoc they wreak on the nomination process.

Leon Holmes is no more antagonistic to women's rights than is Bill Pryor—who, it should be mentioned, is in the Hall of Fame of Penelope House, a prominent local women's shelter.

Mr. Holmes ought to be confirmed, and the character assassination must come to an end.

Mr. SESSIONS. Mr. President, I think we will soon be voting—at 5:30. I urge my colleagues to remember this. You do not have to agree with a nominee's personal religious views to support him or her as judge. The fact that you do not share a person's personal religious views on a host of different matters is not a basis to vote no. The question is, Will that person follow the law?

That is the right test. That is the classical test we have always had. We are getting away from it. We have Members I respect in this body who say we just ought to consider ideology, we just ought to consider their politics, just put it out on the table. Let's not pretend anymore that these things are not what some of my colleagues base their judicial votes on, let's put it out there.

But I say to you that is a dangerous philosophy because it suggests that judges are politicians, that judges are people who are empowered to make political decisions; therefore, we ought to elect judges who agree with our politics. It is contrary to the Anglo-American rule of law through our whole belief system in which judges are given lifetime appointments so they can be expected to resist politics and to adhere to the law as it is written and as defined by the Supreme Court of the United States. That is what it is all about. That is what we need to adhere to here. If we move away from that idea, if we suggest we no longer believe or expect judges to follow the law and not to be politicians, we have undermined law in this country to an extraordinary degree. The American people will not put up with it.

The American people will accept rulings even if they don't like them if they believe the court is following the law, if they believe the court is honestly declaring the Constitution. But if they believe our Supreme Court has ceased to do that, or any other judges in this country have ceased to do that, and they are then imposing their personal views—even though they have not been elected to office, don't have to stand for election for office, hold their office for life and they are unaccountable—they will not accept that.

There is a danger in America at this point in time. What President Bush is doing, day after day, week after week, is simply sending up judges who believe the law ought to be followed and they ought not to impose their political views from the bench.

How can we be afraid of that? Our liberties are not at risk by these judges, as one wise lawyer said at a hearing of the Judiciary Committee, of which I am a member. He said: I don't see that our liberties are at great risk from judges who show restraint. Our liberties are at risk from those who impose their political views from the bench.

I think Justice Holmes has demonstrated a career of commitment to the law. He has won the respect of both of the Democratic Senators from Arkansas. He has won the respect of the Supreme Court of Arkansas. He has won the respect of the American Bar Association, fellow women lawyers who worked with him, year after year after year. He is the kind of person we want on the bench, a person who truly believes in something more than making a dollar, who has represented the poor and dispossessed, who has spoken out on issues that are important to him, who is active in his church. That is what we need more of on the bench. I urge the Senate to confirm Leon Holmes.

I yield the floor.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the quorum call be charged equally to both sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. KENNEDY. Mr. President, I understand that we are under time control. I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I strongly oppose the nomination of Leon Holmes to a lifetime appointment to the U.S. District Court for the Eastern District of Arkansas. His record gives us no confidence that he will be fair in the wide range of cases that come before him, particularly in cases involving the rights of women, gay rights, and the right to choose. His record contains example after example of extreme views of the law that suggest he will not follow established precedent.

Every nominee who comes before us promises to follow the law, including laws in cases with which they disagree. Mr. Holmes is no exception. But the Senate's constitutional role of advise and consent gives each of us the duty to evaluate these claims carefully. It is clear from his record that Mr. Holmes has not shown the dedication to upholding constitutional principles and the judgment necessary for a Federal judge.

Mr. Holmes has expressed extraordinary hostility to equal rights for women. In 1997 he wrote that it is a woman's obligation to ''subordinate herself to her husband.'' He also wrote that a woman must ''place herself under the authority of the man.'' It doesn't get much more extreme than that.

In fact, Mr. Holmes has blamed feminism for the erosion of morality. He has written that ''to the extent that we adopt the feminist principle that the distinction between the sexes is of no consequence . . . we are contributing to the culture of death.'' Are we really expected to believe that someone with such medieval views will dispense 21st century justice?

This nomination is an insult to working women. It is an insult to all Americans who believe in fairness and equality.

Just last week we celebrated the 40th anniversary of the Civil Rights Act of 1964 which gave women equal opportunity in the workplace. Democrats and Republicans alike joined in celebrating that important law. If that celebration is to be more than lip service, we cannot approve this nomination.

Judges appointed to lifetime positions on the Federal court must have a clear commitment to the principles of equality in our basic civil rights laws. Mr. Holmes' view that a woman must ''place herself under the authority of the man'' does not demonstrate such a commitment.

I ask unanimous consent to be printed in the RECORD Mr. Holmes' article containing these statements.

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

GENDER NEUTRAL LANGUAGE—DESTROYING AN ESSENTIAL ELEMENT OF OUR FAITH

(By Leon and Susan Holmes)

Our whole life as husband and wife, as father and mother to our children; and as Catholic Christians, is based on the historic Catholic teaching regarding the relation between male and female.

So when that teaching is rejected, the rejection pierces the heart of who we are as persons, as family, and as Catholic Christians. Nothing causes us greater grief than the fact that the historic and scriptural teaching on the relationship between male and female is widely unpopular in the Church today. We have studied these teachings, prayed about them, and struggled to live them for the largest part of the almost 25 years we have been married; and we ask your indulgence and patience as we attempt to share the fruits of our reflection and struggle with you.

The historic teachings of the Catholic Church are grand, elegant, and beautiful. When they are unpopular amount Catholics, it is usually because they are not understood; and so it is; we think with respect to the teaching of the Church regarding the relationship between male and female. The passages of Scripture that call Christians ''sons of God'' and ''brothers'' are offensive only if they are misunderstood. The teaching that only males can be ordained to be the priesthood and the diaconate is offensive only if it is misunderstood. Far from being offensive, these teachings are elegant and beautiful; and true for this age, as for every age, because truth is eternal.

Catholic theology is essentially sacramental, which is to say that its teaching is permeated by and flows from the notion that there is an unseen reality that is symbolized by visible, external signs. We believe, for instance, that Christ was incarnate as a male because His masculinity is the most fitting sign of the unseen reality of His place in the Holy Trinity, who is revealed to us as Father, Son, and Holy Spirit. Our relationship to God is a part of this unseen reality, and it is twofold. In one aspect, we are related to God as individuals; in another aspect, we are related to God as a community. Individually, we are adopted into the same relationship to the God the Father as Christ enjoys,which is to say; we are all sons of God the Father and brothers of Christ. All of us, male and female, are equally sons of God and therefore brothers of one another. The equality of our relationship is destroyed when some of us are called sons but others are called daughters, some are called brothers but others are called sisters. Daughters have not the same relationship to their father as sons have. Daughters cannot be like their father to the same extent as can sons. Sisters have not the same relationship to brothers as brothers have to one another. Sisters cannot be like brothers to same extent as brothers can be like one another. Hence Scripture refers to all Christians—Jew and Greek, male and female, slave and free—as sons of God (Gal. 3:26) and brothers of one another to signify the equality, the sameness of our spiritual relationship in its unseen reality to God.

As a community, as a Church, we also have a relationship to God as the bride of Christ. This relationship is an unseen reality that is signified in the visible world by the relationship between male and female and especially by the relationship between husband and wife. Hence, the husband is to love his wife as Christ loves the Church; and as the Church subordinates herself to Christ, in that manner the wife is to subordinate herself to her husband. The verb used in Ephesians 5:24 is hypotassetai, which means to place one's self under. The Church is to place herself under the protection of Christ and ipso facto place herself under His authority. Likewise, the woman is to place herself under the authority of the man and ipso facto place herself under his authority. Both the man and the woman are to live so that their relationship is a visible sign of an unseen reality, the relationship between Christ and the Church. Distorting the relationship between male and female is as sacrilegious as profaning any of the other sacraments that by which God symbolizes a divine, unseen reality through tangible symbols.

The use of male and female to symbolize the relationship between Christ and the Church is pervasive in Scripture. In Leviticus, for instance, whenever a sacrificial animal was to stand for Christ, a priest, or a leader, the animal was required to be male; whereas, whenever a sacrificial animal was to stand for the common man or for the community, the animal was required to be a female. In the Gospels, Christ always forgave and never condemned women, though he sometimes condemned men. Women were always forgiven because the Church will always be forgiven. Men could be condemned for their sins because Christ was condemned for our sins. If we were to use ''gender neutral'' language to describe the relationship between Christ and the Church, we would destroy an essential element of our faith. To be true to the reality of the relationship, we must recognize Christ as the groom and the Church as the bride. Christ cannot be the bride, the Church cannot be the groom; nor can Christ and the Church both be groom or both be bride.

This unseen reality is signified once again by an outward sign within the Church, which ordains only males to those positions in the Church that represent Christ among us, the priesthood and the diaconate. Ignoring the distinction between male and female in ordination is like ignoring the distinction between male and female in marriage. It has nothing to do with dignity or worth of male compared to female. When a woman chooses to marry a man, it is not because she thinks men have more dignity or value than women. The suggestion that male-only ordination implies a devaluation of women is as silly as the suggestion that a woman devalues women when she looks exclusively among men for a husband. The assertion that males and females both should be ordained without regard to their sex is akin to the assertion that same-sex relationships should be regarded as having equal legitimacy with heterosexual marriage.

The demand of some women to be ordained is prefigured in the Old Testament when Korah and 250 ''well-known men'' claimed the right to offer sacrifice equally with Moses and Aaron because ''all the congregation are holy, every one of them, and the Lord is among them'' (Nm. 16:3). It is true that all the congregation are holy and the Lord is among them; but it does not follow that all are entitled to offer sacrifice. By the same token, it is true that men and women are equal in their dignity and value, but it does not follow that all are entitled to be ordained. Ordination does not signify the intrinsic worth or holiness of the one ordained; it signifies that the one ordained is to be another other Christ to the Church, which is to say another groom to the bride. A woman cannot be ordained, not because she is inferior in dignity to a man, but because she cannot be a husband to the Church, which is the bride of Christ.

In a way that we cannot understand, the relationship between the unseen reality and the visible signs is reciprocal. St. Paul says he was made a minister to make all men see what is the plan of the mystery hidden for ages in God who created all things, that through the church the manifold wisdom of God might now be made known to the principalities and powers in the heavenly places (Eph 3:10). He also says the apostles have been made a spectacle ''to the world, to angels and to me'' (1 Cor. 4:9). In the same vein,

he says a woman should have a veil on her head (as a sign of authority) ''because of the angels.'' It is an awesome thought that what we do somehow signifies the reality of the unseen world; but it is even a more awesome thought, that God calls us to make known the reality of the unseen world to the unseen world.

In the biological sphere, life depends on the relationship between male and female. In this respect, the biological sphere is a visible sign of the unseen reality of the spiritual realm in which life depends on the relationship of Christ and the Church. Sexuality is a ''great mystery . . . in reference to Christ and the Church'' (Eph. 5:32).

All of this is why denominations whose theology is not essentially sacramental have been quick to endorse artificial contraception, divorce and the ordination of women; and it is why they are much more open to the legitimation of homosexual relationships. Churches whose theology is essentially sacramental, which is to say the Catholic Church and the Orthodox Churches, cannot accommodate the spirit of the age with respect to these matters no matter how overwhelming the society pressure. To do so would be to repudiate the essence (in the strictest Thomistic sense of the word) of our whole theology. Apart from sacramental theology sexuality is just another physical function and the distinction between the sexes is no more significant than the distinction between right-handed persons and left-handed ones. When we treat the distinction between the sexes as of no consequence, we are parting from sacramental theology, which is to say we are parting form Catholicism, which is to say we are parting from Christianity.

It is not coincidental that this culture of death in which we live is a culture that seeks to eliminate the distinctions between male and female. It is not coincidental that the feminist movement brought with it artificial contraception and abortion on demand, with recognition of homosexual liaisons soon to follow. The project of eliminating the distinctions between the sexes is inimical to the transmission of life, which is the raison d'etre of that distinction in both the biological and spiritual realms. No matter how often we condemn abortion, to the extent we adopt the feminist principle that the distinction between the sexes is of no consequence and should be disregarded in the organization of society and the Church, we are contributing to the culture of death.

As Church, we are the bride of Christ. We are to submit to Him. This means in part that we are to take on the mind of Christ rather than adopt whatever paradigm prevails in the age in which we live. As Bishop McDonald said last January when talking about abortion, ''I do not want a Church that is right when the world is right, I want a Church that is right when the whole world is wrong.''

We write in a spirit of friendship, not of animosity. We have brought all five of our children into the Catholic Church. It is no exaggeration to say we have bet their eternal lives on the Church. At the same time, we have built our whole family life on the traditional and now unpopular teachings about the relationship between male and female. What are we to do when we see these pillars of our life start to separate and pull apart? How do we stand on both? How can we stand on only one?

Mr. KENNEDY. Mr. President, Mr. Holmes has expressed opinions that cast doubt on his fairness on other civil rights issues as well. He has criticized remedies to enforce the requirements of school desegregation under Brown v. Board of Education. He has written that Federal court orders requiring assignment of students to desegregate public schools are part of ''a cultural and constitutional revolution in the past 20 years . . . for which the Nation has never voted.'' He has called such remedies authoritarian and argued that it is an ''injustice,'' that overturning them would require a change in the Constitution.

I ask unanimous consent that Mr. Holmes' letters on this subject also been printed in the RECORD.

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

[From the Christian Science Monitor, Dec. 23, 1980]

Nina Totenberg asks in ''Did America vote for this, too?'' whether the people of the United States voted for ''a cultural and constitutional revolution.'' The truth is that the United States has undergone a cultural and constitutional revolution in the past 20 years, and the revolution is one for which the nation has never voted.

Seven years ago, seven members of the Supreme Court held that the abortion laws in all 50 states violate the 14th Amendment, despite the fact that virtually every state that ratified the amendment had a restrictive abortion law at the time. Eight years ago the Supreme Court held the death penalty laws in virtually every state to be in violation of the 14th Amendment, despite the fact that the very wording of the amendment acknowledges the authority of states to take life when done according to due process. Nine years ago the Supreme Court held that the 14th amendment grants to federal courts the power to order schools to bus students to achieve racial balance. Nineteen years ago the Supreme Court held that public schools are not allowed to authorize prayer as a part of their activities.

Combined, these rulings constitute a significant cultural and constitutional revolution. This revolution, not the conservative reaction to it, is the novelty on the American political scene. This revolution has been accomplished by authoritarian means, despite the charges that its opponents are authoritarians.

If we now submit these issues to the electorate or the legislative process, the only injustice will be that the opponents of the recent revolution will bear the burden of mustering a two-thirds majority in Congress and majorities in 38 states in order to restore the Constitution.

LEON HOLMES,
Augustana College, Rock Island, IL.

[From Daily Dispatch, December 24, 1980]

ABORTION ISSUE

TO THE EDITOR: In response to the misrepresentations of Murray Bishoff's recent letter, I make the following comments:

First, the HLA explicitly permits ''those medical procedures required to prevent the death of the mother'' Second, nothing in the HLA would affect the birth control pill or prevent anyone from buying and using contraception. Mr. Bishoff simply misstates the effect of the HLA on these issues. third, it seems to me that the language of the HLA neither explicitly allows nor explicitly prohibits the IUD and the morning after pill. Bishoff's concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami. Fourth, it is silly to say that such trivialities are the principal concern of either HLA proponents of opponents.

If Bishoff really is not ''anti-life'' and if he sincerely believes the HLA to be overly broad, he and others like him should propose a ''complex response'' to these ''complex issues.'' In the absence of an alternative proposal, I cannot help but think their criticism a dishonest effort to perpetuate the status quo, with some 1.8 million abortions per year performed, including 160,000 in the 6th, 7th and 8th months of pre-natal life. In light of these facts, it simply cannot be true that ''The reality is that no one likes abortion.''

Bishoff's letter contrasts ''a fetus'' with ''people.'' But the word ''fetus means, simply, a person developing in the womb. To continue our present policy is to give those persons in the womb no rights at all, not even the most minimal right, the right to life. I think that the abortion issue is the simplest issue this country has faced since slavery was made unconstitutional. And it deserves the same response.

LEON HOLMES,
Ass't Prof. of Political Science,
Augustana College, Rock Island.

Mr. KENNEDY. Mr. President, he opposed the Civil Rights Restoration Act of 1987, an act approved by a broad, bipartisan majority to restore the original meaning of title VI and title IX of the Civil Rights Act which prohibit discrimination in federally funded activities.

Mr. Holmes has also expressed views hostile to gay rights. At one point he even said he opposed the feminist movement because he feared it would bring ''recognition of homosexual liaisons.''

Mr. Holmes' record also indicates that he is intensely opposed to a woman's constitutional right to choose. In his answers to questions, however, he said that he disagrees with the Supreme Court's decision in Roe v. Wade, but he would not try to undermine Roe if he became a Federal judge. But merely repeating the mantra that he will ''follow the law'' does not make it credible that he will do so.

Regardless of the assurances he made after he was nominated for a Federal judgeship, no one looking at his record can avoid the conclusion Mr. Holmes has dedicated much of his career to opposing Roe v. Wade. It defies reason to believe he will abandon that position if he becomes a Federal judge.

In fact, he has demonstrated a clear commitment to using a variety of political and legal means to take away a woman's right to choose. His statements opposing it are among the most extreme we have seen.

He has said the concern expressed by supporters of choice for ''rape victims is a red herring because conceptions from rape occur with the same frequency as snow in Miami.'' According to the American Journal of Preventive Medicine, at least 25,000 pregnancies resulted from rape in 1998 alone.

Mr. Holmes has likened abortion to slavery and the Holocaust.

In the mid-1980s, Mr. Holmes helped write an amendment to the Arkansas Constitution to ban the use of any public funds for abortion, even in cases of rape or incest, and even if abortion was necessary to safeguard a woman's health.

In 1995, he stated the ''only cause that I have actively campaigned for

and really been considered an activist is the right to life issue.''

In 2000, he wrote an article expressing his approval of ''natural law,'' the idea that people have inalienable rights that precede the Constitution. That great phrase is part of the Declaration of Independence. But then Mr. Holmes went on to state any recognition of a right to privacy in cases such as Roe v. Wade is illegitimate and inconsistent with natural law. Supporters of Mr. Holmes' nomination say his statements do not show he will fail to enforce the law if he becomes a Federal judge. It is true that after he was pressed by several Senators, Mr. Holmes admitted his statement that pregnancies from rape occur as frequently as snow in Miami was too inflammatory. But this was more than an isolated statement—it came in the context of an extensive pattern of strident, anti-choice statements, writings, and actions over the past two decades. His cavalier dismissal of the problems facing rape and incest victims is consistent with his repeated attempts to repeal or severely limit the right to choose, even in cases of rape or incest.

Supporters of the nomination suggest many intemperate statements he has made say nothing about how he will interpret the law. But that defies common sense. Mr. Holmes is a self-proclaimed activist against a fundamental constitutional right. Why should we approve a nominee who has made such strong and intemperate statements against rights established in the Constitution? Why should we confirm a nominee who has stated women must be subservient to men? Even if we assume those strong opinions will somehow not affect how he interprets the law, they clearly do not reflect the judgment and temperament we expect from a Federal judge.

I respect the views of my colleagues from Arkansas who support Mr. Holmes' nomination. But too much is at stake. Once nominees are confirmed for the Federal courts, they serve for life, and will influence the law for years to come.

We all know the values Americans respect the most: the commitment to fairness, equality, opportunity for all, and adherence to the rule of law. The American people expect us to honor these values in evaluating nominees to the Federal courts, and our consciences demand it. Mr. Holmes has every right to advocate his deeply held beliefs, but his record and his many extreme statements—especially about women's role in our modern society—raise too many grave doubts to justify his confirmation, and I urge my colleagues to oppose his nomination.

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

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

Mr. SESSIONS. Mr. President, I want to respond to a few of the comments that have been made earlier today.

One of the complaints that has been made is that Leon Holmes, in a letter, said pregnancies from rape were as rare as snowstorms in Miami. I think there is a literary device called exaggeration for effect. I am sure he did not intend that literally. As a matter of fact, some of the studies at that time showed pregnancies as a result of rape to be very rare indeed. I think since then numbers have come out to show a larger number have resulted from rape.

Mr. Holmes apologized, not recently but a number of years ago, for that statement and, in fact, has written a nice letter in which he dealt with that explicitly and said that was not appropriate and noted he had matured over the years. I point out he wrote that letter before he became a lawyer in the early 1980s, or earlier, as a young man debating as a free American citizen an issue that was important to him.

So that is what he said. That is how that came about. He has apologized for it. I do not think it was malicious. I do not think he intended anything bad by it. I think he was trying to make the point that based on the evidence he had at the time not that many abortions occurred as a result of rape. But he has admitted that was wrong and he should not have used that kind of language. He has apologized to everybody he can apologize to. But it will not make much difference, I am sure, to some people.

I see the chairman of the Judiciary Committee in the Chamber, Senator HATCH.

I remember we had a young man who had gone off to college, I guess in his early twenties, and had used a college credit card to purchase illegal property for himself, and they found it in the dorm room. He went off to the Army and did well and went to law school and did well, and we considered that and sat down, and we felt this was not disqualifying.

So they say that as a young man he made this one statement and this is going to disqualify him from sitting on the bench? It was 24 years ago. Well, as if there is something bad about this man, his comment was on the only thing he has politically ever really been engaged with—the pro-life issue. His pro-life views are his religious belief. It is consistent with his church's belief. It is his personal belief. He believes it is a bad thing to abort human life. And he has been active out there as a private citizen—not as a judge, as a private citizen—advocating. But the complaints they had about him on this issue were over 20 years ago before he even got his law degree. So I think they are not persuasive in this debate.

He has also been attacked about the question of ''natural law.'' And he answered the questions of the Senate Judiciary Committee, by Democratic members, about when they asked him about it. He said:

> In my scholarly capacity, I wrote in my ''Comment on Shankman'' that there are no other provisions that open the door to natural law.

He was asked whether he said that you couldn't alter the Constitution on a natural law basis on a specific case. I believe one of the members of the committee asked him, what about any other case? And he said no.

He was asked another question:

> During his Supreme Court confirmation hearings, Clarence Thomas testified that he did not ''see a role for the use of natural law in constitutional adjudication.'' Do you disagree or agree? Please explain why or why not?

Mr. Holmes replied:

> As I have stated above, I do not believe that the courts are empowered by the Constitution to appeal to natural law as a basis for their decisions. The courts are given whatever authority they have by the Constitution. The Constitution does not authorize the courts to use natural law as a basis for overruling acts of Congress or acts of state legislatures.

The comment that he believes natural law overrides the Constitution is contrary to his personal religious views but proves that he will be a fair judge.

He was attacked viciously for the article he and his wife wrote about marriage. I will just note that he and his wife together were quoting the Pauline doctrine of marriage out of the book of Ephesians in the New Testament. It was written in a Catholic magazine for Catholic readership. It assumed certain background knowledge by the readers of the article on Catholic doctrine. It did not attempt to explicate Catholic theology for readers of other faiths who would lack that background and have difficulty understanding. Moreover, the main thrust of the article was to explain why gender-neutral language was inappropriate in the liturgy of a church. It did not focus on Catholic doctrine on marriage.

In a letter to Senator BLANCHE LINCOLN, a fine Senator from Arkansas who supports him and a Democratic Senator, he wrote this in explaining what he and his wife meant:

> The Catholic faith is pervaded with the view that the visible things symbolize aspects of the spiritual realm. This pervasive element of the faith is manifest in the teaching that the marital relationship symbolizes the relationship between Christ and the Church. My wife and I believe that this teaching ennobles and dignifies marriage and both partners in it. We do not believe that this teaching demeans either the husband or the wife but that it elevates both. It involves a mutual self-giving and self-forgetting, a reciprocal gift of self. This teaching is not inconsistent with the equality of all persons, male and female, and, in fact, in that column we say: ''[a]ll of us, male and female, are equally sons of God and therefore brothers of one another.'' This aspect of my faith—the teaching that male and female have equal dignity and are equal in the sight of God—has been manifest, I believe in my dealings with my female colleagues in our firm and in the profession as a whole.

Indeed, many of them support him quite strongly. I reserve the remainder of the time and yield the floor.

Mr. KYL. Mr. President, I rise today to respond briefly to the comments made by Members on the other side of the aisle about the nomination of J. Leon Holmes to be a District Court Judge for the Eastern District of Arkansas.

Mr. Holmes has been criticized for a number of comments—some of which are more than two decades old. Yet his opponents ignore the best evidence about Mr. Holmes: the people who have known him well throughout the past two decades of his legal career. As Senator LINCOLN of Arkansas recently noted in reaffirming her support for Mr. Holmes, letters of support from:

> the legal community in Arkansas, many of whom share different views than Mr. Holmes . . . describe him as ''fair,'' ''compassionate,'' ''even-handed,'' and ''disciplined.'' His colleagues hold him in high esteem.

That is from a press release of Senator BLANCHE LINCOLN, April 11, 2003. The other home State Senator, Senator PRYOR also, of course, a Democrat—supports Mr. Holmes.

Additionally, the strong support of Mr. Holmes' colleagues in the legal community caused the American Bar Association to give him its highest rating of ''well-qualified.'' Finally, the Arkansas Democrat-Gazette, Holmes' hometown paper, is intimately familiar with his record and strongly supports him. The paper, writing while Mr. Holmes was being considered, indicated that Mr. Holmes was a well qualified, mainstream nominee:

> What distinguishes Mr. Holmes is the rare blend of qualities he brings to the law—intellect, scholarship, conviction, and detachment. A reverence not just for the law but for ideas, for the life of the mind. All of that would shine through the clutter of argument that awaits any judge . . . . He would not only bring distinction to the bench but promise. . . . In choosing Leon Holmes, [the President] could bequeath a promise of greatness.

That is from an editorial, Name on a List in a Field of Seven, One Stands Out, Arkansas Democrat Gazette, Dec. 1, 2002, at 86.

It is easy to use out-of-context comments to paint an incomplete and inaccurate picture of a person. By looking at the entire context of Mr. Holmes' career, it is clear that he is held in high regard by those who know him and his work. This includes those who hold views contrary to those of Mr. Holmes, such as Stephen Engstrom, who on March 24, 2003 wrote to Chairman HATCH and Senator LEAHY:

> I heartily commend Mr. Holmes to you. He is an outstanding lawyer and a man of excellent character. Leon Holmes and I differ on political and personal issues such as prochoice/anti-abortion. I am a past board member of our local Planned Parenthood chapter and have been a trial lawyer in Arkansas for over twenty-five years. Regardless of our personal differences on some issues, I am confident that Leon Holmes will do his duty as the law and facts of any given case require.

Letters like this, from people who have known Mr. Holmes well in the context in which he would serve, are the best evidence regarding Mr. Holmes. It is always appropriate to consider questions raised about comments that a nominee has made in the past, and there certainly has been controversy about some of Mr. Holmes' statements. In this situation, I defer to those who know the nominee, and who are in the best position to put his statements into context. In this case, Mr. Holmes has overwhelming bipartisan support from those in his home State, especially those in the legal community, who have known him over the past two decades. Based on this evidence, I will support Mr. Holmes' confirmation to the Federal bench.

Ms. COLLINS. Mr. President, I rise today to speak on the nomination of Leon Holmes to be a district court judge for the U.S. District Court of Arkansas.

The ''advice and consent'' role given to the Senate in the U.S. Constitution is one of the Senate's most solemn duties, and one to which I give the utmost care. Since Federal judges serve for lifetime terms, I carefully review every nominee to ensure that he or she is well-qualified and possesses the proper professional competence and integrity. Although, naturally, I apply no litmus test with respect to a nominee's personal beliefs, a commitment to following the law and applying it soundly is critical.

Perhaps the most important factor in evaluating a nominee is whether the person has the proper ''judicial temperament.'' There are two elements that must be considered when making this determination. The first involves what we would commonly understand the characteristics of good temperament to entail: would the nominee show courtesy and respect toward the practitioners and parties in his courtroom, while at the same time remaining confident and firm. From all I have heard about Mr. Holmes, he has a fine reputation for being both civil and professional, and I have no concerns about his nomination in this regard.

The second element of judicial temperament is more troubling in this case. It involves the deliberative mindset that is so valued in our jurists—the ability to separate emotion and personal views while applying the laws in a neutral and impartial manner. A judge must be able to transcend personal views in ruling on the matters before the court. It is for this reason that I am concerned about whether Mr. Holmes has the proper judicial temperament to receive a lifetime appointment to the federal bench.

After a careful review of the Judiciary Committee proceedings and Mr. Holmes' record, I have come to the conclusion that Mr. Holmes has not demonstrated the requisite ability to put aside his personal views and follow settled law. Over many years, Mr. Holmes has made a number of public statements, many in letters to the editor or in published articles, that raise serious questions about his ability to set aside his deeply held beliefs in order to impartially apply laws with which he disagrees. In fact, Mr. Holmes himself has characterized some of his previous comments as ''strident and harsh rhetoric.'' These statements were not made in the midst of casual conversation; they were largely written pieces that reflected the thoughts of Mr. Holmes on these matters.

In one extremely troubling instance, Mr. Holmes wrote that ''concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami.'' This appalling statement was not a chance comment, instantly regretted. Rather, Mr. Holmes included this statement in a letter he submitted for publication in The Daily Dispatch. In addition to the insensitivity and inaccuracy demonstrated by this comment, I believe it demonstrates that Mr. Holmes lacks the measured approach that is critical for sound judicial decision-making and the ability to set aside his personal views to apply settled principles of law.

In an April 11, 2004 letter to Senator LINCOLN, Mr. Holmes stated, ''I do not propose to defend that sentence, and I would not expect you or anyone else to do so.'' While in this same letter Mr. Holmes went on to apologize for this remark, he also acknowledged that his comment ''reflects an insensitivity for which there is no excuse.'' I agree with Mr. Holmes that there is no excuse for this statement, and his belated apology came only after he was nominated for the Federal bench.

Unfortunately, this type of comment is not an isolated one, but one in a series of unsettling statements Mr. Holmes has made in his writings over many years. For example, Mr. Holmes authored an article in 1997 in which he wrote that ''the wife is to subordinate herself to her husband,'' and ''the woman is to place herself under the authority of the man.'' In 1982, Mr. Holmes authored another letter for the Arkansas Gazette, entitled ''The Scary New Argument for Abortion,'' in which he compared certain arguments justifying abortion to arguments used to justify the actions of Nazi Regime. In 2001, he authored a comment for another publication in which he criticized both Roe and Casey as ''constitutionaliz[ing] the theory of moral relativism.''

Mr. President, let me be clear that I respect Mr. Holmes' personal views on abortion rights and am not opposing his nomination on those grounds. In fact, I have voted for many judicial nominees whose personal views were different from mine on the right to choose, among other issues. Nor do I believe that a nominee should be required to indicate how he would decide issues of substantive law that may arise in future cases. That is not the issue. The issue is whether Mr. Holmes

can put aside his personal views and follow settled law. Unfortunately, his strident statements about a woman's right to choose raise doubts about his commitment to following settled law, including Roe v. Wade.

I note that the Judiciary Committee reported Mr. Holmes' nomination ''without recommendation.'' It is extremely rare for a nominee to be passed from the Judiciary Committee in this manner. In fact, according to the Congressional Research Service, a district court nominee has never been reported out of Committee to the floor without recommendation. It is my belief that the Judiciary Committee's unusual action in this regard represents more than an historical quirk. In fact, it underscores the concerns about this nomination.

Because of the concerns raised by the many writings and comments of Mr. Holmes, of which I have cited only a few examples, I am unable to support his nomination. Our legal system depends on having judges who put an allegiance to following settled law above any personal beliefs. Mr. Holmes' history of inflammatory statements could cause the parties before him to question whether his strong personal beliefs would allow him to follow settled law and apply it in a fair and unbiased way. Mr. President, in light of these concerns, I will oppose this nomination.

Mr. SPECTER. Mr. President, after careful consideration, I am voting to confirm Mr. J. Leon Holmes for the United States District Court for the Eastern District of Arkansas.

I am concerned about certain of his writings/statements where he said: ''. . . concern for rape victims is a red herring because conceptions from rape occur with approximately the same frequency as snowfall in Miami . . .'', ''the wife is to subordinate herself to her husband'' and analogies of prochoice advocates to Nazis and abortion to slavery.

Mr. Holmes subsequently acknowledged ''using strident and harsh rhetoric'' on abortion and wrote to Senator Blanche Lincoln that ''I am a good bit older now and I hope more mature than I was at that time,'' blaming immaturity for his past harsh statements.

After discussing these issues with Mr. Holmes and noting that they were written some time ago, in 1980 and 1997 respectively, I do not believe that they reflect a fixed state of mind demonstrating a pre-disposition on judicial issues to come before his Court. I am also mindful that, as a District Court Judge, his decisions will be subject to review by the Court of Appeals. There would be a substantially different consideration if he were a Circuit Court Judge where he could cast the decisive vote on a three-judge panel where it would be unlikely to be reviewed by the U.S. Supreme Court since certiorari is granted in such a small number of cases.

Mr. Holmes has a very impressive academic record, graduating first in his law school class at the University of Arkansas, holds a Ph.D. in Political Science from Duke University and an M.A. degree from Northern Illinois University and is a member of Phi Beta Kappa.

In voting for confirmation of Mr. Holmes, I also noted that he has the support of both of his home State senators. In their floor statements, Senator BLANCHE LINCOLN and Senator MARK PRYOR noted that Mr. Holmes has broad support among pro-choice advocates from Arkansas, and both Senators concluded that he should be confirmed based on their knowledge of his legal skills, temperament and character and based on his reputation in their community among others who know him. In addition to their floor statements, I talked individually to Senators LINCOLN and PRYOR who amplified to me their solid support for Mr. Holmes.

For these reasons, I am voting to confirm Mr. J. Leon Holmes.

Mr. DASCHLE. Mr. President, I would like to discuss the nomination of James Leon Holmes to be a federal court judge in the district court of Arkansas. Before I address Mr. Holmes' record and qualifications, however, I think it is important to remind my colleagues of where we are in confirming President Bush's judicial nominees and how the Senate's record stands in historical context.

Thanks to bipartisan cooperation, the Senate has confirmed nearly 200 of President Bush's judicial nominees. This is more confirmations than in President Reagan's entire first term, President George H.W. Bush's presidency, or in President Clinton's last term. There are now only 27 vacant seats in the Federal courts, the lowest level of vacancies since the Reagan administration. In fact, more than 96 percent of Federal judicial seats are filled.

With 28 judicial confirmations in this year alone, this Senate is well ahead of 1996, the last time a President was running for re-election, and when Republicans allowed not one single judge to be confirmed until July. In 1996, Republicans allowed only 17 of President Clinton's judicial nominees to be confirmed, none of which were for the circuit courts. The Senate has confirmed five circuit court nominees this year. In total, the Senate has confirmed 35 circuit court nominees, which is more than President Reagan and President Clinton saw confirmed in each of their first terms.

There have been limited occasions where a nomination raises such significant concerns that members choose to oppose granting that nominee a lifetime appointment on the Federal bench. However, these cases have been few. Democrats have allowed 98 percent of President Bush's nominees to be confirmed. In addition, Democrats recently reached an agreement with Republican leadership and the White House to ensure that 25 judicial nominees, including Mr. Holmes, receive an up or down vote on the Senate floor. Any objective look at the record shows that Democrats have been willing to work with the White House to confirm President Bush's nominees to the Federal bench.

While Democrats have worked with Republicans to provide James Leon Holmes an up or down vote, I must oppose this nomination. I have great respect for my esteemed colleagues from Arkansas, who are supporting his nomination. However, my review of the nominee's record raises serious concerns about Mr. Holmes' ability to put his personal beliefs aside and decide cases based on the law. The Federal judiciary is too important to allow the appointment of any individual whose personal views interfere with his ability to interpret and adjudicate the laws of the United States impartially.

This controversial nomination has been pending for a vote on the Senate floor for more than a year. His nomination was reported out of the Judiciary Committee last year without recommendation, a rarely used procedure. Mr. Holmes has been a lawyer for 20 years, and has made countless insensitive and extreme statements over the years. In just one troubling example, Mr. Holmes described slavery as divine providence intended to teach whites to be more Christlike.

During his hearing before the Judiciary Committee, Mr. Holmes admitted that some of his remarks have been ''unduly strident and inflammatory,'' however, he also refused to promise to recuse himself in cases involving issues on which he already holds a committed position.

In fact, during his hearing one Republican Senator on the Judiciary Committee asked Mr. Holmes, ''why in the world would you want to serve in a position where you have to exercise restraint and you could not, if you were true to your convictions about what that role as a judge should be, how you could feel like you have done everything you could in order to perhaps achieve justice in any given case.'' Rather than assuring the Committee of his ability to separate his personal beliefs from his role as a judge, Mr. Holmes simply conceded that ''I know it is going to be difficult for this Committee to assess that question, and I know it is a very important question.''

Another example of why this concern was raised, in October 200, Mr. Holmes delivered a speech in which he stated that, ''Christianity, in principle, cannot accept subordination to the political authorities, for the end to which it directs men is higher than the end of the political order.''

Mr. Holmes is entitled to these beliefs. And one of the magnificent aspects of our country is that every American can hold such beliefs and advance them in the national discourse. But our country was founded on the separation of church and state and the administration and adjudication of our laws must remain free from the influence of any one religious perspective.

That separation has been one of the linchpins of American liberty. Because of the unique role of the federal judiciary in preserving our liberties, the Senate needs to be vigilant and ensure that no judge is able to impose his or her religious views on the rest of our country.

Mr. Holmes's actions and statements raise profound, and unanswered, questions about his willingness to set aside his personal beliefs when interpreting the law. Each member of the Senate has taken an oath to uphold and defend the Constitution and I believe that in good conscience we should not support the appointment of a judicial candidate who will not be able to do the same.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent that the vote on the nomination of J. Leon Holmes occur at 5:45 p.m. today and the time be equally divided. I further ask that when the Senate begins consideration of the class action bill this evening, it be for debate only.

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

The Senator from Nevada.

Mr. REID. Mr. President, how much time remains on the minority side?

The PRESIDING OFFICER. There is 15 minutes.

Mr. REID. We have Senator SCHUMER and Senator DURBIN here to speak. We can divide that time between the two of them, so 7½ to each Senator, with Senator SCHUMER first.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I am not sure I will take my entire 7½ minutes, but I do wish to speak for a minute regarding this nomination.

Let me say before we begin that judging a potential judge is not an easy question. The question many of us grapple with is, Would this judge follow the law or would this judge impose his or her own views instead of the law? That is a difficult question for most nominees. I think both sides of the aisle think that way.

Senator HATCH said a few years ago:

> I believe the Senate can and should do what it can to ascertain the jurisprudential views of a nominee, that a nominee will bring to the bench, in order to prevent the confirmation of those who are likely to become judicial activists.

Activists go both ways. You can be an activist and want to move the clock way ahead or you can be an activist and want to move the clock way back. If you want to move the body politic further to the left or further to the right, then jurisprudence would dictate. In my judgment, if you use that standard, it is not very difficult to come to the conclusion that Mr. Holmes does not deserve to be on the Federal bench.

It is true that when we evaluate candidacies of judges—at least some of us on this side; I for one—the fact they are district court nominees rather than court of appeals nominees means I give them a little extra room because they have less say and it is not an appellate court. But I think that Holmes is so far over, one of the most far over we have seen, that even though he is a district court judge, he did not deserve nomination, and he does not deserve approval by this body.

Mr. Holmes clearly has been an ardent and passionate advocate for causes in which he genuinely believes. I respect that advocacy. But some of the rhetoric he has used, some of the arguments he has advanced should give one real pause—they sure give me real pause—as to who cares about the impartial enforcement of the rule of law.

Mr. Holmes said that our Nation's record on abortion is comparable to our Nation's record on slavery. Perhaps even more disturbingly on this count, he said that rape leads to pregnancy about as often as snow falls on Miami. That last comment isn't about choice or abortion. It is offensive, it is disturbing, and it shows a pattern of thought. If it were a total aberration, then one might say, well, it is a mistake. But it wasn't.

According to the weather almanacs we have consulted, it snowed once in Miami in the last 100 years. According to a study published by the American Journal of Obstetrics and Gynecology, over 32,000 women a year become pregnant as a result of rape or incest. I would say to Mr. Holmes, those 32,000 women a year are not a myth. If you were looking at the facts, not what you want to believe because of your deeply held views but the facts, you wouldn't have said that. And certainly you wouldn't have said it casually without doing some research. These 32,000 women are not red herrings. They are real women in real pain, making traumatic decisions about whether to give birth to their tormentor's child.

Unfortunately, that remark may be the most egregious but it is hardly isolated. He said that it is a woman's duty to subordinate herself to her husband and to place herself under the authority of the man. You can see, I hope, why we might be concerned that he is insufficiently attuned to women's rights.

I know the President is going to go tomorrow to Michigan to speak on the issue of judicial nominees. I would like him to tell all the women in the audience what his nominee said about women and their rights. Let's see if he will talk about that tomorrow.

My guess is that 99 percent of the women would be aghast that he said that—whether they are Democrats, Republicans, liberals, or conservatives. I asked Mr. Holmes in written questions whether he was concerned that, for example, a woman advancing a battered woman's defense against her husband would lack confidence in his impartiality. He said he doesn't see why anything he has written would justify any concern that he could not be impartial.

Not only does Mr. Holmes not disavow his assertion that women are bound to subordinate themselves to men, he doesn't see why women should be troubled by this. To paraphrase Sir Arthur Conan Doyle, ''It is elementary, Mr. Holmes.'' It is pretty basic stuff. This is not a great epistemological argument. It is very simple why women could be offended. If you cannot see it, you should not be on the bench. If I were a woman in a dispute with a man, and my case was assigned to Mr. Holmes, I would be worried that Mr. Holmes could not even see why I had these concerns. That is troubling.

There is a lot more to be worried about when it comes to the Holmes nomination. In his comments, which have already been printed in the RECORD, just over and over again he defended and endorsed Booker T. Washington's view that slavery was a consequence of divine providence, designed to teach white people how to be more Christ-like. Is the President going to mention that when he goes to Michigan? See what people think of that one. He said of all the cases in history, he would want to have argued the creation case. It is right at the top of the list. I don't know why he said that, since John Scopes was convicted. I guess Mr. Holmes thinks he could have done a better job teaching the evolutionary theory in the public schools. More egregious, in not any of these instances, with maybe the exception of the first, has he disavowed them; he stands behind them. These are not slips of the tongue. This is a man caught, when you look at his writing, in almost a time warp. This man probably doesn't even want to turn the clock back to the 1930s or 1890s but somewhere way back in the 1600s.

Holmes said he believes he possesses sufficient self-transcendence—his words—to be able to set aside his views and judge cases impartially. I don't think it is enough to get up and just say: I will follow the law.

I don't mean to be flip, but it is just not that easy.

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

Mr. SCHUMER. In conclusion, if moderation is a criteria in choosing judges—and it is one of mine—Mr. Holmes abjectly fails the test. I urge that he be defeated.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of J. Leon Holmes. There is a reason this nomination has been sitting on the calendar for over a year. There is a reason the Republican Senators are breaking ranks to vote against this nominee because, frankly, the nomination of J. Leon Holmes really speaks volumes about the message being sent by this White House to the American people.

Is this the kind of person they want to give a lifetime appointment on the Federal bench? The things he said—his own words—condemn him. He has written that ''the wife is to subordinate herself to her husband'' and ''the

woman is to place herself under the authority of the man and ipso facto place herself under his authority.''

He wrote that abortion should not be available for rape victims ''because conceptions from rape occur with the same frequency as snow in Miami.'' Does that sound like the kind of statement you want to hear from a man who is going to stand in judgment of cases brought before him, cases that involve the rights of women, the rights of victims of rape?

Words count in life and in law. The words of a judge determine the outcome of a trial and the rights of the parties in the courtroom. The words of J. Leon Holmes convict him of insensitivity to some of the most basic issues in modern America.

I know Mr. Holmes and I disagree on some critical issues, but that is not the basis for my opposition. We have already confirmed 197 of President Bush's nominees to the Federal bench. Trust me, the majority of them disagree with my positions on many issues, and I voted overwhelmingly because the President has his right to choose his nominees. But of all of the attorneys in Arkansas, and of all of the Republican attorneys in the State of Arkansas, of all of the conservative Republican attorneys in the State of Arkansas, is this the best the White House can do? A man who cannot really distinguish the role of women in a modern society? A man who so cavalierly dismisses the plight of a rape victim? This is a man who needs a lifetime appointment to stand in judgment of others?

I asked him in a written question about whether he would recuse himself in cases as a Federal district court judge if any of the anti-abortion organizations that he has represented or founded came into his court. He said no; he was going to stand in judgment of the same organizations that he founded and those that paid him. He would not recuse himself.

I also asked him a basic question that we ask of all nominees. I asked:

Mr. Holmes, name 3 Supreme Court cases with which you disagree.

He said:

As a citizen, I am troubled by the Supreme Court decisions in Dred Scott v. Sandford, Buck v. Bell, and Roe v. Wade, because in my view each of those decisions failed to respect the dignity and worth of the human person.

How could a person make that statement in response to that question and say he will uphold the decision in Roe v. Wade, which is a basic right of privacy for women in America? That is what Mr. Holmes said. In fairness to Mr. Holmes, though, he has apologized for his statement about rape victims that ''conceptions from rape occur with the same frequency as snow in Miami.'' When I asked about his statement, he wrote back and said:

Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

I think it is important that that apology is on the record. Where is the apology for his statement about the subordination of women to men? No statement of explanation or apology was forthcoming. Some have come to the floor on the other side and said: Listen, these happen to be his religious views. If you say you will not support him because of that, then you are discriminating against his religion.

That is an upside down view of the world. Whether Mr. Holmes' views are based on religious beliefs, personal beliefs, cultural upbringing, or his life experiences, that is irrelevant. The basis for his beliefs is not important. What is relevant is whether his beliefs and his reasoning will guide his decisions as a Federal judge, his values that influence his judicial philosophy. The real question is, Are those beliefs reasonable, mainstream, commonsense beliefs?

How can you read what this man has said about the issues of race and gender and say that these are mainstream views and he should have a lifetime appointment to instill those views into the decisions of the United States of America through its judicial system?

Those on the other side say this is all about religion. It is not. It is about a candidate, a nominee for a judicial lifetime appointment. Our Constitution only refers to religion in a few particular areas: First, it says there will be no religious test to qualify to any office of public trust in the United States. Of course, in the first amendment it says that Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof. Mr. Holmes is entitled to his religious beliefs, as I am, as Senator HATCH is, as every Member of the Senate is. But when his religious beliefs reach a point where they call into question whether he will be fair and balanced in his judicial capacity, that is an important public policy issue. We must face it. To say that his beliefs, whether generated by religion or otherwise, are inconsistent with mainstream thinking in America is not antireligious. He is entitled to his religious beliefs. It is a statement that we do not want to perpetuate those beliefs in the findings of a judge with a lifetime appointment. Mr. Holmes' statements, I am afraid, give us fair warning of what he will do as a judge.

Of all of the conservative Republican attorneys in Arkansas, why did it come down to this man? I don't think it is an accident. I think it is a test. This White House is testing this Senate to see how far we can go, how far they can push us to put someone on the bench who is clearly out of the mainstream of American thinking.

I yield the floor.

Mr. HATCH. How much time remains?

The PRESIDING OFFICER. Fifteen minutes.

The Senator from Utah.

Mr. HATCH. Mr. President, I know the Senator from Illinois asked the question, Is this the best the White House can do? In all honesty, I think the people of Arkansas believe it is. The Democrat Gazette newspaper thinks it is. A lot of Democratic women who are law partners with this man think it is. I personally think it is a great nomination.

His record has been visibly distorted on the floor today. Let me take a few minutes to rebut some of the charges and arguments made by those opposing Mr. Holmes' nomination. Many of these were addressed in the morning in my opening statement and by others.

I refer my colleagues to the excellent statement made by the Senator who knows him best, our colleague from Arkansas—in fact, both colleagues from Arkansas, Senators PRYOR and LINCOLN. Senator PRYOR worked with him and associated with him. Both he and Senator LINCOLN support Mr. Holmes' confirmation.

It seems kind of specious to make the argument that nobody in their right mind would support this man. There is no doubt Mr. Holmes has taken a public stance on many issues while in private life. He had a right to do so as an American citizen. We encourage citizens to play a role in the democratic process. That is what Mr. Holmes has done.

We all can recognize abortion is a very divisive issue in this body about which many persons feel strongly. The issue today is not whether one view is right or wrong, but whether Mr. Holmes is able to set aside his personal views, whatever they may be, and act as a judge should act.

The American Bar Association says, by giving him the highest rating possible, that he is able to do that. His friends in Arkansas say he is. The newspapers say he is. The two Senators from Arkansas, both Democrats, say he is. Let me make a few points in this regard.

Some of the statements Mr. Holmes has made in the course of his activism are, without doubt, inflammatory. They were made 24 years ago when he was 27 years of age. To his credit, Mr. Holmes has apologized for his remark about rape which he made 24 years ago in the heat of the moment.

In response to a written question from Senator DURBIN, he wrote:

I have to acknowledge that my own rhetoric, particularly when I first became involved in the issue [of abortion] in 1980 and perhaps some years thereafter, sometimes has been unduly strident and inflammatory. The sentence about rape victims which was made in a letter to an editor in 1980 is particularly troublesome to me from a distance of 23 years later.

It was a year ago he wrote this answer.

Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

He was 27 years old. He was an activist in the pro-life cause. He has apologized over and over. Can we not as adults accept his apology, or do we require everybody to be perfect from 27 years old or before and on?

In an April 11, 2002, letter to Senator LINCOLN, Mr. Holmes explained in a similar manner.

In the 1980s I wrote letters to the editor and newspaper columns regarding the abortion issue using strident and harsh rhetoric. I am a good bit older now and, I hope, more mature as I was at the time. As the years passed, I came to realize that one cannot convey a message about the dignity of the human person, which is the message I intended to convey, using that kind of rhetoric in public discussion.

Referring directly to his 1980 ''snow in Miami'' remark—which has been more than plastered all over this place today in spite of the case we made that the remark was made years ago when he was a young man, and he has more than prostrated himself in asking for forgiveness—he said:

I do not propose to defend that sentence—

The sentence about ''snow in Miami''—

and I would not expect you or anyone else to do so.

Based upon this letter and the level of support Mr. Holmes enjoys in Arkansas, Senator LINCOLN reaffirmed her belief that Mr. Holmes will be a fair judge, and so do the people of Arkansas and anybody who knows him.

I share Senator LINCOLN's views. The fact that Mr. Holmes recognizes his words in the past were sometimes strident and insensitive suggests to me he has undergone a maturation process for which he is given no credit by the perfect people here in the Senate who are so willing to sit in judgment on statements made by 27-year-olds. I wonder how they would fare if all of their 27-year-old statements were used to determine whether they could sit in the Senate.

Mr. Holmes was questioned by my Democratic colleagues on many of the issues they raised today. I thought his answers were very responsive, and I want to review them today so there is no further distortion of his record, because we have had plenty of that today.

In response to another question by Senator DURBIN, which was whether Mr. Holmes, as a judge, would restrict the rights granted by Roe v. Wade, Mr. Holmes responded:

The judge is an instrument of the court and hence the law. Thus, the judge's personal views are irrelevant. Roe v. Wade is the law of the land. As a judge, I would be bound by oath to follow that law. I do not see how a judge could follow the law but restrict the rights established by that law.

I do not know what more he has to say to show good faith, but he surely said it there. In response to the question, ''Do you believe in and support a constitutional right to privacy?'' Mr. Holmes responded:

I recognize the binding force of the court's holding in Griswold and Eisenstadt recognizing a right to privacy. I have never engaged in political activity directed toward overturning the result obtained in Griswold or Eisenstadt. If I am confirmed by the Senate, I would follow the rulings of the Supreme Court.

What do my colleagues need? Senator LEAHY implied Leon Holmes has had some kind of confirmation conversion. That is the usual bullcorn that happens on the floor from time to time, especially with regard to judicial nominees.

I note that the overwhelming evidence, based on his own actions and letters of support, is Mr. Holmes is a man who respects the rule of law and is a man of integrity and will follow the law. His colleagues say that. His women colleagues say that. People who differ with him personally on his views say that. They say he will respect the law and follow it.

Mr. Holmes is not nominated to the Supreme Court where the Justices, such as Justice Thomas, Justice O'Connor, or other Justices, are required to review and sometimes vote to overturn previous decisions. Mr. Holmes, as a district court judge, is bound by the Supreme Court and the appellate court determinations and precedents.

I also heard some criticism that was raised by Senator FEINSTEIN from California that Mr. Holmes placed the Roe v. Wade decision in the same category as Dred Scott and Buck v. Bell, as Supreme Court decisions with which he disagrees. If he has, he has millions of Americans who also disagree with those three decisions, and I am one of them myself.

Let me give the full and complete answer of Mr. Holmes on this issue. He stated:

In my view, each of these decisions failed to respect the dignity and worth of the human person. As a judge, I would follow every decision of the Supreme Court that has not been subsequently overruled.

Even though he disagrees with Roe v. Wade, he will uphold it. I do not know when this business of not believing people on this issue started to take place, but it started back around the time of Justice Rehnquist's nomination, and it has been coming every year. And they say they do not have a litmus test. Give me a break.

One can disagree with Mr. Holmes' personal views, but one cannot credibly argue that he does not respect the supremacy of the laws laid down by the Supreme Court. Everything the man stands for says that.

Let me quickly turn to a few other issues raised today. I have already addressed the issue regarding the charge that Mr. Holmes is antiwomen. The article he wrote with his wife—both of them wrote it—was to discuss their fervent belief in Catholic teachings regarding relationships. It was written for his religious peers in the Catholic faith, published in a religious document. It was not a statement of his legal views.

A fair reading of the article would show a support for the equality of women. I have read it a number of times. And by the way, if it comes down to a choice between St. Paul and my distinguished friend from Massachusetts, Senator KENNEDY, or my distinguished friend from Illinois, Senator DURBIN, I think I will take St. Paul every time, and I think most everybody else in the country would, too. He and his wife were quoting St. Paul.

We have even had some indications that St. Paul was out of whack. According to the Bible, in which I think most of us claim to believe. I will choose St. Paul every time. By the way, the article is why only males in the Catholic Church hold the priesthood. If one reads it fairly, that is what he was driving home. If one reads it fairly, one will find he was very fair to women and treated them equally, as his partners. Democratic women in his law firm whom he mentored and tutored and helped and worked with and works with today have testified through letters to us that they trust him, believe in him. Even though they differ with his views in some matters, they know he will follow the law because they know he is devoted to the law.

We ought to be able to give some credibility to people of that quality who get the highest possible rating by the American Bar Association. That is not always totally dispositive, I have to admit, but it certainly adds to the belief of those of us who support this man and the Democrat people down there who also support him. Mr. Holmes enjoys the support of numerous women in Arkansas, including coworkers and colleagues who know him best.

There is a charge against Mr. Holmes. Holmes does not have the temperament to be a Federal judge, some have said. He has said that rape occurs with the same frequency as snow in Miami and compared abortion to the Holocaust.

He has openly apologized for his 27-year-old rhetoric:

The sentence about rape victims which was made in a letter to an editor in 1980 is particularly troublesome to me from a distance of 23 years later.

He goes on to say:

Regardless of the merits of the issue, the articulation in that sentence reflects an insensitivity for which there is no excuse and for which I apologize.

That is a written response to Senator DURBIN. We cannot take his word for that? He was 27 years old, a fervent believer in the pro-life cause. Arkansans holding strong pro-choice views uniformly attest that Holmes will set aside any personal beliefs and follow the law while on the bench.

Holmes' ''well-qualified'' rating shows he is at the top of the legal profession in his legal community. He has outstanding legal ability, but listening to the arguments today, one would think he is a total malcontent who does not believe in the law. He has a breadth of experience and the highest reputation for integrity. He has demonstrated or exhibited the capacity for judicial temperament.

There is a charge that Holmes does not believe in the separation of church and State. He said this:

Christianity in principle cannot accept subordination to the political authorities,

for the end to which it directs men is higher than the end of the political order.

That is what they say. He quoted him, so he must not believe in the separation of church and State. But what did he say? Holmes was contrasting Christianity with the pagan religions about which Aristotle wrote in which religious activities are political concerns. The speech makes the point that Christianity looks to an ultimate source of authority beyond Earthly authority, and that is God.

I mean, give him a break.

Holmes notes that the model of assigning religious and political matters to separate spheres is favored by modern liberalism, including John Locke, Thomas Jefferson, and Alexis de Tocqueville, and the modern Catholic Church. He urges us not to miss the strengths of de Tocqueville's argument that the church is stronger when separate from the State. Holmes offers his own theological grounds for the separation of church and State, and yet one would think he was not.

Another charge is that Holmes is unwilling to recuse himself from cases involving anti-abortion organizations or abortion matters. He has pledged that:

In any case in which litigants were concerned about my fairness and impartiality, or the appearance of impropriety, I would take those concerns seriously. I would follow 28 U.S.C. Section 455 and the Code of Conduct for United States Judges when making recusal decisions.

He would follow the law. He will abide by the same standards of conduct that govern every Federal judge.

Since the issue of natural law has been raised in discussing Mr. Holmes' nomination, I want to set the record straight.

Some have expressed concern that Mr. Holmes seems to be a believer in natural law and will allow those beliefs to influence his rulings on the bench. The facts show otherwise.

When asked if he believes that the Declaration of Independence establishes or references rights not listed or interpreted by the Supreme Court to be in the Constitution, Mr. Holmes wrote:

I do not believe the Declaration of Independence establishes judicially enforceable rights.

Instead, he wrote:

The Constitution as a whole is aimed at securing the rights described as unalienable by the Declaration of Independence.

Mr. Holmes noted that:

Working all together, the entire system of government should . . . result in a free country, a country without tyranny, which, in the terms that the founders used, is equivalent to saying a country in which natural rights generally are respected.

Mr. Holmes, however, cautions:

[T]here is no constitutional authority for the courts to use the Declaration of Independence to overrule the Constitution. The authority of the courts is granted by the Constitution, not the Declaration.

He also wrote:

No one branch of government can appeal to natural rights as a basis for exceeding or altering its authority under the Constitution.

Rather, he writes:

[w]hen citizens believe that natural rights are not safeguarded adequately by the present system of government, they may express that view in the electoral process, or they may seek to amend the Constitution pursuant to Article V.

Mr. Holmes has demonstrated, and his record demonstrates, that once he dons the robes of a judge, he will set aside those beliefs and follow the law as it is stated. Mr. Holmes understands key differences between an advocate and a judge, and that personal views play no role in the duty of a judge to abide by stare decisis and apply the precedent of the Supreme Court and Eighth Circuit. For those reasons, I believe that Mr. Holmes will make an outstanding Federal district judge.

I close by yielding my last few minutes to Senator PRYOR, a Member of the Senate who knows Mr. Holmes the best. I believe we ought to listen to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 1 minute.

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

The PRESIDING OFFICER. There is 58 seconds remaining.

Mr. PRYOR. I will be brief.

Earlier today, I read from 23 different letters of people from Arkansas, lawyers who practice with him, who support him. Many of these statements are inflammatory. I admit that. He admits that. He has apologized. Many of these were done 15, 20, in one case 24 years ago.

I hope we will tone down the rhetoric. If Senators vote for Leon Holmes, they are not antiwoman. If Senators vote against him, certainly they are not anti-Catholic. Let us have a straight up-or-down vote.

I encourage all of my colleagues to vote for Leon Holmes. Over and over, people in Arkansas who know him, who repeatedly say they do not agree with him on many of these issues, think he will be a fair, impartial, and an excellent member of the bench.

I ask my colleagues for their consideration.

The PRESIDING OFFICER. All time has expired.

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of J. Leon Holmes, of Arkansas, to be United States District Judge for the Eastern District of Arkansas?

The clerk will call the roll. The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Alaska (Ms. MURKOWSKI), is necessarily absent.

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

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

The result was announced—yeas 51, nays 46, as follows:

[Rollcall Vote No. 153 Ex.]

YEAS—51

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

NAYS—46

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Boxer	Graham (FL)	Reed
Byrd	Harkin	Reid
Cantwell	Hollings	Rockefeller
Carper	Hutchison	Sarbanes
Chafee	Inouye	Schumer
Clinton	Jeffords	Snowe
Collins	Johnson	Stabenow
Conrad	Kennedy	Warner
Corzine	Kohl	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NOT VOTING—3

Edwards	Kerry	Murkowski

The nomination was confirmed.

Mr. GRASSLEY. I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

CLASS ACTION FAIRNESS ACT OF 2004

The PRESIDING OFFICER. The clerk will report S. 2062.

The legislative clerk read as follows:

A bill (S. 2062) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to express my strong support for the Class Action Fairness Act of 2004, which is now renumbered S. 2062, to accommodate the bipartisan compromise we reached last November with Senators DODD, SCHUMER, and LANDRIEU. This improved bill embodies a carefully balanced legislative solution that responds to some of the most outrageous abuses of the class action litigation device in some of our State courts.

As anyone who has read the bill knows, it restores fairness to the class

action system. Among other things, it eliminates the opportunity that exists in the current system for unscrupulous lawyers to profit by victimizing injured parties with sham settlements. It takes away the opportunity for those lawyers to use the system to extort legitimate businesses for their personal financial gain.

Throughout the years, Congress has received powerful evidence showing an extraordinary concentration of large interstate class action lawsuits in a handful of outlier State courts—certain county courts, to be precise. The evidence further shows these outlier courts operate in a manner that deprives the rights of truly injured individual plaintiffs, as well as defendants. In too many cases, the families have fallen prey to the manipulation, and in some cases outright evasions, by certain plaintiffs' lawyers of the settled rules supposed to ensure basic fairness during the major interstate class action disputes. Too often, judges approve settlements that primarily benefit the class action attorneys rather than the injured class members.

Indeed, it has become all too common for certain State courts to approve proposed settlements where class members receive little or nothing of value, such as meaningless coupons, while their attorneys rake in millions of dollars in fees.

It is one of the new games in litigation practice in America. It is a disgrace caused by a relatively small few in the legal profession but enough to make it a matter of great concern. This bill would clarify and solve some of these problems.

To make matters worse, multiple class action lawsuits asserting the same claims on behalf of the same plaintiffs are routinely filed in different State courts, thus creating judicial inefficiencies and encouraging collusive settlement behavior. Unfortunately, the injuries caused by these abuses are not confined to the parties who are named in the class action complaint. Rather, they extend to everyday consumers who unwittingly get dragged into these lawsuits as unnamed class members simply because they purchased a cell phone, bought a box of cereal, drove a car fitted with a certain brand of tires, or rented a video. What we are talking about is a system that impacts the vast majority of people who live in this country, not only lawyers and some businesses, as some have wrongly suggested.

We are talking about people such as Irene Taylor of Tyler, TX, who was cheated out of approximately $20,000 in a telemarketing scam that defrauded senior citizens out of more than $200 million.

This is a picture of Irene Taylor. In a class action brought in Madison County, IL, the attorneys purportedly representing Ms. Taylor negotiated a proposed settlement which excluded her from any recovery whatsoever.

We are talking about people such as Martha Preston of Baraboo, WI, as evidenced by this picture of her. Martha was involved in the infamous BancBoston case, brought in Alabama State court, which involved the bank's alleged failure to post interest to mortgage escrow accounts in a prompt manner. Ms. Preston received a settlement of about $4. Approximately $95 was deducted from her account to help pay the class action fees of $8.5 million.

This is the Bank of Boston chart, a perfect illustration of class action abuses going on in this country as we speak. A Bank of Boston settlement over disputed accounting practices produced $8.5 million in attorneys' fees—costing the class members as much as $95, which was deducted from their accounts. The plaintiffs' attorneys in this case later sued class members for an additional $25 million. I do not care who you are, you have to say that is outrageous.

Ms. Preston testified before the Judiciary Committee 5 years ago asking us to halt these abusive class action lawsuits, but it appears that, at least so far, her plea has fallen on very deaf ears.

Class action abuses are far-reaching, so far-reaching that they affect nonconsumers as well. Take, for instance, Hilda Bankston, a hard-working American, shown in this picture, who came to this country seeking to fulfill the American dream. Hilda found that instead of reaping the rewards that normally come with hard work, she was unmercifully dragged into hundreds of lawsuits filed by personal injury lawyers in the State of Mississippi. Why? She owned the only drugstore in Jefferson County—a county known for hosting one of the most notorious magnet courts in the country.

Her small business became a prime target for forum-shopping personal injury lawyers in pharmaceutical cases, not because her business committed acts of negligence, and certainly not because her business had deep pockets to pay a large jury award or a lucrative settlement. To the contrary, they were sued, in this particular case, for the sole purpose of evading Federal court jurisdiction so the class action lawsuit could remain in State court.

Why would personal injury lawyers go to such trouble to keep a class action in State court? Because unlike our Federal courts which have judges who are insulated from political influence through lifetime appointments, many State court judges are elected officials who answer through the political process itself.

Even though Ms. Bankston no longer owns the drugstore, she continues to be named a defendant in these lawsuits today and is buried under a mountain of discovery requests because of the litigation. On a more personal level, Ms. Bankston told us about how this ordeal has affected her both personally and professionally. She testified that:

[N]o small business should have to endure the nightmares I have experienced. . . . I have spent many sleepless nights wondering if my business would survive the tidal wave of lawsuits cresting over it.

Critics have argued the Senate should vote this bill down because it amounts to nothing more than special interest legislation. These critics are dead wrong and stand in desperate need of a reality check. To be perfectly clear, it is because of the wrongs committed against everyday American consumers such as Irene Taylor and Martha Preston that the time has come for the Senate to pass class action reform. It is because of the victimization of innocent people like Hilda Bankston that the Senate needs to act now, and it is because of the public's collapsing confidence in our civil justice system that we need to pass this bill without further delay. Arguments being raised to the contrary are red herrings that distort the real truth of the matter. The class action problem is real and significantly affects the general public.

The Class Action Fairness Act represents a modest and balanced solution to the class action problems. There are two core features to the legislation.

First, the bill implements consumer protections against abusive settlements by, No. 1, valuing attorneys' fees in coupon settlements to those coupons that are actually redeemed by class members; No. 2, providing a standard for judicial approval of settlements that would result in a net monetary loss to plaintiffs; No. 3, prohibiting settlements that favor class members based upon geographic proximity to the courthouse; and, No. 4, requiring notice of class action settlements be sent to appropriate State and Federal authorities to provide them with sufficient information to determine whether the settlement is in the best interest of the citizens they represent.

Second, the bill corrects a flaw in the current Federal diversity jurisdiction statute so the class actions with a truly interstate impact are adjudicated where they originally should be adjudicated, and that is in our Federal courts. Specifically, S. 2062 amends the diversity of citizenship jurisdiction statute to allow larger interstate class actions to be adjudicated in Federal court by granting original jurisdiction in class actions where there is ''minimal diversity'' and the aggregate amount in controversy among all class members exceeds $5 million.

The bill also balances the States' interest in adjudicating local disputes by providing that class actions filed in the home State of the primary defendants remain in State court subject to a triple-tiered formula that looks at the composition of the plaintiffs' class membership. This formula become known as the Feinstein compromise, which we were able to reach with Senator FEINSTEIN during the Judiciary Committee markup on the bill.

Moreover, after negotiations with Senators DODD, SCHUMER, and LANDRIEU last November, we were able to reach consensus on further refinements that allow truly local disputes

involving principal injuries within the forum State to be adjudicated in the State courts.

Now that I have summarized what the bill does, let me explain what it does not do. First, this bill does not eliminate all State court class action litigation. Class action suits brought in State courts have proven in many contexts to be an effective and desirable tool for protecting consumer rights, nor do the proposed reforms in any way diminish the rights or practical ability of victims to band together to pursue their claims against large corporations. In fact, we have included several consumer-protection provisions in our legislation that I believe will substantially improve plaintiffs' chances of achieving a fair result in any proposed settlement.

My summary of the bill should not come as a surprise to anyone here because these reform efforts have an extensive history in this body. Most importantly, this bill maintains strong support from several Members on the other side of the aisle. In this regard, I extend a special thanks to Senators CARPER, KOHL, and MILLER for their tireless efforts in pushing for class action reform. Their commitment has helped us to get where we are today with this bill, and I look forward to their efforts in the coming days to keep the focus on passing this much-needed compromise legislation without becoming mired in extraneous amendments.

I also thank my colleagues—Senators SCHUMER, DODD, and LANDRIEU—for working with us in good faith to build a stronger bipartisan consensus for this bill. As you may know, we fell one vote shy of invoking cloture, on getting 60 votes, last year. These three Members, who originally voted against the bill presented us with a detailed list of issues they wanted resolved before they could support class action reform legislation. After extensive discussions last November, we responded in good faith to each and every concern they raised by making the appropriate changes that are now embodied in S. 2062.

I look forward to continuing the good faith that was displayed last November as we proceed on this bill.

Opponents of this legislation would, no doubt, like to derail it by bogging it down in the amendment process. I look to the leadership of my Democratic colleagues who have worked with me on getting this legislation to where it is, and to others who are serious about ending the victimization of American consumers, to do all they can to prevent this from happening.

Above all, I look to the leadership of Senator GRASSLEY, who was the original sponsor of this bill and who deserves a lot of credit for having fought this bill through in such a magnificent way through all of these years. He is a gutsy guy. He stands for what he believes. He deserves a lot of the credit for this bill.

In the coming days, I fully expect that some Members will offer numerous amendments to the bill, many of which will have nothing to do with the subject of class action. Look, we know this bill is going to be used as an attempt to bring up all kinds of political amendments for the purpose of scoring political points. I wish my colleagues wouldn't do that on a bill this important. Naturally, some of them want to adopt some of these amendments so they can kill this bill. Others just want a shot at making Senators vote on political issues that they think will be embarrassing to them. I would hope we would concentrate on the bill because it is important, and if there are legitimate amendments, certainly we will give every consideration to them.

While I understand the desire to follow regular order, I would like to note that this bill rests on a delicate bipartisan compromise that at least on paper commands a supermajority of votes—beyond 60—to overcome a Democratic filibuster. But with each controversial measure added to this bill, we all know it is less likely to become law. That is after 5 years of very hard work and an agreement by 62 Members of this body who have signed on to this bill up front to see that it passes. As such, I urge my colleagues, especially those who have supported class action reform, to limit and oppose amendments so we can move an important bipartisan measure through the Senate.

Again, while I expect opponents of this bill to do everything in their power to gut and weaken the bill, I trust that my Democratic colleagues who support class action reform will remain faithful to the bipartisan deal by vigorously opposing these amendments that will likely be offered in the coming days. That is what we do when we agree to a settlement. We agree to work to stop all poison pill amendments, and we agree to work to stop amendments that those who made the agreement to begin with do not agree with.

Class action reform is long overdue, and it is now time for us to act. We have considered legislation for many years now, and the pattern of abuse has become clear. What once began as an occasional outrageous class action settlement has now become a routine occurrence. There are jurisdictions in this country, State jurisdictions and local jurisdictions, that border on corruption, that literally don't care what the facts are, don't care what the law is. They are just going to give the plaintiffs' attorneys whatever they want. The plaintiffs' attorneys have caught on to it, so they forum shop to these outrageous jurisdictions so they can get judgments and verdicts far beyond what they could ever get in a jurisdiction that treated the law with respect.

The legislation we are considering would fix all of these problems. I would consider it a shame if we allowed partisan politics to kill much-needed reform of the abuses in the current system, abuses that are actually hurting those in the system we are supposed to help.

This is an important bill. We have worked long and hard to get to this point. I hope with all my heart that our colleagues on both sides will live up to the commitments they have made and that we can pass this bill and solve some of these terrible problems.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, the current version of class action legislation has undergone a number of changes since it was reported by the Judiciary Committee. Some of these changes have been improvements. I want to note that. Some have not. I know that Senators DODD, LANDRIEU, SCHUMER, KOHL, and CARPER negotiated some procedural improvements to S. 1751. I believe these do help. I appreciate their efforts to rein in some of the worst aspects of the bill.

For example, these improvements restricted the use of worthless coupon settlements. I agree with that. To hear some of the commentators about this bill, you would think that was not in there, but I want everybody to know it is. They also eliminated some provisions that were harmful to civil rights and consumer plaintiffs who endure hardships as a result of initiating and pursuing litigation.

But in other aspects, the compromise failed to achieve their intended goals. For example, one provision seeks to reduce the delay plaintiffs can experience when a case is removed to Federal court. It sets a time limit for appeals and remand orders. But there is not a concomitant measure that would set a timeline for the district court to rule on the actual remand motion.

This may seem like a bit of arcane lawyer's jargon, but it is a lot more than that. It means that you could be a plaintiff, be in State court legitimately. You suddenly get plucked out of State court. But then they could put you on the Federal docket. Somebody could say, OK, we are just going to leave it there year after year after year after year, and there is nothing you could do about it. There is no recourse. I understand that Senator FEINGOLD will offer an amendment to set a reasonable time limit for the district court to rule on these remand orders. It seems like common sense. Rule them up or rule them down, but have a time to do it. I hope all Senators will support him.

In addition, I am disturbed the bill may deny justice to consumers and others in class actions involving multiple State laws. The recent trend in the Federal courts is to not certify class actions if multiple State laws are involved; thus, the class action bill could force nationwide class actions into Federal court and then just be dismissed for involving too many State laws. It is kind of a way of making sure that you never reach the merits of the

case, whether in Federal courts or State courts, because you could get rid of it on a technicality. I understand Senator BINGAMAN has an amendment to prevent this from happening. I would support that.

I am also concerned with provisions contained in the most recent iteration of this class action bill before the Senate. I try to keep up with it, but it keeps undergoing so many changes. But this latest part would deprive Vermonters of the right to band together to protect themselves against violations of State civil rights, consumer, health, and environmental protection laws in their own State courts. What it is saying is, we here in the Senate can make a far better judgment than the people of Vermont going into State courts on State matters or the people of Tennessee going into Tennessee court on a Tennessee matter.

I hear so many speeches about how we have to protect our States and keep the heavy hand of government from them, but basically we are saying that if a group of people, say, in Iowa, want to band together to protect themselves against a violation of State civil rights or consumer or health or environmental protection laws, and do it just in their own State courts, they can't do it because the U.S. Senate has figured we know a lot better than the people of Iowa or Tennessee or Vermont.

This bill continues to deprive citizens of the right to sue on State law claims in their own State courts if the principal defendant is a citizen of another State, even if that defendant has a substantial presence in the plaintiff's home State and even if the harm done was in the plaintiff's home State. In other words, you might have somebody from State A, but they have invested a huge amount in the second State. They are involved in things in that second State. They do something in that second State. They may deprive citizens of their rights in that second State, and they can't sue in that State. I understand that Senator BREAUX intends to offer an amendment to keep these in-State class actions in State courts. They should be.

I am also troubled by the scope of the legislation in that it federalizes a lot more than class actions. This goes way beyond class actions. Despite the fact that such a provision was struck from the bill during markup in the Judiciary Committee, mass torts now again are included in the bill. This expansion simply amplifies the harm done to citizens' rights and to the possibility of vindicating those rights in their own State courts.

Some special interest groups are distorting the state of class action litigation by relying on a few anecdotes in an ends-oriented attempt to impede plaintiffs bringing class action cases. It will make a lot of money in radio and TV stations. The ads are designed to actually be seen or heard only by 535 people—Members of Congress.

I think we should take steps to correct actual problems in class action litigation where they occur. But simply shoving most suits into Federal court will not correct the real problems faced by plaintiffs and defendants. We have done something like this by taking a whole lot of criminal matters that should easily be handled in State courts and put them into the Federal courts, and the Federal courts are so overloaded they don't get to either the criminal or civil cases.

Our State-based tort system has grown over 200 years. It remains one of the greatest and most powerful vehicles for justice anywhere in the world. One reason for that is the availability of class action litigation to let ordinary people band together to take on powerful corporations or, in some cases, even their own Government. Nobody has the money by themselves to take on the Government. Nobody has the money by themselves to take on some multibillion-dollar corporation. Banding together, sometimes they can.

Defrauded investors, deceived consumers, victims of defective products, environmental torts, and thousands of other people are currently able to access class action lawsuits in their State court system to seek and receive justice. They can band together to afford a competent lawyer. Whether they are getting together to force manufacturers to recall products or to clean up after devastating environmental harm or to vindicate basic civil rights, they are using class action. We should not try to make it more difficult or costly for them to right those wrongs, although many people who cause the wrongs would love us to put roadblocks in the way.

So the so-called Class Action Fairness Act falls short in the expectation set by its title. It is going to leave many injured parties who have valid claims with no way to seek relief. Class action suits have enabled our citizens to receive justice and expose wrongdoing by corporations and their own Government. It has given the average American a local venue and a chance.

This legislation may be the last authorization bill the Senate considers this year. We have only passed one appropriations bill for the upcoming fiscal year. The Senate has so few days left. Can you imagine that? There are 14 appropriations bills and we have only passed 1. We have not passed a budget yet. I think that is supposed to be done in March or April. We are not going to do our appropriations bills. Everybody knows that. Someone will write a huge omnibus bill with the White House and try to cram it through. So I think because this is the last authorization bill, you are going to have Senators on both sides of the aisle with both germane and nongermane amendments.

So we will vote and see where we go. There were improvements made. We showed we could make improvements. But as soon as it started really being improved, the doors got slammed shut.

I ask unanimous consent that a letter on behalf of the attorneys general of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia in opposition to S. 2062 be printed in the RECORD.

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

STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL,
Albany, NY, June 22, 2004.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia, we are writing in opposition to S. 2062, the so-called ''Class Action Fairness Act,'' which reportedly will be scheduled for a vote in the next few weeks. Although S. 2062 has been improved in some ways over similar legislation considered last year (S. 274), it still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 2062, almost all class actions brought by private individuals in state court based on state law claims would be forced into federal court, and for the reasons set forth below many of these cases may not be able to continue as class actions. All Attorneys General aggressively prosecute violations of our states' laws through public enforcement actions filed in state court. Particularly in these times of state fiscal constraints, class actions provide an important ''private attorney general'' supplement to our efforts to obtain redress for violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in state and federal courts have resulted in substantial attorneys' fees but minimal benefits to the class members, and we support targeted efforts to prevent such abuses and preserve the integrity of the class action mechanism. However, S. 2062 fundamentally alters the basic principles of federalism, and if enacted would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL–CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. Class Actions Should Not Be ''Federalized''

S. 2062 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need for such a sweeping change in our long-established system for adjudicating state law issues. Indeed, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. The federal judiciary faces a serious challenge in managing

its current caseload, and thus it is no surprise that the Judicial Conference of the United States has opposed the ''federalization'' of class action litigation.

S. 2062 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a ''citizen'' of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state. While the amendments made last fall give the federal judge discretion to decline jurisdiction in some cases if more than one-third of the plaintiffs are from the same state, and place additional limitations on the exercise of federal court jurisdiction if more than two-thirds of the plaintiffs are from a single state, even in those circumstances there are additional hurdles that frequently will prevent the case from being heard in state court.

2. Many Multi-State Class Actions Cannot Be Brought in Federal Court

Another significant problem with S. 2062 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the law of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and them removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely that similar lawsuits will be brought on behalf of the residents of many smaller states. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

3. Civil Rights and Labor Cases Should be Exempted

Proponents of S. 2062 point to allegedly ''collusive'' consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received ''coupons'' towards the purchase of other goods sold by defendants. If so, then this ''reform'' should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

4. The Notification Provisions Are Misguided

S. 2062 requires that federal and state regulators be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against ''collusive'' settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. In addition, class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 2062 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although the Attorneys General of California, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Montana, New Mexico, New York, Oklahoma, Vermont, and West Virginia oppose S. 2062 in its present form, we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms while maintaining our federal system of justice and safeguarding the interests of the public.

Sincerely,

ELIOT SPITZER,
Attorney General of the State of New York.
W.A. DREW EDMONDSON,
Attorney General of the State of Oklahoma.

Mr. LEAHY. Mr. President, I ask unanimous consent that an editorial in today's New York Times in opposition be printed in the RECORD.

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

[From the New York Times, July 6, 2004]

CLASS-ACTION UNFAIRNESS

A mischievous bill masquerading as an effort to reform the system of class-action lawsuits is headed for the Senate floor this week. The bill would tilt the civil justice system in favor of corporations and against consumers, the environment and public health. Democrats blocked a nearly identical measure by just one vote last October, Since then, three Democratic senators—Mary Landrieu of Louisiana, Christopher Dodd of Connecticut and Charles Schumer of New York—have agreed to switch sides to support the bill in exchange for certain improvements in it.

Unfortunately, those improvements would not cure the bill's core defect: namely, that it would move almost all major class-action lawsuits to overburdened federal courts from state courts. Such a shift is likely to delay or deny justice in numerous instances, and, ultimately, to dilute the impact of the strong consumer protection laws in many states.

A letter to Congress representing the views of 13 state attorneys general, including Eliot Spitzer of New York, makes this point emphatically. It goes on to note that the bill's sweeping provisions moving state class actions to federal courts would not only threaten individual plaintiffs but would also trespass on traditional principles of federalism.

Should the Senate measure be passed, it would have to be reconciled with an even more damaging House bill, which would apply retroactively to pending class-action cases. The best result would be for the Senate to defeat the bill and go back to the drawing board. At the very least, however, it should limit the damage by approving corrective amendments being offered by Senator Jeff Bingaman and others to lessen the disadvantage to plaintiffs.

No one disputes that certain provisions of the bill address real class-action abuses, foremost among them the collusive settlements that benefit plaintiffs' lawyers while shortchanging their clients. But taken as a whole, the bill before the Senate isn't genuine tort reform. It is mostly a gift to wealthy special interests that is mislabeled as reform.

Mr. LEAHY. Mr. President, I see other Senators seeking the floor. I will probably have an opportunity to say a few words tomorrow. I find that the summertime laryngitis is coming back, and I see my dear friend from Iowa on the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I am pleased that Majority Leader FRIST has called up the Class Action Fairness Act. I have been working on this bill since the 105th Congress, so I think it is about time the Senate completes action on this bill.

My colleagues will recall that in October of last year Senator FRIST brought this bill to the floor, but we were not able to proceed to the bill because of filibuster, and we lost the vote on cloture on the motion to proceed by just a one-vote margin. A supermajority of 60 votes was needed. We had 59 votes which, obviously, means that last fall we had enough votes to pass the legislation but could not get around the filibuster.

When you are up against a filibuster, you have to work out issues because nothing in the Senate gets done that is not done in a fairly broad bipartisan way. Since then, I have worked in good faith with Senator HATCH, chairman of the Judiciary Committee, and our lead Democratic cosponsors, Senator KOHL and Senator CARPER, to modify the bill to address a number of concerns raised by their colleagues on the Democratic side, Senators DODD, LANDRIEU, and SCHUMER.

These Senators are now satisfied with the changes we made to this bill. We reintroduced the legislation this year as S. 2062. So the bill before us goes even further in terms of compromising on the issues than were brought before the Senate last October—enough action, I hope, that we can get to finality within a few days.

As many colleagues may already know, this bill has gone through many changes and mostly changes to accommodate the minority in the Senate, a few Democratic Senators. I have worked in good faith with my colleagues on the other side of the aisle to bring people together and to address valid concerns to increase support for this bill, especially to get over the hurdle of the supermajority of 60 to get to stop debate and get to finality.

To tell you the truth, Mr. President, I really didn't think we needed to make any changes in this class action bill that we originally introduced this Congress—in other words, last year. I thought then, and I think now, that the original introduction was a pretty good bill. But, of course, being a pretty good bill in my judgment doesn't mean it has enough votes to get that supermajority and get the compromise that is necessary to get to finality. So in order to move the class action bill forward, I did my best to listen to the issues raised and to make modifications to the bill where there was room for compromise.

Yet S. 2062 still retains the goals I wanted to achieve and other cosponsors wanted to achieve; that is, to fix some of the more egregious problems that we are seeing in the class action system, and to provide a more legitimate forum for nationwide class action lawsuits.

The deal we have struck is a very carefully crafted compromise that should not need any further modifications. So I am asking my colleagues to withhold offering amendments to avoid disrupting the balance we have achieved. I also hope we will not see a lot of nongermane amendments offered to this bill—meaning nothing to do with this legislation. Under the rules of the Senate, they can be offered but they are very distracting. We ought to keep our focus upon the class action system reform. Instead, we should focus on the germane amendments, get this bill done, and move on. We should not get all caught up in message amendments that will do nothing but play politics and delay all the hard work that we put into this bipartisan compromise bill. So I hope we can pass this bipartisan class action bill without changes and without any further delay.

The reality is that the class action system is broken and we should do something about it. The current class action system is rife with problems which have undermined the rights of both plaintiffs and defendants. Class members are often in the dark as to what their rights are, with the class lawyers, driving the lawsuits and the settlements, with their interests as much in mind as those of members of the class.

Class members receive court and settlement notices in hard-to-understand legalese. The notices are written in small print and in confusing legal jargon so class members often do not understand their rights or, more importantly, the consequences of their actions with respect to the class action lawsuit of which they are a part.

Furthermore, many class action settlements only benefit lawyers, with little or nothing going to the members who have been harmed. We are all familiar with class action settlements where the members get a coupon of little or no value, and the lawyers get all the money available in the settlement agreement. We know that is not protecting the consumers of America.

In addition, the current class action rules are such that the majority of the large nationwide class action lawsuits can only proceed in State court when they are clearly the kinds of cases that should be decided in our Federal courts because they have nationwide implications.

At least these class action lawsuits should have had an opportunity to be heard in Federal court because usually they are the cases that involve the most amount of money, citizens from all across the country, and issues of nationwide concern.

Why should a State court or a county court be deciding these kinds of class action cases that are going to impact people all across our country? Those cases ought to be decided in a Federal jurisdiction. This present system has never made sense to me.

To further compound the problem, the present rules are easily gamed by unscrupulous lawyers who steer class action cases to certain State-preferred courts where judges are quick to certify a class and approve settlements with little regard to class members' interests and the parties' due process rights.

We have heard of class action lawyers manipulating case pleadings to avoid removal of a class action lawsuit to Federal court, claiming that their clients suffered under $75,000 in damages, in order to avoid the Federal jurisdiction amount threshold in existing law.

We have also heard of class action lawyers crafting lawsuits in such a way to defeat the complete diversity requirements by ensuring that at least one named class member is from the same State as one of the defendants, even if every other class member is from a different State.

These are only a couple of the gamesmanship tactics that we hear lawyers like to utilize to bring down an entire class action legal system. The fact is, many of these class action cases are just frivolous lawsuits that are cooked up by lawyers to make a quick buck, with little benefit to class members whom the lawyers are supposed to be representing.

This is a real drag on the economy. Many a good business is being hurt by frivolous litigation costs. Unfortunately, the current class action rules are contributing to the cost of businesses across America and particularly hitting hard small businesses that get caught up in the class action web.

Too many frivolous lawsuits are being filed and too many good companies and consumers are having to pay for lawyer greed. We need to restore some commonsense reform to our legal system, and this legislation does it. It should have been done years ago.

So my colleagues understand, then, why Senator KOHL of Wisconsin and I originally joined forces several Congresses ago—too long ago—to do something about these runaway abuses, and the only thing standing between us and success several years ago was the powerful influence of personal injury lawyers within our political system.

The Class Action Fairness Act will address some of the more egregious problems within our class action system, and it will, at the same time, preserve class action lawsuits as an important tool to bring representation to the unrepresented.

I remind my colleagues of all the time that was spent working on finding a fair solution to the class action problem. For the past four Congresses, Senator KOHL, Senator HATCH, and others have joined me in studying the abuses in the class action system and working to solve these problems. Over the years, both the House and Senate Judiciary Committees have convened numerous hearings on these class action abuses and, more importantly, highlighting the need for reform. The House passed similar versions of class action bills in several Congresses with very strong bipartisan support.

In the Senate, in the 105th Congress, I held a hearing on class action abuse in the Judiciary Committee's Administrative Oversight Subcommittee. In the 106th Congress, my subcommittee held another hearing on class action, and the Judiciary Committee, at that time, marked up and reported out our class action legislation. The Judiciary Committee held a hearing on class action abuse again in the 107th Congress and again in this 108th Congress. The Judiciary Committee marked up the bill which is before the Senate.

Chairman HATCH, Senator KOHL, and I worked closely with Senator FEINSTEIN to make sure that more in-State class actions stayed in State court. That was a compromise to garner a little more bipartisan support at that time.

We also worked closely with Senator SPECTER, albeit a Republican but a person who had some questions about this legislation, to make sure that his concerns relative to class actions were addressed.

The bill was approved by the Judiciary Committee with solid bipartisan support. Late last year, we worked with Senators SCHUMER, DODD, and LANDRIEU to address concerns they raised and to get them on board. Those Senators joined us in the introduction of the numbered bill before us, S. 2062, in February of this year in a bipartisan show of support for class action reform.

I wanted to elaborate on the history of this bill so my colleagues were aware of the tremendous amount of time, over almost a decade, that Congress has spent studying the problem with our class action system and all the work and compromises that we put into this bipartisan bill to hopefully now get it passed.

I will highlight some of the changes that we made to the bill to increase bipartisan support since Senator KOHL and I introduced the first Class Action Fairness Act several years ago.

The bill, as was originally introduced, did several things. It required that notice of proposed settlements in all class actions, as well as all class notices, be in clear, easily understood English and include all material settlements and the terms of those settlements, including amount and source of attorney's fees. Mr. President, you should not have to be a lawyer to understand what you are suing about and what your cause is and what is going to happen to attorney's fees and other issues in the settlement. Presently, it is pretty complicated to understand that situation.

Because plaintiffs give up their right to sue by joining a class action, they

have a right to understand the ramifications of their actions in joining a class.

Then our bill required that State attorneys general, or other responsible State government officials, be notified of any proposed class settlement that would affect the residents of their States.

We included this provision to help protect class members because such notices would provide State officials with an opportunity to object if the settlement terms were unfair to the citizens of their particular State. Somebody at the State level ought to be reviewing that for the populations of their States.

Our bill also requires that courts closely scrutinize class action settlements where the plaintiffs only receive a coupon or some other noncash award while, as I have said before, the lawyers get the bulk of the money.

Our bill required the Judiciary Committee to report back to Congress on the best practices in class action cases and how to best ensure fairness of class action settlements.

Finally, the bill allowed more class action lawsuits to be removed from State court to Federal court. The bill eliminated the complete diversity rule for class action cases but left in State court those class actions with fewer than 100 plaintiffs, class actions that involved less than $5 million, and class actions in which the State government entity, like the attorney general—well, no that is not right—where a State government entity is a primary defendant. Our bill still does many of these things, but we have made a number of modifications to get broader bipartisan support.

In the Judiciary Committee last year, we incorporated the Feinstein amendment, which would leave in State court class action cases brought against a company in its home State where two-thirds or more of the class members are also residents of that State. We also incorporated changes to address issues raised by Senator SPECTER relative to how mass actions should be treated under the bill.

In our negotiations in late 2003 with Senators SCHUMER, DODD, and LANDRIEU, we made numerous changes. I am only going to mention a few of those important compromises reached. Examples: We made changes to the coupon settlement provisions in the bill, providing that attorneys fees must be based either on the value of the coupons actually redeemed by class members or the hours actually billed in prosecuting the case.

We deleted the bounties provision because of concern that it might harm civil rights plaintiffs.

We deleted provisions in the bill that dealt with specific notice requirements because the Judicial Conference has already approved similar notice requirements to the Federal Rules of Civil Procedure.

To address questions about the merry-go-round issue, we eliminated a provision dealing with the dismissal of cases that failed to meet rule 23 requirements so that existing law continues to apply.

We deleted a provision allowing plaintiff class members to remove class action because of gaming concerns.

We placed reasonable time limitations on appellate review of remand orders in the bill.

We clarified that citizenship of proposed class members is to be determined on the date plaintiffs file the original complaint or when plaintiffs amend that complaint.

We made modifications to the Feinstein compromise that I have already referred to and to the class actions language referred to.

We clarified that nothing in the bill restricts the authority of the Judicial Conference to promulgate rules with respect to class actions.

Finally, we crafted a new local class action exception which would allow class actions to remain in State court if, No. 1, more than two-thirds of the class members are citizens of the forum State; No. 2, there is at least one in-State defendant from whom significant relief is sought by members of the class and whose conduct forms a significant basis of the plaintiffs' claims; No. 3, principal injuries resulting from the alleged conduct or related conduct of each defendant were incurred in the State where the action was originally filed; and lastly, no other class action asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons has been filed during the preceding 3 years. We did this to ensure that truly local class action cases, such as a plant explosion or some other localized event, would be able to stay in the State court where the harm took place.

So we have made significant concessions to get our Democratic colleagues on board the Class Action Fairness Act. They have been telling us they are ready to support the bill and to get it passed. Both sides have been asking the leader to bring up this bill. Now that we have an agreement to proceed to the bill, hopefully no partisan politics will be played and we will get down to business and finally get this job done. It is time to make real progress on the class action bill and get it passed.

Again, I want to remind my colleagues that we crafted a carefully balanced bill that consists of all of these compromises and more that I have mentioned. I believe we have done a pretty good job of addressing legitimate concerns with the bill, and I am hopeful we will not see lots of amendments to disrupt this compromise.

I urge my colleagues to refrain from offering nonrelevant amendments, amendments that have nothing to do with this bill, because this is a bill that should not be bogged down with everyone's pet project, for which the Senate is so famous. All of our hard work of forging a bipartisan compromise bill should not go down the drain.

The bottom line is class action reform is badly needed. Both plaintiffs and defendants alike are calling for change. The Class Action Fairness Act will help curb many problems that have plagued the class action system.

The bill will increase class member protections and ensure the approval of fair settlements. It will allow nationwide class actions to be heard in the proper forum—the Federal courts—but keep primarily State class actions in State court. It will preserve the process but put a stop to the more egregious abuses. It will also help to put a stop to the frivolous lawsuits that are a drag on our economy and especially harmful to small business.

Now that we have worked out a delicate compromise, we should be able to get this bipartisan bill done without any changes.

A lot of my colleagues listening will say: Well, the gall of the Senator from Iowa to say that we have such a perfect bill before the Senate that we should not have any amendments. Well, over the course of several years, this has been a bipartisan bill in sponsorship. We developed more broad bipartisan consensus last year to get this bill out of committee. We just about had enough consensus to move the bill, one vote short of a supermajority, last October, of 60 votes, to move this bill.

Then there were further compromises made to get over that hurdle. You can quantify in this body, what it takes, as a measure of bipartisanship. It is whether you get that 60-vote supermajority to stop debate and to get to finality. That is where the power of the minority comes into play in this body. They can say they need further compromise to move this bill to finality. We did that between last October and now.

Some people do not want class action reform and they have a right to vote against it. But it seems when the Senate process has worked to bring about the necessary votes, and those necessary votes are gotten by the proper bipartisan compromises being worked out, then we ought to be able to let the Senate work its will. The rights of the minority have been protected.

Have the rights of every last Senator been protected? No. But if we had to wait for that to happen, no bill would pass. But if it did pass, it would pass by a 100-to-0 margin.

We are there. Hopefully this bill will pass the way it has been worked out and be done in a short period of a few days. We do not have a lot of time to spend on it. Of course, that works to the advantage of those who do not want anything because they represent the interests, they would say, of the consumers, and I don't doubt that is what they are concerned about. But they are also, intended or not, representing the interests of the selfish personal injury lawyers who want to play games with picking this county in this State, or that county in that State—some Podunk county where they can win their case.

It would be OK if that case were only pertinent to the people of that State, but you find this forum shopping with national implications. Something of national implication should not be decided in one Podunk county in one State but should be decided by our Federal courts.

I yield the floor.

Mr. CARPER. Will the Senator yield?

Mr. GRASSLEY. Yes. I yielded the floor, but if you want me to hold the floor——

Mr. CARPER. I would appreciate it. If the Senator will yield, I would like to make a comment.

Mr. GRASSLEY. Yes.

Mr. CARPER. I want to thank the chairman, as the prime sponsor of this bill, for his willingness to entertain changes and ideas from our side of the aisle, from Democrats who had what we thought were ideas to improve this legislation. I think as the bill has gone through its introduction, its markup and debate in the Judiciary Committee, been reported out of the Judiciary Committee—the bill was sort of rereported out of the Judiciary Committee with some further changes, there was the adoption of the changes and incorporation of the changes that were negotiated with a number of us, including Senators SCHUMER, DODD, LANDRIEU, KOHL, and myself—I think one of the reasons why we are here tonight with a bill we can go forward with, that is going to get pretty good bipartisan support, has been your willingness to not only listen to some other ideas but to incorporate them into this bill.

As I listened to the Senator go through the bill and talk about it, particularly to talk about the changes that have been made in it, I was struck how far we have come in the course of the last year or two. I want, while you are still here, to express my thanks for the way you approached this subject and the openminded way you have enabled us to move forward.

Mr. GRASSLEY. Mr. President, if I could say this before I yield the floor, and I am going to yield the floor right away, first of all, I appreciate the statement by the Senator from Delaware. He may have missed it, but sometime in my remarks tonight I made some commentary about his efforts to help work a compromise and bring up issues that were very important to get settled in order to move to finality.

Also, Mr. President, I want to tell you as well as other Members of this body, this bill is where it is because of the urgency Senator CARPER has put on this legislation, to get it passed, because he knows of the need. He also understands the need of bipartisanship.

I hope I have given him proper credit in this way. So many times as we Senators do, we go to breakfasts or lunches to speak to groups that are interested in legislation, and they are always asking us about this bill or that bill. More often than not, particularly when I am talking to small business groups, I am often asked about when are we going to get class action reform. I say, under certain circumstances we will get it. Sometimes people compliment me because I was the prime sponsor of this legislation. But I say at every one of these meetings, they need to thank Senator CARPER whenever they see him, because no person in the Senate is trying move this bill along and do it in a bipartisan way, no one more than Senator CARPER.

I can say to Senator CARPER, I thank him very much for what he has done and I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). Who seeks recognition?

Mr. CARPER. I do.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. CARPER. I thank Senator GRASSLEY for what he said. I understand Senator GRASSLEY may need to do some wrap-up here. I am not sure. If he does, I will be happy to yield.

Mr. GRASSLEY. Yes. I guess I didn't understand that was part of my responsibility. I will do that right away.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, for our leader, I ask there now be a period of morning business with Senators speaking for up to 10 minutes each.

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

HONORING OUR ARMED FORCES

Mrs. BOXER. Mr. President, I rise to pay tribute to 34 young Americans who have been killed in Iraq since May 6. I have been doing this all throughout the war. All of them were from California or they were based in California.

LCpl Jeremiah E. Savage, age 21, died May 12 of wounds received due to hostile action in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

SGT Brud Cronkrite died May 14 from injuries sustained in Karbala. He was assigned to the 1st Battalion, 37th Armor, 1st Armored Division, Friedberg, Germany. Sergeant Cronkrite was from Spring Valley, CA.

PFC Michael A. Mora, age 19, died May 14 in An Najaf when his military vehicle slid off the road and turned over. He was assigned to the Army's 3rd Squadron, 2nd Armored Cavalry Regiment, 1st Calvary Division, Fort Polk, LA. Private First Class Mora was from Arroyo Grande, CA.

PFC Brian K. Cutter, age 19, was found unconscious on May 13 and was later pronounced dead in Al Asad, Iraq. Cause of death is under investigation. He was assigned to 3rd Assault Amphibian Battalion, 1st Marine Division, Camp Pendleton, CA. Private First Class Cutter was from Riverside, CA.

PFC Brandon Sturdy, age 19, died May 13 from hostile fire in Al Anbar Province. He was assigned to 2nd Battalion, 1st Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

LCpl Bob W. Roberts died May 17 due to hostile fire in Al Anbar Province. He was assigned to 1st Combat Engineer Battalion, 1st Marine Division, Camp Pendleton, CA.

SPC Marcos Nolasco died May 18 in Baji, Iraq, as a result of an electrocution accident. He was assigned to Battery B, 1st Battalion, 33rd Field Artillery, 1st Infantry Division, Bamberg, Germany. He was from Chino, CA.

PFC Michael M. Carey, age 20, died May 18 in Iraq. He apparently fell into a canal and did not resurface. His remains were recovered on May 18. He was assigned to 1st Battalion, 5th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

Cpl Rudy Salas, age 20, died May 20 from fatal injuries sustained when his vehicle was involved in an accident while conducting a resupply convoy in Al Anbar Province. He was assigned to 1st Light Armored Reconnaissance Battalion, 1st Marine Division, Camp Pendleton, CA. Corporal Salas was from Baldwin Park, CA.

Sgt Jorge A. MolinaBautista, age 37, was killed May 23 in an explosion while conducting combat operations in the Al Anbar Province. He was assigned to 1st Light Armored Reconnaissance Battalion, 1st Marine Division, Camp Pendleton, CA. He was from Rialto, CA.

PFC Daniel P. Unger, age 19, died May 25 in Forward Operating Base Kalsu during a rocket attack. He was assigned to the Navy National Guard's 1st Battalion, 185th Armor, 81st Separate Armor Brigade, Visalia, CA. He was from Exeter, CA.

LCpl Kyle W. Codner, age 19, died May 26 due to hostile action in Al Anbar Province, Iraq. He was assigned to 1st Combat Engineer Battalion, 1st Marine Division, Camp Pendleton, CA.

Cpl Matthew C. Henderson, age 25, died May 26 due to hostile action in Al Anbar Province. He was assigned to 1st Combat Engineer Battalion, 1st Marine Division, Camp Pendleton, CA.

LCpl Benjamin R. Gonzalez, age 23, was killed May 29 from an explosion while conducting combat operations in the Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA. He was from Los Angeles, CA.

Pfc Cody S. Calavan, age 19, died May 29 due to hostile action in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

LCpl Rafael Reynosasuarez, age 28, was killed May 29 from an explosion while conducting combat operations in the A1 Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA. He was from Santa Ana, CA.

Cpl Dominique J. Nicolas, age 25, died May 26 from hostile fire in A1

Anbar Province, Iraq. He was assigned to 1st Combat engineer Battalion, 1st Marine Division, Camp Pendleton, CA.

1LT Kenneth Michael Ballard, age 26, died May 30 in Najaf during a firefight with insurgents. He was assigned to the Army's 2nd Battalion, 37th Armored Regiment, 1st Armored Division, from Friedburg, Germany. He was from Mountain View, CA.

LCpl Dustin L. Sides, age 22, died May 31 from hostile fire in A1 Anbar Province. He was assigned to 9th Communications Battalion, I Marine Expeditionary Force, Camp Pendleton, CA.

Cpl Bum R. Lee, age 21, died June 2 as the result of multiple traumatic injuries received from an explosion while conducting combat operations in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA. He was from Sunnyvale, CA.

LCpl Todd J. Bolding, age 23, died June 3 of wounds received due to hostile action in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

LCpl Jeremy L. Bohlman, age 21, died June 7 from hostile action in Al Anbar Province. He was assigned to 1st Light Armored Reconnaissance Battalion, 1st Marine Division, Camp Pendleton, CA.

PFC Sean Horn, age 19, died June 19 due to a non-hostile incident at Camp Taqaddum, Iraq. He was assigned to Combat Service Support Group 11, 1st Force Service Support Group, Camp Pendleton, CA. He was from Orange, CA.

SSgt Marvin Best, age 33, died June 20 due to hostile action in Al Anbar Province. He was assigned to 2nd Battalion, 7th Marine Regiment, 1st marine division, Twentynine Palms, CA.

SPC Thai Vue, age 22, died June 18 in Baghdad when a mortar round hit the motor pool where he was working. He was assigned to the Army's 127th Military Police Company, 709th Military Police Battalion, 18th Military Police Brigade, V Corps, Hanau, Germany. He was from Willows, CA.

LCpl Pedro Contreras, age 27, died June 21 from hostile fire in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

LCpl Deshon E. Otey, age 24, died June 21 from hostile fire in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

Cpl Tommy L. Parker, Jr., age 21, died June 21 from hostile fire in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

LCpl Juan Lopez, age 22, died June 21 from hostile fire in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

2LT Andre D. Tyson, age 33, died June 22 in Balad, Iraq, when enemy forces ambushed his ground patrol. He was assigned to the Army National Guard's 579th Engineer Battalion, Petaluma, CA. He was from Riverside, CA.

SPC Patrick R. McCaffrey, Sr., age 34, died June 22 in Balad, Iraq, when enemy forces ambushed his ground patrol. He was assigned to the Army National Guard's 579th Engineer Battalion, Petaluma, CA. He was from Tracy, CA.

LCPL Manuel A. Ceniceros, age 23, died June 26 from an explosion while conducting combat operations in Al Anbar Province. He was assigned to Regimental Combat Team 1 Headquarters Company, 1st Marine Division, Camp Pendleton, CA. He was from Santa Ana, CA.

Sgt Kenneth Conde, Jr., age 23, died July 1 due to injuries received from enemy action in Al Anbar Province. He was assigned to 2nd Battalion, 4th Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

LCPL James B. Huston, Jr., age 22, died July 2 in a vehicle accident while his unit was responding to hostile action in Al Anbar Province. He was assigned to 2nd Battalion, lst Marine Regiment, 1st Marine Division, Camp Pendleton, CA.

Mr. President, 206 soldiers who were either from California or based in California have been killed while serving our country in Iraq. I pray for these young Americans and their families, and I pray for those who are over there. I look forward to the day when we have a plan to bring our troops home.

I, again, thank Senators LEAHY and HATCH and I yield the floor.

AN ARTICLE WRITTEN BY ELIE WIESEL

Mr. DOMENICI. Mr. President, I do not frequently come to the floor—I assume not very many Senators do—calling to the attention of the Senate an article that has appeared in ''Parade,'' the magazine that is inserted in our Sunday newspapers. But this past weekend I witnessed and then read an article entitled ''The America I Love.'' It was by Elie Wiesel. I think we all have heard of him. He is a Jewish man who was in the concentration camps. He was freed by American soldiers and then came to America. He has spent much of his life here, becoming a citizen. He has been a professor for a long time at one of our universities and has written about 40 books.

I do not know why this article came up this weekend, but let me read excerpts from it, and then I will ask that the entire article be made a part of the RECORD.

At one point, Mr. Wiesel says:

In America, compassion for the refugees and respect for the other still have biblical connotations.

Grandiloquent words used for public oratory? Even now, as America is in the midst of puzzling uncertainty and understandable introspection because of tragic events in Iraq, these words reflect my personal belief. For I cannot forget another day that remains alive in my memory: April 11, 1945.

That day I encountered the first American soldiers in Buchenwald concentration camp. I remember them well. Bewildered, disbelieving, they walked around the place, hell on earth, where our destiny had been played out. They looked at us, just liberated, and did not know what to do or say. Survivors snatched from the dark throes of death, we were empty of all hope—too weak, too emaciated to hug them or even speak to them. Like lost children, the American soldiers wept and wept with rage and sadness. And we received their tears as if they were heartrending offerings from a wounded and generous humanity.

Ever since that encounter, I cannot repress my emotion before the flag and the uniform—anything that represents American heroism in battle. That is especially true on July Fourth. I reread the Declaration of Independence, a document sanctified by the passion of a nation's thirst for justice and sovereignty, forever admiring both its moral content and majestic intonation. Opposition to oppression in all its forms, defense of all human liberties, celebration of what is right in social intercourse: All this and much more is in that text, which today has special meaning.

Granted, U.S. history has gone through severe trials, of which anti-black racism was the most scandalous and depressing. I happened to witness it in the late Fifties, as I traveled through the South. What did I feel? Shame. Yes, shame for being white. What made it worse was the realization that, at that time, racism was the law, thus making the law itself immoral and unjust.

Still, my generation was lucky to see the downfall of prejudice in many of its forms. True, it took much pain and protest for that law to be changed, but it was. Today, while fanatically stubborn racists are still around, some of them vocal, racism as such has vanished from the American scene. That is true of anti-Semitism too. Jew-haters still exist here and there, but organized anti-Semitism does not—unlike in Europe, where it has been growing with disturbing speed.

As a great power, America has always seemed concerned with other people's welfare, especially in Europe. Twice in the 20th century, it saved the ''Old World'' from dictatorship and tyranny.

America understands that a nation is great not because its economy is flourishing or its army invincible but because its ideals are loftier. Hence America's desire to help those who have lost their freedom to conquer it again. America's credo might read as follows: For an individual, as for a nation, to be free is an admirable duty—but to help others become free is even more admirable.

Some skeptics may object: But what about Vietnam? And Cambodia? And the support some administrations gave to corrupt regimes in Africa or the Middle East? And the occupation of Iraq? Did we go wrong—and if so, where?

And what are we to make of the despicable, abominable ''interrogation methods'' used on Iraqi prisoners of war by a few soldiers (but even a few are too many) in Iraqi military prisons?

Well, one could say that no nation is composed of saints alone. None is sheltered from mistakes or misdeeds. All have their Cain and Abel. It takes vision and courage to undergo serious soul-searching and to favor moral conscience over political expediency. And America, in extreme situations, is endowed with both. America is always ready to learn from its mishaps. Self-criticism remains its second nature.

Not surprising, some Europeans do not share such views. In extreme left-wing political and intellectual circles, suspicion and distrust toward America is the order of the

went to war only to please the oil-rich capitalists.

They are wrong. America went to war to liberate a population too long subjected to terror and death.

We see in newspapers and magazines and on television screens the mass graves and torture chambers imposed by Saddam Hussein and his accomplices. One cannot but feel grateful to the young Americans who leave their families, some to lose their lives, in order to bring to Iraq the first rays of hope—without which no people can imagine the happiness of welcoming freedom.

Hope is a key word in the vocabulary of men and women like myself and so many others who discovered in America the strength to over come cynicism and despair.

Remember the legendary Pandora's box? It is filled with implacable, terrifying curses. But underneath, at the very bottom, there is hope. Now as before, now more than ever, it is waiting for us.

Mr. DOMENICI. Mr. President, I ask unanimous consent to print the full text of the article in the RECORD.

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

THE AMERICA I LOVE

(By Elie Wiesel)

Born in Sighet, Transylvania (Romania), Elie Wiesel became a U.S. citizen in 1963. Since then, Wiesel—a Holocaust survivor, Boston University professor and the author of more than 40 books—has become one of our nation's most honored citizens. In 1985, President Ronald Reagan awarded him the Congressional Gold Medal, the highest honor Congress can bestow on a civilian. In 1992, President George Bush recognized Wiesel with the Presidential Medal of Freedom. Wiesel, who has been an outspoken advocate of human rights around the world, won the Nobel Peace Prize in 1986.

The day I received American citizenship was a turning point in my life. I had ceased to be stateless. Until then, unprotected by any government and unwanted by any society, the Jew in me was overcome by a feeling of pride mixed with gratitude.

From that day on, I felt privileged to belong to a country which, for two centuries, has stood as a living symbol of all that is charitable and decent to victims of injustice everywhere—a country in which every person is entitled to dream of happiness, peace and liberty; where those who have are taught to give back.

In America, compassion for the refugee and respect for the other still have biblical connotations.

Grandiloquent words used for public oratory? Even now, as America is in the midst of puzzling uncertainty and understandable introspection because of tragic events in Iraq, these words reflect my personal belief. For I cannot forget another day that remains alive in my memory: April 11, 1945.

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Ever since that encounter, I cannot repress my emotion before the flag and the uniform—anything that represents American heroism in battle. That is especially true on July Fourth. I reread the Declaration of Independence, a document sanctified by the passion of a nation's thirst for justice and sovereignty, forever admiring both its moral content and majestic intonation. Opposition to oppression in all its forms, defense of all human liberties, celebration of what is right is social intercourse: All this and much more is in that text, which today has special meaning.

Granted, U.S. history has gone through severe trials, of which anti-black racism was the most scandalous and depressing. I happened to witness it in the late Fifties, as I traveled through the South. What did I feel? Shame. Yes, shame for being white. What made it worse was the realization that, at that time, racism was the law, thus making the law itself immoral and unjust.

Still, my generation was lucky to see the downfall of prejudice in many of its forms. True, it took much pain and protest for that law to be changed, but it was. Today, while fanatically stubborn racists are still around, some of them vocal, racism as such has vanished from the American scene. That is true of anti-Semitism too. Jew-haters still exist here and there, but organized anti-Semitism does not—unlike in Europe, where it has been growing with disturbing speed.

As a great power, America has always seemed concerned with other people's welfare, especially in Europe. Twice in the 20th century, it saved the ''Old World'' from dictatorship and tyranny.

America understands that a nation is great not because its economy is flourishing or its army is invincible but because its ideals are loftier. Hence America's desire to help those who have lost their freedom to conquer it again. America's credo might read as follows: For an individual, as for a nation, to be free is an admirable duty—but to help others become free is even more admirable.

Some skeptics may object: But what about Vietnam? And Cambodia? And the support some administrations gave to corrupt regimes in Africa or the Middle East? And the occupation of Iraq? Did we go wrong—and if so, where?

And what are we to make of the despicable, abominable ''interrogation methods'' used on Iraqi prisoners of war by a few soldiers (but even a few are too many) in Iraqi military prisons?

Well, one could say that no nation is composed of saints alone. None is sheltered from mistakes or misdeeds. All have their Cain and Abel. It takes vision and courage to undergo serious soul-searching and to favor moral conscience over political expediency. And America, in extreme situations, is endowed with both. America is always ready to learn from its mishaps. Self-criticism remains its second nature.

Not surprising, some Europeans do not share such views. In extreme left-wing political and intellectual circles, suspicion and distrust toward America is the order of the day. They deride America's motives for its military interventions, particularly in Iraq. They say: It's just money. As if America went to war only to please the oil-rich capitalists.

They are wrong. America went to war to liberate a population too long subjected to terror and death.

We see in newspapers and magazines and on television screens, the mass graves and torture chambers imposed by Saddam Hussein and his accomplices. One cannot but feel grateful to the young Americans who leave their families, some to lose their lives, in order to bring to Iraq the first rays of hope—without which no people can imagine the happiness of welcoming freedom.

Hope is a key word in the vocabulary of men and women like myself and so many others who discovered in America the strength to overcome cynicism and despair.

Remember the legendary Pandora's box? It is filled with implacable, terrifying curses. But underneath, at the very bottom, there is hope. Now as before, now more than ever, it is waiting for us.

111TH VIBORG DANISH DAYS

Mr. DASCHLE. Mr. President, I take this opportunity to recognize the upcoming Danish Days Festival in Viborg, SD. This annual event attracts hundreds of people to the small South Dakota town to celebrate the area's rich Danish history. I especially applaud the Danish Days planning committee and the Danish Heritage Association for their work to make this event a success.

Denmark-native Peter Larsen Christensen first settled near Viborg in 1864, establishing a small general store on his homestead. Southwestern Railroad completed a line connecting Sioux Falls and Yankton in 1893, which passed through the present-day Viborg. The community incorporated on August 25, 1893, shortly after the railroad's arrival, and quickly grew into a bustling Danish community on the new South Dakota prairie.

Today, this town of 800 remains a vibrant community. In a time when small town stores continue to close, Viborg's Main Street features full storefronts offering a variety of services, including a pharmacy, grocery store and bank. The city's industrial park also continues to grow. Viborg's strong business community exists because of the town's strong foundation of community, established more than 100 years ago.

Each year, the Danish Days Festival provides Viborg residents, past and present, with an opportunity to celebrate the community's proud heritage. The event will feature a leadership luncheon for Turner County's public servants and an honoring reception for the decedents of 2004 Danish Days honorees, C.J. and Cena Glood. A parade, community barbecue, car show, and fireworks display are also planned.

The C.J. and Cena Glood family opened Viborg's first hardware and implement store shortly after the community was incorporated, and their decedents have continued to impact Viborg's prosperity through proud leadership. Most prominently, their eldest son, Royal, served 10 years in South Dakota State Legislature, advocating for the interests of Turner County.

Their daughter, Dagmar, maintained a medical practice in Viborg for nearly 20 years and made numerous contributions to the community. The family has had a substantial impact on Viborg's development and are worthy honorees.

Finally, the Danish Heritage Association will unveil Viborg's first Danish heritage museum during the festivities.

heritage museum during the festivities. The Association has dedicated hours of volunteer time and labor to ''preserving yesterday and today for tomorrow,'' and I am pleased that artifacts of Viborg's history will be preserved in this fashion.

South Dakota communities each have their own unique history. I am proud to recognize Vibrog's ongoing work to preserve its heritage while building toward the future.

HONORING SUE POWERS

Mr. REID. Mr. President, today I rise to remember Sue Powers, a woman who devoted her last years to honoring the memory of cold-war veterans, and the widow of famed U–2 pilot Gary Powers.

When the United States salutes its war heroes, those who fought the cold war are often overlooked. Sue Powers, who died last month in Las Vegas, worked tirelessly to change that, and to preserve this important chapter of our history.

Mrs. Powers served as a volunteer at the Atomic Testing Museum in Las Vegas, and was a founding member of the Cold War Museum.

''She was as much of a cold-war warrior as her husband and believed in him and what he did through the events in the Soviet Union'' said Troy Wade, chairman of the Nevada Test Site Historical Foundation.

Mrs. Powers, born Claudia Edwards, grew up in Warrenton, VA., and Washington, DC. After graduating from Anacostia High School, she went to work for the Central Intellegence Agency as a psychometrist.

In 1962 she met Francis Gary Powers, a famed U–2 pilot. Two years earlier in 1960, Powers had been shot down and taken as a prisoner of war while flying his U–2 spy plane over the Soviet Union.

Gary and Sue met just after Gary's return from Russia. He literally bumped into her when he walked around a corner near their offices. According to their son Gary Jr., there was spilled coffee, which led to a cup of coffee, which led to dinner, which led to romance and marriage.

Sue left the CIA and the couple was married in 1963. After their marriage they moved to Sun Valley, CA, where Gary worked as a pilot first for Lockheed then for KNBC television. They worked together to preserve the memories of those people who sacrificed their lives during the cold war. Sue was left to carry on their cold-war crusade alone after Gary died in a helicopter crash in 1977 while piloting for KNBC.

After her husband's death Mrs. Powers moved to Los Angeles and eventually to Las Vegas. She devoted the rest of her life to preserving the legacy of her husband and other heroes of the cold war. She was honorary chairwoman of the Silent Heroes of the Cold War National Memorial Committee.

As a citizen of Nevada, Mrs. Powers worked especially hard to preserve Nevada cold war history. Her husband was trained at Area 51, a military facility in Nevada, and Mrs. Powers was well aware of the many other contributions that Nevadans made during the cold war.

Many Government personnel were trained at Area 51, Nellis Air Force Base, or the Naval Air Station in Fallon. Nevada was also crucial to the cold-war effort because it was home to intercontinental ballistic missiles, fight training centers, nuclear weapons test sites, and strategic tactical resources.

Mrs. Powers appreciated the importance of these contributions and was diligent in her efforts to ensure that the Silver State's role in the cold war was not forgotten.

Sue never swayed in her loyalty to cold-war veterans or her determination to ensure their sacrifices were not forgotten. For this, she herself is a hero. It is only fitting that she will be buried on July 13 in Arlington National Cemetery, along with her beloved husband.

PASSAGE OF THE AGOA ACCELERATION ACT OF 2004

Mr. GRASSLEY. Mr. President, I rise today to praise the Senate for the passage of the African Growth and Opportunity Acceleration Act of 2004 which was completed before we adjourned for the Fourth of July recess. The House of Representatives passed the legislation on June 14, 2004, and it was imperative the Senate quickly follow suit.

The passage of AGOA is great news for Africa. Since AGOA was first enacted in 2000, investment in Africa is up, and trade from Africa is up. Because of the Africa Growth and Opportunity Act, many African families can now feed their children. For the first time there is a new sense of hope in many countries. Many provisions of the Africa Growth and Opportunity Act were set to expire this year. This created an environment of uncertainty, which as leading to investment flight and lost opportunities. Passage of this bill will help people in Africa reap the full benefits of the program.

It is encouraging that this bill received such strong bipartisan support in the House and Senate. Trade can be a powerful tool of growth, and I am pleased that the majority of my colleagues share this view.

Although passage of this bill is a great step forward, there is still a lot of work to be done. For example, the United States is currently negotiating a free trade agreement with members of the Southern African Customs Union. This will include the nations of South Africa, Botswana, Lesotho, Swaziland, and Namibia. Completion of this agreement will help foster trade and investment in the region, which could lead to a new period of sustained economic growth.

For trade to work, it has to be two-way street. Foreign aid and preference programs are always a short-term answer. For long-term growth, Africans must work hand-in-hand with the United States to open markets both in Africa and around the world. History proves that the most economically advanced nations are those that embrace free trade and free markets. Too often, unduly high tariff barriers in developing countries hinder the trade and investment that is so vital to economic growth. I want to help create a climate of sustained prosperity in Africa, so we can eliminate poverty and provide hope for a better future. Passage of this bill is a good first step. I hope we can continue our work with the African people to help advance both our economies and build toward a brighter, more prosperous future.

I would now like to take a minute and thank my staff who helped bring this legislation into realization. First and foremost is my staff director and chief counsel, Kolan Davis, for his leadership and loyalty. I would like to thank Everrett Eissenstat, my chief international trade counsel, for his hard work as well as that of the rest of my trade team, including Stephen Schaefer, David Johanson, Zach Paulsen and Dan Shepherdson. I must not forget to mention Carrie Clark—now Carrie Clark-Philips—who competently covered this issue for me before leaving the Committee. And finally, I want to thank the ranking member on the Finance Committee, Senator BAUCUS, and his able trade staff of Tim Punke, Brian Pomper, Shara Aranoff, Sara Andrews, John Gilliland and Pascal Niedermann, for the work they did in getting this bill compelted.

I look forward to seeing the President sign this legislation into law quickly, so we can continue to work with the African nations in furthering economic progress. I thank the Senate for the bipartisan nature extended in the passage of this important legislation.

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.

On January 2, 1993, police found Chrissey Johnson naked, with her feet tied together. She had been stabbed approximately 15 times and thrown from the second floor of her apartment. The disturbing nature of the murder suggested to police that Johnson was targeted for being transgendered.

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.

COLLOQUY ON CAMCORDER PROVISION OF S. 1932

Mr. HATCH. Mr. President, Section 3 of the ART Act establishes a new provision of Title 18 entitled, ''Unauthorized Recording of Motion Pictures in a Motion Picture Exhibition Facility.'' I ask Senator CORNYN, what is the purpose of this provision?

Mr. CORNYN. Section 3 addresses a serious piracy issue facing the movie business: the use of camcorders in a motion picture theater. Sad to say, there are people who go to the movie theater, generally during pre-opening ''screenings'' or during the first weekend of theatrical release, and using sophisticated digital equipment, record the movie. They're not trying to save $8.00 so they can see the movie again. Instead, they sell the camcorded version to a local production factory or to an overseas producer, where it is converted into DVDs or similar products and sold on the street for a few dollars per copy. This misuse of camcorders is a significant factor in the estimated $3.5 billion per year of losses the movie industry suffers because of hard goods piracy. Even worse, these camcorded versions are posted on the Internet through ''P2P'' networks such as KaZaa, Grockster and Morpheus—and made available for millions to download. The goal of our bill is to provide a potent weapon in the arsenal of prosecutors to stem the piracy of commercially valuable motion pictures at its source.

Mr. HATCH. I have heard it said that this bill could be used against a salesperson or a customer at stores such as Best Buy or Circuit City if he or she were to point a video camera at a television screen showing a movie. Is this cause for concern?

Mr. CORNYN. Absolutely not. The offense is only applicable to transmitting or copying a movie in a motion picture exhibition facility, which has to be a movie theater or similar venue ''that is being used primarily for the exhibition of a copyrighted motion picture.'' In the example of Best Buy—the store is being used primarily to sell electronic equipment, not to exhibit motion pictures. For the same reason, the statute would not cover a university student who records a short segment of a film being shown in film class, as the venue is being used primarily as a classroom, and not as a movie theater.

Mr. HATCH. Does the Senator from California agree with our colleague from Texas?

Mrs. FEINSTEIN. Absolutely, on all points.

Mr. HATCH. I have also heard some say that this statute could be used to prosecute someone for camcording a DVD at his home. Is this a fair concern?

Mrs. FEINSTEIN. No, it is not. The definition of a motion picture exhibition facility includes the concept that the exhibition has to be ''open to the public or is made to an assembled group of viewers outside of a normal circle of a family and its social acquaintances.'' This definition makes clear that someone recording from a television in his home does not meet that definition. It is important to emphasize that the clause ''open to the public'' applies specifically to the exhibition, not to the facility. An exhibition in a place open to the public that is itself not made to the public is not the subject of this bill. Thus, for example, a university film lab may be ''open to the public.'' However, a student who is watching a film in that lab for his or her own study or research would not be engaging in an exhibition that is ''open to the public.'' Thus, if that student copied an excerpt from such an exhibition, he or she would not be subject to liability under the bill.

Mr. HATCH. Do the users of hearing aids, cell phones or similar devices have anything to fear from this statute?

Mrs. FEINSTEIN. Of course not. The statute covers only a person who ''knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of a motion picture or other audiovisual work protected under Title 17, or any part thereof. . . .'' In other words, the defendant would have to be making, or attempting to make, a copy that is itself an audiovisual work, or make, or attempt to make, a transmission embodying an audiovisual work, as that term is defined in Section 101 of Title 17. As such, the Act would not reach the conduct of a person who uses a hearing aid, a still camera, or a picture phone to capture an image or mere sound from the movie.

Mr. HATCH. It appears that there is no fair use exception to this provision. Is that correct?

Mrs. FEINSTEIN. This is a criminal provision under Title 18, not a copyright provision under Title 17. Accordingly, there is no fair use exception included. However, Federal prosecutors should use their discretion not to bring criminal prosecutions against activities within movie theaters that would constitute fair use under the copyright laws. The object of this legislation is to prevent the copying and distribution of motion pictures in a manner that causes serious commercial harm. This legislation is not intended to chill legitimate free speech.

Mr. HATCH. Does the Senator from Texas agree?

Mr. CORNYN. Yes, on all points.

BOYS AND GIRLS CLUBS OF AMERICA

Mr. FEINGOLD. Mr. President, I wish to express my strong support for S. 2363 and the Boys and Girls Clubs of America. For over a hundred years, the Boys and Girls Clubs of America have been empowering the youth of our Nation by giving them tools to help them become productive citizens and future leaders. Providing children a safe place to learn and grow is just the beginning for this wonderful organization, which supports and inspires its members to participate in community service, arts, and culture, and sports and fitness activities, to learn important health and life skills, and much more.

I am especially proud of the vibrant 115-year history of the Boys and Girls Clubs of Milwaukee, whose five clubs currently serve more than 22,000 Milwaukee-area members. The Milwaukee clubs have won national awards for their technology and dental programs, and have achieved tremendous success in inspiring their members to strive to attend college. An impressive 85 percent of Milwaukee Club alumni credit Club staff for helping them learn leadership skills and build self-confidence. I am pleased that the legislation passed by the Judiciary Committee and the full Senate will help the Milwaukee-area clubs continue their important work.

I strongly support this bill, and I express my gratitude to Judiciary Committee Chairman HATCH and Ranking Minority Member LEAHY for giving this important cause the attention it deserves. The Boys and Girls Clubs of America are integral in fostering a safe and productive environment for our Nation's young people, our country's greatest resource for the future.

ADDITIONAL STATEMENTS

TRIBUTE TO JAMES A. ZIMBLE, M.D.

● Mr. INOUYE. Mr. President, today I pay tribute to James A. Zimble, President of the Uniformed Services University of the Health Sciences, USUHS. On August 3, 2004, this remarkable individual will mark the end of his 46-year career in Federal service.

Dr. Zimble, Vice Admiral, Medical Corps, United States Navy (Retired), and 30th Surgeon General of the United States Navy, was born on October 12, 1933, in Philadelphia, PA. He served as a senior medical student and ensign in the Navy Reserve Program from 1958 through 1959, earning a Medical Degree from the University of Pennsylvania, School of Medicine (SOM). Thus commenced a career dedicated to service to his nation, medical readiness, and force health protection.

Dr. Zimble's 33-year career in the Navy began with his internship and residency at the Naval Hospital in St. Albans, New York. By 1969, he was board certified by the American Board of Obstetrics and Gynecology. From 1972 through 1987 he served with distinction in a series of assignments directing clinical services and strategic planning. His Navy career culminated with his selection to serve as Surgeon General of the Navy, from 1987 through 1991. Vice Admiral Zimble earned multiple honors and awards during his

Navy career, including the Department of Defense Distinguished Service, Superior Service, and Meritorious Service Medals, the Department of Navy Legion of Merit, the Naval Reserve Association Distinguished Service Award, and the Association of Military Surgeons of the United States Founder's Medal.

Dr. Zimble was selected by the Secretary of Defense to serve as the President of USUHS in 1991. He was first to initiate strategic planning and assessment processes, which focused on mission accomplishment and the annual achievements of the 1,824 members of the USUHS community. Today, the University provides a comprehensive, performance-based annual report to the Office of the Secretary of Defense (OSD).

In 1996, under Dr. Zimble's leadership, the Graduate School of Nursing was established and officially recognized by OSD, thereby, providing uniquely qualified advanced practice nurses for the military. In December of 2000, the OSD Joint Meritorious Unit Award was presented to Dr. Zimble and the University, which officially recognized the multiple products and services of USUHS and their generation of cost avoidance for the Department. In addition, research conducted at USUHS was recognized in Science as one of the top ten scientific breakthroughs of 2002. In 2003, the University received the maximum term of ten years of accreditation with commendation from the Middle States Commission on Higher Education. Today, the USUHS School of Medicine Graduate Education Programs in Public Health rank sixth in the Nation according to U.S. News & World Report's 2004 Rankings of America's Best Graduate Schools on the list of the top 10 community health master or doctoral programs. The American Medical Association has recognized that USUHS not only educates its own graduates, but also provides a significant national service through its continuing medical education courses for military physicians in combat casualty care, tropical medicine, combat stress, disaster medicine, and medical responses to terrorism, courses not available through civilian medical schools. Significantly, the Emerging Infectious Diseases Graduate Education Program provides courses on the agents and effects of bioterrorism and is the only graduate program in the Nation to offer formal training in these critical areas. Over the past 13 years, USUHS has gained recognition and evolved into the Academic Center for Military Medicine.

During his tenure, Dr. Zimble remained focused on the medical readiness and force health protection requirements of the Uniformed Services. Today, USUHS prepares its career-oriented physicians, advanced practice nurses, and scientists for the practice of health care in contingency environments. USUHS alumni possess the essential knowledge, skills, and attitudes required during Joint Service deployments. Relevant knowledge in the psychological stresses of combat and trauma and the medical effects of nuclear, chemical, and biological weapons and extreme environments have been integrated throughout the USUHS educational programs. USUHS' internationally recognized operational exercises, Operations Kerkesner and Bushmaster, ensure flexibility in meeting the ever-evolving requirements of medical readiness. Dr. Zimble's meticulous focus has secured recognition for USUHS throughout the uniformed and civilian health care communities for providing uniformed physicians, advanced practice nurses and scientists with a better understanding of, commitment to, and preparation for the practice of health care in the military. Such accomplishments were recognized in 2000, when the Surgeon General of the United States awarded Dr. Zimble the Public Health Service Surgeon General's Medallion. In December of 1998 and 2001, the Association of American Medical Colleges confirmed the critical role of USUHS in national security by recognizing the USUHS is the one place where physicians of tomorrow, obtain today, thorough preparation to deal with many contingencies, including the medical aspects of chemical and biological terrorism. As of April 2004, the USUHS SOM alumni averaged approximately 20 years of active duty service and represent 22.2 percent of the 11,901 physicians on active duty. The Center for Navy Analysis has reported that where the median length of non-obligated service for physician specialists is 2.9 years, the median length of non-obligated service for USUHS SOM alumni is 9 years, making USUHS the most cost-effective and recommended accession source for leadership positions and ensuring continuity in the military health system. Today, USUHS alumni are globally deployed and providing essential care for our Armed Forces in every theater of operation.

Dr. Zimble provided visionary leadership in the establishment of the National Capital Area Medical Simulation Center and the immersive Computer-Aided Virtual Environment. Both projects serve as a template for civilian entities to model and participate in similar training scenarios.

Dr. Zimble's extraordinary contributions are respected and admired throughout the Joint Services and within the Federal and civilian health care communities. Our Nation is proud of Dr. Zimble's long and distinguished career and his devotion to the health of the Armed Forces and that of all citizens. I take this opportunity to thank him for his tremendous dedication and love for our country. I wish him fair winds and following seas.●

TRIBUTE TO BRUCE F. MUNDIE

● Mr. SARBANES. Mr. President, I wish to pay tribute today to Bruce Mundie, Director of the Office of Regional Aviation Assistance for the Maryland Aviation Administration. Bruce is retiring after a distinguished career serving the public and the aviation community and I would like to extend my personal congratulations and thanks for his tremendous public service.

When the next chapter in Maryland's aviation history is written, Bruce Mundie's name is likely to figure prominently as one of the key leaders who helped make the sky more accessible and greatly improved Maryland's air transportation infrastructure. Over the past 17 years, Bruce has worked tirelessly to enhance aviation at Maryland's 34 regional general aviation airports and more than 100 private airports. Among his many other accomplishments, Bruce was instrumental in the development of the Maryland Aid to Private Airports program, the Maryland Airport Equipment Loan Program, and the Maryland Airport Managers Association. He also introduced the innovative system of using automated weather stations, allowing for the institution of all-weather commercial service at eight new airports. In addition, he oversaw the replacement of 27 visual approach slope indicators that violated FAA standards and introduced new units that will save Maryland 95 percent of the cost of new equipment.

I have had the privilege of working closely with Bruce since he was first appointed to the Maryland Aviation Administration. Over the years we worked to bring a new control tower to Salisbury-Ocean City-Wicomico Regional Airport, expand the runways at Hagerstown, Garrett County, and Carroll County Airports, and create a bi-state compact for the Greater Cumberland Regional Airport, to name just a few projects. In every instance, Bruce exhibited an extraordinary commitment to elevating airport efficiency and safety standards in Maryland.

But Bruce's passion for flying and aviation was not just exemplified in his work. As a founding member of Opportunity Skyway, Bruce introduced programs that target students at risk of dropping out of school, benefiting citizens across the State and allowing students to pursue their interests in aviation. He has worked to integrate aviation into school curriculums through an aerospace workshop for teachers entitled ''Take It to the Top.'' Bruce also contributed to area institutions of higher education, teaching Aviation Management at the University of Maryland Eastern Shore.

Bruce's contributions and accomplishments to aviation and public service have been recognized numerous times with prestigious honors, including his National Association of Aviation Officials Distinguished Service Award in 2000. He also received the Distinguished Flying Cross in Vietnam and left the service a Lieutenant Colonel after a 26-year career in the United States Air Force.

It is my firm conviction that public service is the highest calling, one that demands the most dedicated efforts of those who have the opportunity to serve their fellow citizens and country. Throughout his career Bruce has exemplified a firm commitment to meeting this demand, constantly and tirelessly devoting his energy to improving Maryland airports and the community through his education initiatives that have fostered local interest in aviation and encouraged adolescents to remain in school.

It has been a pleasure working with a man who has followed his passion to make aviation safer, more efficient, and accessible to young people. I want to extend my personal congratulations and thanks for his years of hard work and dedication and wish him the best in his future endeavors.●

HONORING DR. DONALD DAHLIN

● Mr. JOHNSON. Mr. President, I rise today to publicly congratulate Dr. Donald Dahlin who is retiring from his position as Vice President for Academic Affairs at the University of South Dakota. He will be returning to the Department of Political Science where he will be teaching American Government and Constitutional Law on a part-time basis.

As the Vice President for Academic Affairs over the past 7 years, Don has further enhanced the ideals and principles upon which the University of South Dakota stands. Much has been accomplished during his tenure. Of particular note is the progress made on a strategic plan and implementation of the First Year Experience and IdEA programs.

University of South Dakota President James W. Abbott said that the University of South Dakota has benefited greatly from Dr. Dahlin's service.

As a new president without academic experience, I was extremely fortunate to have been the beneficiary of Don Dahlin's wisdom and expertise.

Don has provided leadership in many different roles. He served as the acting President at USD, Chair of the Department of Political Science, and Director of the Criminal Justice Studies Program. He also served the State as Secretary of the Department of Public Safety as well as the Nation as an active consultant in the field of law enforcement, public safety, the judiciary and court management.

Don's leadership and character is exactly what the USD community and education field in South Dakota needs to evolve and survive in the future. I wish nothing but the best for him and his family. It is with great honor that I share his impressive accomplishments with my colleagues.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on the Judiciary.

(The nomination received today is printed at the end of the Senate proceedings.)

LEGISLATION AND SUPPORTING DOCUMENTS TO IMPLEMENT THE UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT (FTA)—PM 90

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance:

To the Congress of the United States:

I am pleased to transmit legislation and supporting documents prepared by my Administration to implement the United States-Australia Free Trade Agreement (FTA). This Agreement adds an important dimension to our bilateral relationship with a steadfast ally in the global economic and strategic arena. This FTA will enhance the prosperity of the people of the United States and Australia, serve the interest of expanding U.S. commerce, and advance our overall national interest.

My Administration is committed to securing a level playing field and creating opportunities for America's workers, farmers, and businesses. The United States and Australia already enjoy a strong trade relationship. The U.S.-Australia FTA will further open Australia's market for U.S. manufactured goods, agricultural products, and services, and will promote new growth in our bilateral trade. As soon as this FTA enters into force, tariffs will be eliminated on almost all manufactured goods traded between our countries, providing significant export opportunities for American manufacturers. American farmers will also benefit due to the elimination of tariffs on all exports of U.S. agricultural products.

The U.S.-Australia FTA will also benefit small- and medium-sized businesses and their employees. Such firms already account for a significant amount of bilateral trade. The market opening resulting from this Agreement presents opportunities for those firms looking to start or enhance participation in global trade.

In negotiating this FTA, my Administration was guided by the negotiating objectives set out in the Trade Act of 2002. The Agreement's provisions on agriculture represent a balanced response to those seeking improved access to Australia's markets, through immediate elimination of tariffs on U.S. exports and mechanisms to resolve sanitary and phytosanitary issues and facilitate trade between our countries, while recognizing the sensitive nature of some U.S. agricultural sectors and their possible vulnerability to increased imports.

The U.S.-Australia FTA also reinforces the importance of creativity and technology to both of our economies. The Agreement includes rules providing for strong protection and enforcement of intellectual property rights, promotes the use of electronic commerce, and provides for increased cooperation between our agencies on addressing anticompetitive practices, financial services, telecommunications, and other matters.

The Agreement memorializes our shared commitment to labor and environmental issues. The United States and Australia have worked in close cooperation on these issues in the past and will pursue this strategy and commitment to cooperation in bilateral and global fora in the future.

With the approval of this Agreement and passage of the implementing legislation by the Congress, we will advance U.S. economic, security, and political interests, and set an example of the benefits of free trade and democracy for the world.

GEORGE W. BUSH.
THE WHITE HOUSE, *July 6, 2004.*

MESSAGES FROM THE HOUSE DURING ADJOURNMENT

ENROLLED BILLS SIGNED

Under authority of the order of the Senate of January 7, 2003, the Secretary of the Senate, on June 28, 2004, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

S. 2507. An act to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes.

Under the authority of the order of January 7, 2003, the enrolled bill was signed by the Acting President pro tempore (Mr. WARNER) during the adjournment of the Senate, on June 28, 2004.

Under authority of the order of January 7, 2003, the Secretary of the Senate, on July 1, 2004, during the adjournment of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 1731. An act to amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

H.R. 3846. An act to authorize the Secretary of Agriculture and the Secretary of the Interior to enter into an agreement or contract with Indian tribes meeting certain criteria to carry out projects to protect Indian forest land.

Under the authority of the order of January 7, 2003, the enrolled bills were signed by the Acting President pro tempore (Mr. STEVENS) during the adjournment of the Senate, on July 6, 2004.

MESSAGE FROM THE HOUSE

At 11:09 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4614. An act making appropriations for energy and water development for the fiscal year ending September 30, 2005, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4614. An act making appropriations for energy and water development for the fiscal year ending September 30, 2005, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

H.R. 4359. An act to amend the Internal Revenue Code of 1986 to increase the child tax credit.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on June 30, 2004, she had presented to the President of the United States the following enrolled bill:

S. 2507. An act to amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to reauthorize child nutrition programs, and for other purposes.

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–8162. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 Airplanes Powered by General Electric or Pratt and Whitney Engines Doc. No. 2002–NM–275'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8163. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767 Airplanes Doc. No. 2004–NM–17'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8164. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Lockheed Model L–1011 Airplanes Doc. No. 2000–NM–145'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8165. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopter Textron Canada Model 407 Helicopters Doc. No. 2003–SW–08'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8166. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Airplanes Doc. No. 2002–NM–253'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8167. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Model 1900, 1900C, 190C (C–12J), and 1900 D Airplanes Doc. No. 95–CE–46'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8168. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757–200 Airplanes Doc. No. 2004–NM–44'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8169. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A319 and A320 Airplanes Doc. No. 2002–NM–278'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8170. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and 145 Airplanes Doc. No. 2002–NM–165'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8171. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–100 and 300 Airplanes Doc. No. 2003–NM–263'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8172. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–100 and –300 Airplanes Doc. No. 2003–NM–112'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8173. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model DMB–135BJ and EMB–145XR Airplanes Doc. No. 2003–NM–218'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8174. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hamilton Sunstrand Corporation (formerly Hamilton Standard Division) Model 568F Propellers Doc. No. 2003–NE–48'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8175. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211 Engines Doc. No. 2000–NM–376'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8176. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A330–200 Airplanes Doc. No. 2003–NM–128'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8177. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–300 Airplanes Doc. No. 2002–NM–156'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8178. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Cessna Aircraft Company Models 208 and 208B Airplanes Doc. No. 2004–CE–09'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8179. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model DC–9–14, 15, and 15F Airplanes Model DC–9–20, 30, 40, and 50 Airplanes, and Model DC–9–81 (MD81), MD82, MD83, MD87, MD88, and MD90–30 Airplanes Doc. No. 2002–NM–203'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8180. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model EC155B and B1 Helicopters Doc. No. 2004–SW–05'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8181. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737–100, 200, 200C, 300, 400, and 500 Airplanes Doc. No. 2004–NM–29'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8182. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Airplanes Doc.

No. 2003–NM–79'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8183. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gulfstream Aerospace LP Models Astra SPX and 1125 Westwind Astra Airplanes Doc. No. 2002–NM–236'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8184. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CORRECTION Cessna Model 500, 501, 550, and 551 Airplanes Doc. No. 2000–NM–65'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8185. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes Doc. No. 2004–CE–08'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8186. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–400 and 40D Airplanes Doc. No. 2004–NM–01'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8187. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Dornier Model 328–100 and 300 Airplanes Doc. No. 2003–NM–120'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8188. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; King Cove, AK Doc. No. 03–AAL–26'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8189. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class D, E2 and E4 Airspace; Columbus Lawson AAF, GA, and Class E5 Airspace; Columbus, GA Doc. No. 03–ASO–20'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8190. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Beckwourth, CA Doc. No. 03–AWP–7'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8191. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Des Moines, IA Doc. No. 04–ACE–11'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8192. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Mount Comfort, IN Revocation of Class E Airspace; Indianapolis-Brookside, IN; Modification of Legal Description; Indianapolis-Terry, IN Doc. No. 03–AGL–16'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8193. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Chappell, NE Doc. No. 04–ACE–22'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8194. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; McCook, NE Doc. No. 04–ACE–34'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8195. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Hamilton, MT Doc. No. 03–ANM–05'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8196. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Wahoo, NE Doc. No. 04–ACE–37'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8197. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Ogallala, NE Doc. No. 04–ACE–36'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8198. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Moberly, MO Doc. No. 04–ACE–21'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8199. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Gothenburg, NE Doc. No. 04–ACE–24'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8200. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Johnson, KS Doc. No. 04–CE–17'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8201. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Fulton, MO Doc. No. 04–ACE–15'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8202. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; North Platte, NE'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8203. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Excelsior Springs, MO Doc. No. 04–ACE–13'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8204. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Gideon, MO Doc. No. 04–ACE–16'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8205. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Cassville, MO Doc. No. 04–ACE–18'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8206. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Moberly, MO Doc. No. 04–ACE–21'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8207. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Wayne, NE Doc. No. 04–ACE–38'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8208. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Clayton, NM Doc. No. 2004–SW–08'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8209. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Manchester, NH Doc. No. 2003–NE–104'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8210. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Kipnuk, AK Doc. No. 04–AAL–05'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8211. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation,

transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Allakaket, AK Doc. No. 04–AAL–04'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8212. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Galliano, LA Doc. No. 04–SW–07'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8213. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Wales, AK Doc. No. 04–AAL–02'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8214. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Platinum, AK Doc. No. 04–AAL–03'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8215. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Restricted Area 2204; Oliktok Point, AK Doc. No. 03–AAL–1'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8216. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace; Denton, TX Doc. No. 04–ASW–09'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8217. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Class E Airspace; Lynchburg, VA Doc. No. 04–AEA–03'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8218. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Restricted Area 5115, NM; and Restricted Areas 6316, 6317, and 6318, TX Doc. No. 04–ASW–03'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8219. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; Dassault Model Mystere-Falcon 50 Airplanes Doc. No. 2002–NM–2004'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8220. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CORRECTION: McDonnell Douglas MD–11 and 11F Airplanes Doc. No. 2001–NM–161'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8221. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Aerospataile Model ATR42–500 and ATR72–212A Airplanes Doc. No. 2002–NM–301'' (RIN2120–AA64) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8222. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Revision of Federal Airway 137 Doc. No. 03–AWP–2'' (RIN2120–AA66) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8223. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (18) Amendment No. 3097'' (RIN2120–AA65) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8224. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (52) Amendment No. 3096'' (RIN2120–AA65) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8225. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (76) Amendment No. 3095'' (RIN2120–AA65) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8226. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (63) Amendment No. 3094'' (RIN2120–AA65) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8227. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (49) Amendment No. 3098'' (RIN2120–AA65) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8228. A communication from the Paralegal Specialist, Federal Aviation Administration, transmitting, pursuant to law, the report of a rule entitled ''IFR Altitudes; Miscellaneous Amendments (14) Amendment No. 448'' (RIN2120–AA63) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8229. A communication from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Sea Turtle Conservation; Additional Exception to Sea Turtle Take Prohibition'' (RIN0648–AR69) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8230. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Temporary Closure of the Primary Season of the Shore-based Pacific Whiting Fishery South of 42 Degrees North Latitude'' (ID052004B) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8231. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #1—Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon'' (ID051704B) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8232. A communication from the Deputy Associate Administrator for Regulatory Programs, National Marine Fisheries Service, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Designation of the AT1 Group of Transient Killer Whales as a Depleted Stock Under the Marine Mammal Protection Act'' (RIN0648–AR14) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8233. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled ''Buckle Up America''; to the Committee on Commerce, Science, and Transportation.

EC–8234. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #2 and #3—Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon'' (ID05/2704B) received on June 22, 2004; to the Committee on Commerce, Science, and Transportation.

EC–8235. A communication from the Secretary of Defense, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–8236. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–8237. A communication from the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the report of a retirement; to the Committee on Armed Services.

EC–8238. A communication from the Principal Deputy, Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the authorization of officers to wear the insignia of the next higher grade; to the Committee on Armed Services.

EC–8239. A communication from the Principal Deputy, Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the authorization of officers to wear the insignia of the next higher grade; to the Committee on Armed Services.

EC–8240. A communication from the Principal Deputy, Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the authorization of an officer to wear the insignia of the next higher grade; to the Committee on Armed Services.

EC–8241. A communication from the Principal Deputy, Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the authorization of an officer to wear the insignia of the next higher grade; to the Committee on Armed Services.

EC–8242. A communication from the Principal Deputy, Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, the authorization of an officer to wear the insignia of the next higher grade; to the Committee on Armed Services.

EC–8243. A communication from the Chairman, Technology and Privacy Advisory Committee, Department of Defense, transmitting, pursuant to law, a report entitled ''Safeguarding Privacy in the Fight Against Terrorism''; to the Committee on Armed Services.

EC–8244. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Follow-On Production Contracts for Products Developed Pursuant to Prototype Projects'' (DFARS Case 2002–D023) received on June 22 , 2004; to the Committee on Armed Services.

EC–8245. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Production Surveillance and Reporting'' (DFARS Case 2002–D015) received on June 22, 2004; to the Committee on Armed Services.

EC–8246. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Fish, Shellfish, and Seafood Products'' (DFARS Case 2002–D034) received on June 22, 2004; to the Committee on Armed Services.

EC–8247. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Contracting for Architect-Engineer Services'' (DFARS Case 2003–D105) received on June 22, 2004; to the Committee on Armed Services.

EC–8248. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative to the health coordination and sharing activities portion of the National Defense Authorization Act of 2003; to the Committee on Armed Services.

EC–8249. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Deputy Secretary, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8250. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of Assistant Secretary for Tax Policy, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8251. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of Assistant Secretary for Management, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8252. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of Chief Financial Officer, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8253. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant Secretary for Economic Policy, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8254. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary for Enforcement, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8255. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of Inspector General, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8256. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination for the position of Under Secretary for Enforcement, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8257. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Under Secretary for Domestic Finance, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–8258. A communication from the White House Liaison, Department of the Treasury, transmitting, pursuant to law, the report of a nomination confirmed for the position of Assistant General Counsel (Treasury)/Chief Counsel, IRS, Department of the Treasury received on June 7, 2004; to the Committee on Banking, Housing, and Urban Affairs.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of June 25, 2004, the following reports of committees were submitted on June 30, 2004:

By Ms. COLLINS, from the Committee on Government Affairs, without amendment:

S. 2351. A bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes (Rept. No. 108–291).

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1735. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Ms. COLLINS for the Committee on Government Affairs.

*David M. Stone, of Virginia, to be an Assistant Secretary of Homeland Security.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LEVIN:

S. 2607. A bill to provide for the reliquidation of certain entries of candles; to the Committee on Finance.

By Mr. LEVIN:

S. 2608. A bill to provide for the reliquidation of certain entries of clock radios; to the Committee on Finance.

By Mr. COLEMAN (for himself, Mr. KOHL, Mr. LEAHY, Ms. COLLINS, Mr. DASCHLE, Mr. JOHNSON, and Mr. HARKIN):

S. 2609. A bill to amend the Farm Security and Rural Investment Act of 2002 to extend and improve national dairy market loss payments; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRASSLEY (for himself, Mr. BAUCUS, and Mr. FRIST) (by request):

S. 2610. A bill to implement the United States-Australia Free Trade Agreement; to the Committee on Finance pursuant to section 2103(b)(3) of Public Law 107–210.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LUGAR:

S. Res. 398. A resolution expressing the sense of the Senate on promoting initiatives to develop an HIV vaccine; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 346

At the request of Mrs. DOLE, her name was added as a cosponsor of S. 346, a bill to amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements.

S. 453

At the request of Mrs. HUTCHISON, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 453, a bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants regarding patient navigators to assist individuals of health disparity populations in receiving such services.

S. 467

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 467, a bill to amend the Internal Revenue Code of 1986 to allow a deduction

for State and local sales taxes in lieu of State and local income taxes and to allow the State and local income tax deduction against the alternative minimum tax.

S. 560

At the request of Mr. DAYTON, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 560, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 664

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 664, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

S. 847

At the request of Mrs. CLINTON, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 893

At the request of Mr. SANTORUM, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 893, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 944

At the request of Mr. JEFFORDS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 944, a bill to enhance national security, environmental quality, and economic stability by increasing the production of clean, domestically produced renewable energy as a fuel source for the national electric system.

S. 1129

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1129, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 1368

At the request of Mr. LEVIN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 1368, a bill to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 1735

At the request of Mr. HATCH, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 1735, a bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, and for other purposes.

S. 2132

At the request of Mr. FEINGOLD, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2132, a bill to prohibit racial profiling.

S. 2248

At the request of Mr. LAUTENBERG, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 2248, a bill to clarify the Harmonized Tariff Schedule classification of certain leather goods.

S. 2328

At the request of Mr. DORGAN, the names of the Senator from Nevada (Mr. REID), the Senator from North Dakota (Mr. CONRAD) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 2328, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. 2351

At the request of Mr. FEINGOLD, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 2351, a bill to establish a Federal Interagency Committee on Emergency Medical Services and a Federal Interagency Committee on Emergency Medical Services Advisory Council, and for other purposes.

S. 2363

At the request of Mr. HATCH, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 2363, a bill to revise and extend the Boys and Girls Clubs of America.

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 2363, supra.

S. 2383

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 2383, a bill to amend title 10, United States Code, to require the registration of contractors' taxpayer identification numbers in the Central Contractor Registry database of the Department of Defense, and for other purposes.

S. 2439

At the request of Mrs. HUTCHISON, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 2439, a bill to award a congressional gold medal to Michael Ellis DeBakey, M.D.

S. 2461

At the request of Mr. DEWINE, the names of the Senator from Pennsylvania (Mr. SPECTER) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 2461, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2468

At the request of Ms. COLLINS, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 2468, a bill to reform the postal laws of the United States.

S. 2477

At the request of Mr. REED, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2477, a bill to amend the Higher Education Act of 1965 to expand college access and increase college persistence, to simplify the process of applying for student assistance, and for other purposes.

S. 2533

At the request of Ms. MIKULSKI, the names of the Senator from Georgia (Mr. MILLER), the Senator from Arkansas (Mr. PRYOR) and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 2533, a bill to amend the Public Health Service Act to fund breakthroughs in Alzheimer's disease research while providing more help to caregivers and increasing public education about prevention.

S. CON. RES. 41

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. Con. Res. 41, a concurrent resolution directing Congress to enact legislation by October 2005 that provides access to comprehensive health care for all Americans.

S. RES. 271

At the request of Mr. COLEMAN, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. Res. 271, a resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

S. RES. 345

At the request of Mrs. CLINTON, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. Res. 345, a resolution expressing the Sense of the Senate that Congress should expand the supports and services available to grandparents and other relatives who are raising children when their biological parents have died or can no longer take care of them.

S. RES. 387

At the request of Mr. FEINGOLD, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. Res. 387, a resolution commemorating the 40th Anniversary of the Wilderness Act.

S. RES. 389

At the request of Mr. CAMPBELL, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Res. 389, a resolution expressing the sense of the Senate with respect to prostate cancer information.

S. RES. 392

At the request of Mr. BINGAMAN, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. Res. 392, a resolution conveying the sympathy of the Senate to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COLEMAN (for himself, Mr. KOHL, Mr. LEAHY, Ms. COLLINS, Mr. DASCHLE, Mr. JOHNSON, and Mr. HARKIN):

S. 2609. A bill to amend the Farm Security and Rural Investment Act of 2002 to extend and improve national dairy market loss payments; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. KOHL. Mr. President, I am pleased to help lead the effort to put the Milk Income Loss Contract (MILC) program on equal footing with other counter-cyclical income support programs in the farm bill.

The MILC program provides critical support to dairy farmers when prices are low. When dairy prices rebound, as they have in recent months, it makes no payments to dairy farmers and the government spends nothing.

For thousands of family-sized dairy operations across the nation, the MILC program has meant the difference between bankruptcy and survival. Unfortunately, the program as authorized in the last farm bill will come to an end in September, 2005.

As many of my colleagues will recall, the MILC program was established after an extremely painful debate over dairy compacts. I remain resolutely opposed to dairy compacts or any scheme that further exacerbates regional discontent in diary. Extending the MILC program to the 2007 Farm Bill—rather than reopening rancorous regional warfare over dairy—seems the only prudent course of action.

This proposal is a bipartisan and national approach that will provide stability and predictability in an otherwise volatile industry. I encourage my colleagues to support this effort.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 398—EXPRESSING THE SENSE OF THE SENATE ON PROMOTING INITIATIVES TO DEVELOP AN HIV VACCINE

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 398

Whereas more than 20,000,000 people have died of the acquired immune deficiency syndrome (hereinafter referred to as ''AIDS'') between 1984 and 2004;

Whereas AIDS claimed the lives of more than 3,000,000 people in 2003, and nearly 8,500 people die each day from AIDS;

Whereas an estimated 40,000,000 people around the world are living with the human immunodeficiency virus (hereinafter referred to as ''HIV'') or AIDS;

Whereas an estimated 14,000 people become infected with HIV every day;

Whereas there will be 45,000,000 new infections by 2010 and nearly 70,000,000 deaths by 2020;

Whereas an estimated 14,000,000 children have lost 1 or both parents to AIDS, and this number is expected to increase to 25,000,000 by 2010;

Whereas a child loses a parent to AIDS every 14 seconds;

Whereas more than 90 percent of the people infected with HIV live in the developing world;

Whereas more than 70 percent of the people infected with HIV live in sub-Saharan Africa;

Whereas communities and countries are struggling with the devastating human and economic toll that HIV and AIDS has taken on them;

Whereas the HIV/AIDS pandemic threatens political and regional stability and has contributed to broader economic and social problems, including food insecurity, labor shortages, and the orphaning of generations of children;

Whereas the United States is leading global efforts to combat the HIV/AIDS pandemic through its $15,000,000,000 Emergency Plan for AIDS Relief and its commitment to the Global Fund to Fight AIDS, Tuberculosis and Malaria;

Whereas, through the World Health Organization, the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the Global Fund to Fight AIDS, Tuberculosis and Malaria, the international community is cooperating multilaterally to combat HIV/AIDS;

Whereas developing an HIV vaccine is especially challenging due to the complicated nature of the virus;

Whereas many biotechnology companies have not invested in the development of HIV vaccines;

Whereas during 2001–2002, only 7 HIV vaccine candidates entered clinical trials, and only 1 of those candidates entered advanced human testing, but it proved ineffective;

Whereas the International AIDS Vaccine Initiative (IAVI) has been a very effective and positive force in the development of an HIV vaccine and has been instrumental in laying the groundwork for developing an HIV vaccine;

Whereas the Bill and Melinda Gates Foundation, the Rockefeller Foundation, and other public and private organizations are pursuing a variety of initiatives to develop an HIV vaccine, including establishing BIO Ventures for Global Health to help small biotechnology companies address the problems they confront in developing new medical products for poor countries;

Whereas the members of the Group of Eight (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States) met in Sea Island, Georgia in June 2004 and reaffirmed their commitment to combat the global HIV/AIDS pandemic by accelerating and coordinating efforts to develop an HIV vaccine;

Whereas at the meeting in Sea Island, Georgia, the President encouraged the Group of Eight to endorse the establishment of a Global HIV Vaccine Enterprise, a virtual consortium to accelerate HIV vaccine development by enhancing coordination, information sharing, and collaboration globally;

Whereas the United States currently has an HIV vaccine research and development center at the National Institutes of Health, and the President announced plans to establish a second HIV vaccine research and development center in the United States; and

Whereas an HIV vaccine has the potential to prevent new HIV and AIDS cases, which would save millions of lives and dramatically reduce the negative economic consequences of HIV and AIDS: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE ON THE DEVELOPMENT OF AN HIV VACCINE.

It is the sense of the Senate that—

(1) the President should seek to build on the initiative of the members of the Group of Eight (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States) to develop a vaccine to curtail the spread of the human immunodeficiency virus (hereinafter referred to as ''HIV'') and should mobilize necessary economic and scientific support to establish a Global HIV Vaccine Enterprise, as described in section 2;

(2) the President should continue to urge the members of the Group of Eight and other countries to garner support from their own economic, scientific, and philanthropic communities for the development of an HIV vaccine;

(3) the President should establish a second vaccine research and development center in the United States, as he announced in June 2004;

(4) the members of the Group of Eight should follow-up the June 2004 meeting in Sea Island, Georgia with official and private meetings, conferences, and other events to further explore and implement initiatives concerning the Global HIV Vaccine Enterprise;

(5) the members of the Group of Eight should leverage financial contributions from the international philanthropic community to provide funding, including funding to the private sector, to promote the development of an HIV vaccine;

(6) the members of the Group of Eight should include the scientific and political leadership of those countries most affected by the pandemic of HIV and the acquired immune deficiency syndrome (hereinafter referred to as ''AIDS''); and

(7) the members of the Group of Eight should develop a specific plan for furthering its efforts towards this goal by the June 2005 meeting in the United Kingdom.

SEC. 2. ESTABLISHING A GLOBAL HIV VACCINE ENTERPRISE.

The Senate urges the President to continue the efforts of the United States to generate global support for the establishment of a Global HIV Vaccine Enterprise by carrying out an initiative that—

(1) is in coordination and partnership with the members of the Group of Eight, the private sector, and other countries, especially

those most affected by the HIV/AIDS pandemic;

(2) encourages the members of the Group of Eight to act swiftly to mobilize money and resources to make the establishment of a Global HIV Vaccine Enterprise a reality;

(3) includes a strategic plan to prioritize the scientific and other challenges to be addressed, to coordinate research and product development efforts, and to encourage greater use of information-sharing networks and technologies;

(4) encourages the establishment of a number of coordinated global HIV vaccine development centers that would have the critical mass and scientific expertise necessary to advance the development of an HIV vaccine; and

(5) increases cooperation, communication, and sharing of information on issues related to HIV and AIDS among regulatory authorities in various countries.

Mr. LUGAR. Mr. President, I rise to submit a resolution expressing the Sense of the Senate on promoting initiatives to develop an HIV vaccine.

The HIV/AIDS pandemic is unlike any disease in history and has profound implications for political stability, development, and human welfare. The sheer magnitude of the crisis is overwhelming. An estimated 40,000,000 people around the world live with HIV or AIDS, and nearly 8,500 people die every day from AIDS. Last year alone, more than 3,000,000 people died from AIDS. Every 14 seconds, a child loses a parent to AIDS. An estimated 14,000,000 children have lost one or both parents to AIDS, and this number is expected in increase to 25,000,000 by 2010. According to recent projections from the World Health Organization and the Joint United Nations Program on HIV/AIDS (UNAIDS), if the pandemic spreads at this current rate, there will be 45,000,000 new infections by 2010 and nearly 70 million deaths by 2020. Sub-Saharan Africa has been hardest hit by the disease, with more than 75 percent of the people infected with HIV living in the region.

The U.S. is leading global efforts to combat the pandemic through its $15 billion dollar Emergency Plan for AIDS relief and its commitment to the Global Fund to Fight AIDS, Tuberculosis, and Malaria. But the human and economic toll of the HIV pandemic demands that these activities be complemented by accelerated efforts to develop an HIV vaccine. An HIV vaccine would prevent new HIV and AIDS cases, which could save millions of lives and dramatically reduce the negative social and economic consequences of the disease. Yet, HIV vaccine development is still not prominent on national or international public health agendas.

Developing an HIV vaccine is particularly challenging because HIV is one of the most complicated viruses ever identified. In addition, many private sector biotechnology companies have not invested money and expertise in the search for an HIV vaccine. Developing an HIV vaccine, therefore, is unlikely to occur without a well-coordinated and focused global research effort.

Recently, under President Bush's leadership, the Members of the Group of Eight Industrialized Nations (G–8), during their meeting at Sea Island, endorsed the establishment of a Global HIV Vaccine Enterprise. The Enterprise, an international alliance working to develop an HIV vaccine, would be modeled after the Human Gnome Project which brought together public and private sector researchers to map the human genetic code. Similarly, the HIV Vaccine Enterprise is intended to accelerate progress by promoting international public-private collaboration. It would coordinate the research efforts of scientists from around the globe to improve the chances of developing an HIV vaccine. President Bush also announced plans to establish a second HIV Vaccine Research and Development Center, in addition to the one at the U.S. National Institutes of Health. The new center will become a key component of the Global HIV Vaccine Enterprise.

The International AIDS Vaccine Initiative (IAVI) has been instrumental in laying the groundwork for such an enterprise. The IAVI is an international organization that collaborates with developing countries, governments, and international agencies dedicated to accelerating the development of a vaccine to halt the AIDS epidemic. The IAVI, however, cannot accomplish this task alone. Here in the United States, the Bill and Melinda Gates Foundation and the Rockefeller Foundation have joined forces to help address the financial problems faced by small biotechnology companies. They founded BIO Ventures for Global Health to help small biotechnology companies address the problems they confront in developing new medical products for poor countries. The wider application of this model would greatly improve the development of vaccines and other medicines aimed at improving health in the developing world.

I commend the President's leadership on this critically important issue. The G–8's endorsement of a Global HIV Vaccine Enterprise is a big step forward in the development of an HIV vaccine. My resolution acknowledges the President's and the G–8's actions towards this goal and urges them to continue to cooperate with other countries, particularly those hit hardest by the HIV/AIDS pandemic, to achieve this important objective.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3546. Mr. MCCAIN (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 2062, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3546. Mr. MCCAIN (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 2062, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

DIVISION B—CLIMATE CHANGE

SECTION 1. SHORT TITLE.

This division may be cited as the ''Climate Stewardship Act of 2004''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) BASELINE.—The term ''baseline'' means the historic greenhouse gas emission levels of an entity, as adjusted upward by the Administrator to reflect actual reductions that are verified in accordance with—

(A) regulations promulgated under section 201(c)(1); and

(B) relevant standards and methods developed under this title.

(3) CARBON DIOXIDE EQUIVALENTS.—The term ''carbon dioxide equivalents'' means, for each greenhouse gas, the amount of each such greenhouse gas that makes the same contribution to global warming as one metric ton of carbon dioxide, as determined by the Administrator.

(4) COVERED SECTORS.—The term ''covered sectors'' means the electricity, transportation, industry, and commercial sectors, as such terms are used in the Inventory.

(5) COVERED ENTITY.—The term ''covered entity'' means an entity (including a branch, department, agency, or instrumentality of Federal, State, or local government) that—

(A) owns or controls a source of greenhouse gas emissions in the electric power, industrial, or commercial sectors of the United States economy (as defined in the Inventory), refines or imports petroleum products for use in transportation, or produces or imports hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride; and

(B) emits, from any single facility owned by the entity, over 10,000 metric tons of greenhouse gas per year, measured in units of carbon dioxide equivalents, or produces or imports—

(i) petroleum products that, when combusted, will emit,

(ii) hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride that, when used, will emit, or

(iii) other greenhouse gases that, when used, will emit,

over 10,000 metric tons of greenhouse gas per year, measured in units of carbon dioxide equivalents.

(6) DATABASE.—The term ''database'' means the national greenhouse gas database established under section 201.

(7) DIRECT EMISSIONS.—The term ''direct emissions'' means greenhouse gas emissions by an entity from a facility that is owned or controlled by that entity.

(8) FACILITY.—The term ''facility'' means a building, structure, or installation located on any 1 or more contiguous or adjacent properties of an entity in the United States.

(9) GREENHOUSE GAS.—The term ''greenhouse gas'' means—

(A) carbon dioxide;

(B) methane;

(C) nitrous oxide;

(D) hydrofluorocarbons;

(E) perfluorocarbons; and

(F) sulfur hexafluoride.

(10) INDIRECT EMISSIONS.—The term ''indirect emissions'' means greenhouse gas emissions that are—

(A) a result of the activities of an entity; but

(B) emitted from a facility owned or controlled by another entity.

(11) INVENTORY.—The term ''Inventory'' means the Inventory of U.S. Greenhouse Gas Emissions and Sinks, prepared in compliance with the United Nations Framework Convention on Climate Change Decision 3/CP.5).

(12) LEAKAGE.—The term ''leakage'' means—

(A) an increase in greenhouse gas emissions by one facility or entity caused by a reduction in greenhouse gas emissions by another facility or entity; or

(B) a decrease in sequestration that is caused by an increase in sequestration at another location.

(13) PERMANENCE.—The term ''permanence'' means the extent to which greenhouse gases that are sequestered will not later be returned to the atmosphere.

(14) REGISTRY.—The term ''registry'' means the registry of greenhouse gas emission reductions established under section 201(b)(2).

(15) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(16) SEQUESTRATION.—

(A) IN GENERAL.—The term ''sequestration'' means the capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere.

(B) INCLUSIONS.—The term ''sequestration'' includes—

(i) agricultural and conservation practices;

(ii) reforestation;

(iii) forest preservation; and

(iv) any other appropriate method of capture, long-term separation, isolation, or removal of greenhouse gases from the atmosphere, as determined by the Administrator.

(C) EXCLUSIONS.—The term ''sequestration'' does not include—

(i) any conversion of, or negative impact on, a native ecosystem; or

(ii) any introduction of non-native species.

(17) SOURCE CATEGORY.—The term ''source category'' means a process or activity that leads to direct emissions of greenhouse gases, as listed in the Inventory.

(18) STATIONARY SOURCE.—The term ''stationary source'' means generally any source of greenhouse gases except those emissions resulting directly from an engine for transportation purposes.

TITLE I—FEDERAL CLIMATE CHANGE RESEARCH AND RELATED ACTIVITIES.

SEC. 101. NATIONAL SCIENCE FOUNDATION FELLOWSHIPS.

The Director of the National Science Foundation shall establish a fellowship program for students pursuing graduate studies in global climate change, including capability in observation, analysis, modeling, paleoclimatology, consequences, and adaptation.

SEC. 102. COMMERCE DEPARTMENT STUDY OF TECHNOLOGY TRANSFER BARRIERS.

(a) STUDY.—The Assistant Secretary of Technology Policy at Department of Commerce shall conduct a study of technology transfer barriers, best practices, and out comes of technology transfer activities at Federal laboratories related to the licensing and commercialization of energy efficient technologies, and other technologies that, compared to similar technology in commercial use, result in reduced emissions of greenhouse gases or increased sequestration of greenhouse gases. The study shall be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science within 6 months after the date of enactment of this Act. The Assistant Secretary shall work with the existing interagency working group to address identified barriers.

(b) AGENCY REPORT TO INCLUDE INFORMATION ON TECHNOLOGY TRANSFER INCOME AND ROYALTIES.—Paragraph (2)(B) of section 11(f) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(f)) is amended—

(1) by striking ''and'' after the semicolon in clause (vi);

(2) by redesignating clause (vii) as clause (ix); and

(3) by inserting after clause (vi) the following:

''(vii) the number of fully-executed licenses which received royalty income in the preceding fiscal year for climate-change or energy-efficient technology;

''(viii) the total earned royalty income for climate-change or energy-efficient technology; and''.

(c) INCREASED INCENTIVES FOR DEVELOPMENT OF CLIMATE-CHANGE OR ENERGY-EFFICIENT TECHNOLOGY.—Section 14(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710c(a)) is amended—

(1) by striking ''15 percent,'' in paragraph (1)(A) and inserting ''15 percent (25 percent for climate change-related technologies),''; and

(2) by inserting ''($250,000 for climate change-related technologies)'' after ''$150,000'' each place it appears in paragraph (3).

SEC. 103. REPORT ON UNITED STATES IMPACT OF KYOTO PROTOCOL.

Within 6 months after the date of enactment of this Act, the Secretary shall execute a contract with the National Academy of Science for a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science on the effects that the entry into force of the Kyoto Protocol without United States participation will have on—

(1) United States industry and its ability to compete globally;

(2) international cooperation on scientific research and development; and

(3) United States participation in international environmental climate change mitigation efforts and technology deployment.

SEC. 104. RESEARCH GRANTS.

Section 105 of the Global Change Research Act of 1990 (15 U.S.C. 2935) is amended—

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

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

''(c) RESEARCH GRANTS.—

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

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

''(3) FUNDING THROUGH NSF.—

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

''(B) AUTHORIZATION.—For fiscal year 2005 and each fiscal year thereafter, there are authorized to be appropriated to the National Science Foundation not less than $25,000,000, to be made available through the Science and Technology Policy Institute, for research in those priority areas.''.

SEC. 105. ABRUPT CLIMATE CHANGE RESEARCH.

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

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

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

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

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

(b) ABRUPT CLIMATE CHANGE DEFINED.—In this section, the term ''abrupt climate

change'' means a change in climate that occurs so rapidly or unexpectedly that human or natural systems may have difficulty adapting to it.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal year 2005 $60,000,000 to carry out this section, such sum to remain available until expended.

SEC. 106. NIST GREENHOUSE GAS FUNCTIONS.

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

(1) by striking ''and'' after the semicolon in paragraph (21);

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

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

''(22) perform research to develop enhanced measurements, calibrations, standards, and technologies which will facilitate activities that reduce emissions of greenhouse gases or increase sequestration of greenhouse gases, including carbon dioxide, methane, nitrous oxide, ozone, perfluorocarbons, hydrofluorocarbons, and sulfur hexafluoride; and''.

SEC. 107. DEVELOPMENT OF NEW MEASUREMENT TECHNOLOGIES.

To facilitate implementation of section 204, the Secretary shall initiate a program to develop, with technical assistance from appropriate Federal agencies, innovative standards and measurement technologies to calculate greenhouse gas emissions or reductions for which no accurate or reliable measurement technology exists. The program shall include—

(1) technologies (including remote sensing technologies) to measure carbon and other greenhouse gas emissions and reductions from agriculture, forestry, and other land use practices; and

(2) technologies to calculate non-carbon dioxide greenhouse gas emissions from transportation.

SEC. 108. ENHANCED ENVIRONMENTAL MEASUREMENTS AND STANDARDS.

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

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

(2) by inserting after section 16 the following:

SEC. 17. CLIMATE CHANGE STANDARDS AND PROCESSES.

''(a) IN GENERAL.—The Director shall establish within the Institute a program to perform and support research on global climate change standards and processes, with the goal of providing scientific and technical knowledge applicable to the reduction of greenhouse gases (as defined in section 3(8) of the Climate Stewardship Act of 2004) and of facilitating implementation of section 204 of that Act.

''(b) RESEARCH PROGRAM.—

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

''(2) RESEARCH PROJECTS.—The specific contents and priorities of the research program shall be determined in consultation with appropriate Federal agencies, including the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the National Aeronautics and Space Administration. The program generally shall include basic and applied research—

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

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

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

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

''(c) NATIONAL MEASUREMENT LABORATORIES.—

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

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

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

''(B) developing chemical processes to be used by industry that, compared to similar processes in commercial use, result in reduced emissions of greenhouse gases or increased sequestration of greenhouse gases; and

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

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

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

SEC. 109. TECHNOLOGY DEVELOPMENT AND DIFFUSION.

The Director of the National Institute of Standards and Technology, through the Manufacturing Extension Partnership Program, may develop a program to promote the use, by the more than 380,000 small manufacturers, of technologies and techniques that result in reduced emissions of greenhouse gases or increased sequestration of greenhouse gases.

SEC. 110. AGRICULTURAL OUTREACH PROGRAM.

(a) IN GENERAL.—The Secretary of Agriculture, acting through the Global Change Program Office and in consultation with the heads of other appropriate departments and agencies, shall establish the Climate Change Education and Outreach Initiative Program to educate, and reach out to, agricultural organizations and individual farmers on global climate change.

(b) PROGRAM COMPONENTS.—The program—

(1) shall be designed to ensure that agricultural organizations and individual farmers receive detailed information about—

(A) the potential impact of climate change on their operations and well-being;

(B) market-driven economic opportunities that may come from storing carbon in soils and vegetation, including emerging private sector markets for carbon storage; and

(C) techniques for measuring, monitoring, verifying, and inventorying such carbon capture efforts;

(2) may incorporate existing efforts in any area of activity referenced in paragraph (1) or in related areas of activity;

(3) shall provide—

(A) outreach materials to interested parties;

(B) workshops; and

(C) technical assistance; and

(4) may include the creation and development of regional centers on climate change or coordination with existing centers (including such centers within NRCS and the Cooperative State Research Education and Extension Service).

TITLE II—NATIONAL GREENHOUSE GAS DATABASE

SEC. 201. NATIONAL GREENHOUSE GAS DATABASE AND REGISTRY ESTABLISHED.

(a) ESTABLISHMENT.—As soon as practicable after the (late of enactment of this Act, the Administrator, in coordination with the Secretary, the Secretary of Energy, the Secretary of Agriculture, and private sector and nongovernmental organizations, shall establish, operate, and maintain a database, to be known as the ''National Greenhouse Gas Database'', to collect, verify, and analyze information on greenhouse gas emissions by entities.

(b) NATIONAL GREENHOUSE GAS DATABASE COMPONENTS.—The database shall consist of—

(1) an inventory of greenhouse gas emissions; and

(2) a registry of greenhouse gas emission reductions and increases in greenhouse gas sequestrations.

(c) COMPREHENSIVE SYSTEM.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall promulgate regulations to implement a comprehensive system for greenhouse gas emissions reporting, inventorying, and reductions registration.

(2) REQUIREMENTS.—The Administrator shall ensure, to the maximum extent practicable, that—

(A) the comprehensive system described in paragraph (1) is designed to—

(i) maximize completeness, transparency, and accuracy of information reported; and

(ii) minimize costs incurred by entities in measuring and reporting greenhouse gas emissions; and

(B) the regulations promulgated under paragraph (1) establish procedures and protocols necessary—

(i) to prevent the double-counting of greenhouse gas emissions or emission reductions reported by more than 1 reporting entity;

(ii) to provide for corrections to errors in data submitted to the database;

(iii) to provide for adjustment to data by reporting entities that have had a significant organizational change (including mergers, acquisitions, and divestiture), in order to maintain comparability among data in the database over time;

(iv) to provide for adjustments to reflect, new technologies or methods for measuring or calculating greenhouse gas emissions;

(v) to account for changes in registration of ownership of emission reductions resulting from a voluntary private transaction between reporting entities; and

(vi) to clarify the responsibility for reporting in the case of any facility owned or controlled by more than 1 entity.

(3) SERIAL NUMBERS.—Through regulations promulgated under paragraph (1), the Administrator shall develop and implement a system that provides—

(A) for the verification of submitted emissions reductions registered under section 204;

(B) for the provision of unique serial numbers to identify the registered emission reductions made by an entity relative to the baseline of the entity;

(C) for the tracking of the registered reductions associated with the serial numbers and

(D) for such action as may be necessary to prevent counterfeiting of the registered reductions.

SEC. 202. INVENTORY OF GREENHOUSE GAS EMISSIONS FOR COVERED ENTITIES.

(a) IN GENERAL.—Not later than July 1st of each calendar year after 2008, each covered entity shall submit to the Administrator a report that states, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(1) the total quantity of direct greenhouse gas emissions from stationary sources, expressed in units of carbon dioxide equivalents, except those reported under paragraph (3);

(2) the amount of petroleum products sold or imported by the entity and the amount of greenhouse gases, expressed in units of carbon dioxide equivalents, that would be emitted when these products are used for transportation in the United States, as determined by the Administrator under section 301(b),

(3) the amount of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride, expressed in units of carbon dioxide equivalents, that are sold or imported by the entity and will ultimately be emitted in the United States, as determined by the Administrator under section 301(d); and

(4) such other categories of emissions as the Administrator determines in the regulations promulgated under section 201(c)(1) may be practicable and useful for the purposes of this Act, such as—

(A) indirect emissions from imported electricity, heat, and steam;

(B) process and fugitive emissions; and

(C) production or importation of greenhouse gases.

(b) COLLECTION AND ANALYSIS OF DATA.—The Administrator shall collect and analyze information reported under subsection (a) for use under title III.

SEC. 203. GREENHOUSE GAS REDUCTION REPORTING.

(a) IN GENERAL.—Subject to the requirements described in subsection (b)—

(1) a covered entity may register greenhouse gas emission reductions achieved after 1990 and before 2010 under this section; and

(2) an entity that is not a covered entity may register greenhouse gas emission reductions achieved at any time since 1990 under this section.

(b) REQUIREMENTS.—

(1) IN GENERAL.—The requirements referred to in subsection (a) are that an entity (other than an entity described in paragraph (2)) shall—

(A) establish a baseline; and

(B) submit the report described in subsection (c)(1).

(2) REQUIREMENTS APPLICABLE TO ENTITIES ENTERING INTO CERTAIN AGREEMENTS.—An entity that enters into an agreement with a participant in the registry for the purpose of a carbon sequestration project shall not be required to comply with the requirements specified in paragraph (1) unless that entity is required to comply with the requirements by reason of an activity other than the agreement.

(e) REPORTS.—

(1) REQUIRED REPORT.—Not later than July 1st of the each calendar year beginning more than 2 years after the date of enactment of this Act, but subject to paragraph (3), an entity described in subsection (a) shall submit to the Administrator a report that states, for the preceding calendar year, the entity-wide greenhouse gas emissions (as reported at the facility level), including—

(A) the total quantity of direct greenhouse gas emissions from stationary sources, expressed in units of carbon dioxide equivalents;

(B) the amount of petroleum products sold or imported by the entity and the amount of greenhouse gases, expressed in units of carbon dioxide equivalents, that would be emitted when these products are used for transportation in the United States, as determined by the Administrator under section 301(b);

(C) the amount of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride, expressed in units of carbon dioxide equivalents, that are sold or imported by the entity and will ultimately be emitted in the United States, as determined by the Administrator under section 301(d); and

(D) such other categories of emissions as the Administrator determines in the regulations promulgated under section 201(c)(1) may be practicable and useful for the purposes of this Act, such as—

(i) indirect emissions from imported electricity, heat, and steam;

(ii) process and fugitive emissions; and

(iii) production or importation of greenhouse gases.

(2) VOLUNTARY REPORTING.—An entity described in subsection (a) may (along with establishing a baseline and reporting emissions under this section)—

(A) submit a report described in paragraph (1) before the date specified in that paragraph for the purposes of achieving and commoditizing greenhouse gas reductions through use of the registry and for other purposes; and

(B) submit to the Administrator, for inclusion in the registry, information that has been verified in accordance with regulations promulgated under section 201(c)(1) and that relates to—

(i) any activity that resulted in the net reduction of the greenhouse gas emissions of the entity or a net increase in sequestration by the entity that were carried out during or after 1990 and before the establishment of the database, verified in accordance with regulations promulgated under section 201(c)(1), and submitted to the Administrator before the date that is 4 years after the date of enactment of this Act; and

(ii) with respect to the calendar year preceding the calendar year in which the information is submitted, any project or activity that resulted in the net reduction of the greenhouse gas emissions of the entity or a net increase in net sequestration by the entity.

(3) PROVISION OF VERIFICATION INFORMATION BY REPORTING ENTITIES.—Each entity that submits a report under this subsection shall provide information sufficient for the Administrator to verify, in accordance with measurement and verification methods and standards developed under section 204, that the greenhouse gas report of the reporting entity—

(A) has been accurately reported; and

(B) in the case of each voluntary report under paragraph (2), represents—

(i) actual reductions in direct greenhouse gas emissions—

(I) relative to historic emission levels of the entity; and

(II) after accounting for any increases in indirect emissions described in paragraph (1)(C)(i); or

(ii) actual increases in net sequestration.

(4) FAILURE TO SUBMIT REPORT.—An entity that participates or has participated in the registry and that fails to submit a report required under this subsection shall be prohibited from using, or allowing another entity to use, its registered emissions reductions or increases in sequestration to satisfy the requirements of section 301.

(5) INDEPENDENT THIRD-PARTY VERIFICATION.—To meet the requirements of this section and section 203, an entity that is required to submit a report under this section may—

(A) obtain independent third-party verification; and

(B) present the results of the third-party verification to the Administrator.

(6) AVAILABILITY OF DATA.—

(A) IN GENERAL.—The Administrator shall ensure that information in the database is—

(i) published; and

(ii) accessible to the public, including in electronic format on the Internet.

(B) EXCEPTION.—Subparagraph (A) shall not apply in any case in which the Administrator determines that publishing or otherwise making available information described in that subparagraph poses a risk to national security or discloses confidential business information that can not be derived from information that is otherwise publicly available and that would cause competitive harm if published.

(7) DATA INFRASTRUCTURE.—The Administrator shall ensure, to the maximum extent practicable, that the database rises, and is integrated with, Federal, State, and regional greenhouse gas data collection and reporting systems in effect as of the date of enactment of this Act.

(8) ADDITIONAL ISSUES TO BE CONSIDERED.—In promulgating the regulations under section 201(c)(1) and implementing the database, the Administrator shall take into consideration a broad range of issues involved in establishing an effective database, including—

(A) the data and information systems and measures necessary to identify, track, and verify greenhouse gas emissions in a manner that will encourage private sector trading and exchanges;

(B) the greenhouse gas reduction and sequestration measurement and estimation methods and standards applied in other countries, as applicable or relevant;

(C) the extent to which available fossil fuels, greenhouse gas emissions, and greenhouse gas production acid importation data are adequate to implement the database; and

(D) the differences in, and potential uniqueness of, the facilities, operations, and business and other relevant practices of persons and entities in the private and public sectors that may be expected to participate in the database.

(d) ANNUAL REPORT.—The Administrator shall publish an annual report that—

(1) describes the total greenhouse gas emissions and emission reductions reported to the database during the year covered by the report;

(2) provides entity-by-entity and sector-by-sector analyses of the emissions and emission reductions reported;

(3) describes the atmospheric concentrations of greenhouse gases;

(4) provides a comparison of current and past atmospheric concentrations of greenhouse gases; and

(5) describes the activity during the year covered by the period in the trading of greenhouse gas emission allowances.

SEC. 204. MEASUREMENT AND VERIFICATION.

(a) STANDARDS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall establish by rule, in coordination with the Administrator, the Secretary of Energy, and the Secretary of Agriculture, comprehensive measurement and verification methods and standards to ensure a consistent and technically accurate record of greenhouse gas emissions, emission reductions, sequestration, and atmospheric concentrations for use in the registry.

(2) REQUIREMENTS.—The methods and standards established under paragraph (1) shall include—

(A) a requirement that a covered entity use a continuous emissions monitoring system, or another system of measuring or estimating emissions that is determined by the Secretary to provide information with precision, reliability, accessibility, and timeliness similar to that provided by a continuous emissions monitoring system where technologically feasible;

(B) establishment of standardized measurement and verification practices for reports made by all entities participating in the, registry, taking into account—

(i) protocols and standards in use by entities requiring or desiring to participate in the registry as of the date of development of the methods and standards under paragraph (1);

(ii) boundary issues, such as leakage;

(iii) avoidance of double counting of greenhouse gas emissions and emission reductions;

(iv) protocols to prevent a covered entity from avoiding the requirements of this Act by reorganization into multiple entities that are under common control; and

(v) such other factors as the Secretary, in consultation with the Administrator, determines to be appropriate;

(C) establishment of methods of—

(i) estimating greenhouse gas emissions, for those cases in which the Secretary determines that methods of monitoring, measuring or estimating such emissions with precision, reliability, accessibility, and timeliness similar to that provided by a continuous emissions monitoring system are not technologically feasible at present; and

(ii) reporting the accuracy of such estimations;

(D) establishment of measurement and verification standards applicable to actions taken to reduce, avoid, or sequester greenhouse gas emissions;

(E) in coordination with the Secretary of Agriculture, standards to measure the results of the use of carbon sequestration and carbon recapture technologies, including—

(i) soil carbon sequestration practices; and

(ii) forest preservation and reforestation activities that adequately address the issues of permanence, leakage, and verification;

(E) establishment of such other measurement and verification standards as the Secretary, in consultation with the Secretary of Agriculture, the Administrator, and the Secretary of Energy, determines to be appropriate;

(F) establishment of standards for obtaining the Secretary's approval of the suitability of geological storage sites that include evaluation of both the geology of the site and the entity's capacity to manage the site; and

(G) establishment of other features that, as determined by the Secretary, will allow entities to adequately establish a fair and reliable measurement and reporting system.

(b) REVIEW AND REVISION.—The Secretary shall periodically review, and revise as necessary, the methods and standards developed under subsection (a).

(c) PUBLIC PARTICIPATION.—The Secretary shall—

(1) make available to the public for comment, in draft form and for a period of at least 90 days, the methods and standards developed under subsection (a); and

(2) after the 90-day period referred to in paragraph (1), in coordination with the Secretary of Energy, the Secretary of Agriculture, and the Administrator, adopt the methods and standards developed under subsection (a) for use in implementing the database.

(d) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—The Secretary may obtain the services of experts and consultants in the private and nonprofit sectors in accordance with section 3109 of title 5, United States Code, in the areas of greenhouse gas measurement, certification, and emission trading.

(2) AVAILABLE ARRANGEMENTS.—In obtaining any service described in paragraph (1), the Secretary may use any available grant, contract, cooperative agreement, or other arrangement authorized by law.

TITLE III—MARKET-DRIVEN GREENHOUSE GAS REDUCTIONS

Subtitle A—Emission Reduction Requirements; Use of Tradeable Allowances

SEC. 301. COVERED ENTITIES MUST SUBMIT ALLOWANCES FOR EMISSIONS.

(a) IN GENERAL.—Beginning with calendar year 2010—

(1) each covered entity in the electric generation, industrial, and commercial sectors shall submit to the Administrator one tradeable allowance for every metric ton of greenhouse gases, measured in units of carbon dioxide equivalents, that it emits from stationary sources, except those described in paragraph (2);

(2) each producer or importer of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride that is a covered entity shall submit to the Administrator one tradeable allowance for every metric ton of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride, measured in units of carbon dioxide equivalents; that it produces or imports and that will ultimately be emitted in the United States, as determined by the Administrator under subsection (d) and

(3) each petroleum refiner or importer that is a covered entity shall submit one tradeable allowance for every unit of petroleum product it sells that will produce one metric ton of greenhouse gases, measured in units of carbon dioxide equivalents, as determined by the Administrator under subsection (b), when used for transportation.

(b) DETERMINATION OF TRANSPORTATION SECTOR AMOUNT.—For the transportation sector, the Administrator shall determine the amount of greenhouse gases, measured in units of carbon dioxide equivalents, that will be emitted when petroleum products are used for transportation.

(c) EXCEPTION FOR CERTAIN DEPOSITED EMISSIONS.—Notwithstanding subsection (a), a covered entity is not required to submit a tradeable allowance for any amount of greenhouse gas that would otherwise have been emitted from a facility under the ownership or control of that entity if—

(1) the emission is deposited in a geological storage facility approved by the Administrator under section 204(a)(2)(F); and

(2) the entity agrees to submit tradeable allowances for any portion of the deposited emission that is subsequently emitted from that facility.

(d) DETERMINATION OF HYDROFLUROCARBON, PERFLUOROCARBON, AND SULFUR HEXAFLUORIDE AMOUNT.—The Administrator shall determine the amounts of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride, measured in units of carbon dioxide equivalents, that will be deemed to be emitted for purposes of this Act.

SEC. 302. COMPLIANCE.

(a) IN GENERAL.—

(1) SOURCE OF TRADEABLE ALLOWANCES USED.—A covered entity may use a tradeable allowance to meet the requirements of this section without regard to whether the tradeable allowance was allocated to it under subtitle B or acquired from another entity or the Climate Change Credit Corporation established under section 351.

(2) VERIFICATION BY ADMINISTRATOR.—At various times during each year, the Administrator shall determine whether each covered entity has met the requirements of this section. In making that determination, the Administrator shall—

(A) take into account the tradeable allowances submitted by the covered entity to the Administrator; and

(B) retire the serial number assigned to each such tradeable allowance.

(b) ALTERNATIVE MEANS OF COMPLIANCE.—For the years 2010 and after, a covered entity may satisfy up to 15 percent of its total allowance submission requirement under this section by—

(1) submitting tradeable allowances from another nation's market in greenhouse gas emissions if—

(A) the Secretary determines that the other nation's system for trading in greenhouse gas emissions is complete, accurate, and transparent and reviews that determination at least once every 5 years;

(B) the other nation has adopted enforceable limits on its greenhouse gas emissions which the tradeable allowances were issued to implement; and

(C) the covered entity certifies that the tradeable allowance has been retired unused in the other nation's market;

(2) submitting a registered net increase in sequestration, as registered in the database, adjusted, if necessary, to comply with the accounting standards and methods established under section 372;

(3) submitting a greenhouse gas emissions reduction (other than a registered net increase in sequestration) that was registered in the database by a person that is not a covered entity; or

(4) submitting credits obtained from the Administrator under section 303.

(c) DEDICATED PROGRAM FOR SEQUESTRATION IN AGRICULTURAL SOILS.—If a covered entity chooses to satisfy 15 percent of its total allowance submission requirements under the provisions of subsection (b), it shall satisfy up to 1.5 percent of its total allowance submission requirement by submitting registered net increases in sequestration in agricultural soils, as registered in the database, adjusted, if necessary, to comply with the accounting standards and methods established under section 371.

SEC. 303. BORROWING AGAINST FUTURE REDUCTIONS.

(a) IN GENERAL.—The Administrator shall establish a prograrn under which a covered entity may—

(1) receive a credit in the current calendar year for anticipated reductions in emissions in a future calendar year; and

(2) use the credit in lieu of a tradeable allowance to meet the requirements of this Act for the current calendar year, subject to the limitation imposed by section 302(b).

(b) DETERMINATION OF TRADEABLE ALLOWANCE CREDITS.—The Administrator may make credits available under subsection (a) only for anticipated reductions in emissions that—

(1) are attributable to the realization of capital investments in equipment, the construction, reconstruction, or acquisition of facilities, or the deployment of new technologies—

(A) for which the covered entity has executed a binding contract and secured, or applied for, all necessary permits and operating or implementation authority;

(B) that will not become operational within the current calendar year; and

(C) that will become operational and begin to reduce, emissions from the covered entity within 5 years after the year in which the credit is used; and

(2) will be realized within 5 years after the year in which the credit is used.

(c) CARRYING COST.—If a covered entity uses a credit under this section to meet the requirements of this Act for a calendar year (referred to as the use year), the tradeable allowance requirement for the year from which the credit was taken (referred to as the source year) shall be increased by an amount equal to—

(1) 10 percent for each credit borrowed from the source year, multiplied by

(2) the number of years beginning after the use year and before the source year.

(d) MAXIMUM BORROWING PERIOD.—A credit from a year beginning more than 5 years after the current year may not be used to meet the requirements of this Act for the current year.

(e) FAILURE TO ACHIEVE REDUCTIONS GENERATING CREDIT.—If a covered entity that uses a credit under this section fails to achieve the anticipated reduction for which the credit was granted for the year from which the credit was taken, then—

(1) the covered entity's requirements under this Act for that year shall be increased by the amount of the credit, plus the amount determined under subsection (c);

(2) any tradeable allowances submitted by the covered entity for that year shall be counted first against the increase in those requirements; and

(3) the covered entity may not use credits under this section to meet the increased requirements.

SEC. 304. OTHER USES OF TRADEABLE ALLOWANCES.

(a) IN GENERAL.—Tradeable allowances may be sold, exchanged, purchased, retired, or used as provided in this section.

(b) INTERSECTOR TRADING.—Covered entities may purchase or otherwise acquire tradeable allowances from other covered sectors to satisfy the requirements of section 301.

(c) CLIMATE CHANGE CREDIT ORGANIZATION.—The Climate Change Credit Corporation established under section 351 may sell tradeable allowances allocated to it under section 332(a)(2) to any covered entity or to any investor, broker, or dealer in such tradeable allowances. The Climate Change Credit Corporation shall use all proceeds from such sales in accordance with the provisions of section 352.

(d) BANKING OF TRADEABLE ALLOWANCES.—Notwithstanding the requirements of section 301, a covered entity that has more than a sufficient amount of tradeable allowances to satisfy the requirements of section 301, may refrain from submitting a tradeable allowance to satisfy the requirements in order to sell, exchange, or use the tradeable allowance in the future.

SEC. 305. EXEMPTION OF SOURCE CATEGORIES.

(a) IN GENERAL.—The Administrator may grant an exemption from the requirements of this Act to a source category if the Administrator determines, after public notice and comment, that it is not feasible to measure or estimate emissions from that source category, until such time as measurement or estimation becomes feasible.

(b) REDUCTION OF LIMITATIONS.—If the Administrator exempts a source category under subsection (a), the Administrator shall also reduce the total tradeable allowances under section 331(a)(1) by the amount of greenhouse gas emissions that the exempted source category emitted in calendar year 2000, as identified in the 2000 Inventory.

(c) LIMITATION ON EXEMPTION.—The Administrator may not grant, an exemption under subsection (a) to carbon dioxide produced from fossil fuel.

Subtitle B—Establishment and Allocation of Tradeable Allowances

SEC. 331. ESTABLISHMENT OF TRADEABLE ALLOWANCES.

(a) IN GENERAL.—The Administrator shall promulgate regulations to establish tradeable allowances, denominated in units of carbon dioxide equivalents, for calendar years beginning after 2009, equal to—

(1) 5896 million metric tons, measured in units of carbon dioxide equivalents, reduced by

(2) the amount of emissions of greenhouse gases in calendar year 2000 from non-covered entities.

(b) SERIAL NUMBERS.—The Administrator shall assign a unique serial number to each tradeable allowance established under subsection (a), and shall take such action as may be necessary to prevent counterfeiting of tradeable allowances.

(c) NATURE OF TRADEABLE ALLOWANCES.—A tradeable allowance is not a property right, and nothing in this title or any other provision of law limits the authority of the United States to terminate or limit a tradeable allowance.

(d) NON-COVERED ENTITY.—In this section:

(1) IN GENERAL.—The term 'non-covered entity' means an entity that—

(A) owns or controls a source of greenhouse gas emissions in the electric power, industrial, or commercial sectors of the United States economy (as defined in the Inventory), refines or imports petroleum products for use in transportation, or produces or imports hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride; and

(B) is not a covered entity.

(2) EXCEPTION.—Notwithstanding paragraph (1), an entity that is a covered entity for any calendar year beginning after 2009 shall not be considered to be a non-covered entity for purposes of subsection (a) only because it emitted, or its products would have emitted, 10,000 metric tons or less of greenhouse gas, measured in units of carbon dioxide equivalents, in the year 2000.

SEC. 332. DETERMINATION OF TRADEABLE ALLOWANCE ALLOCATIONS.

(a) IN GENERAL.—The Secretary shall determine—

(1) the amount of tradeable allowances to be allocated to each covered sector of that sector's allotments; and

(2) the amount of tradeable allowances to be allocated to the Climate Change Credit Corporation established under section 351.

(b) ALLOCATION FACTORS.—In making the determination required by subsection (a), the Secretary shall consider—

(1) the distributive effect of the allocations on household income and net worth of individuals;

(2) the impact of the allocations on corporate income, taxes, and asset value;

(3) the impact of the allocations on income levels of consumers and on their energy consumption;

(4) the effects of the allocations in terms of economic efficiency;

(5) the ability of covered entities to pass through compliance costs to their customers;

(6) the degree to which the amount of allocations to the covered sectors should decrease over time; and

(7) the need to maintain the international competitiveness of United States manufacturing and avoid the additional loss of United States manufacturing jobs.

(c) ALLOCATION RECOMMENDATIONS AND IMPLEMENTATION.—Before allocating or providing tradeable allowances under subsection (a) and within 24 months after the date of enactment of this Act, the Secretary shall submit the determinations under subsection (a) to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Environment and Public Works, the House of Representatives Committee on Science, and the House of Representatives Committee on Energy and Commerce. The Secretary's determinations under paragraph (1), including the allocations and provision of tradeable allowances pursuant to that determination, are deemed to be a major rule (as defined in section 804(2) of title 5, United States Code), and subject to the provisions of chapter 8 of that title.

SEC. 333. ALLOCATION OF TRADEABLE ALLOWANCES.

(a) IN GENERAL.—Beginning with calendar year 2010 and after taking into account any initial allocations under section 334, the Administrator shall—

(1) allocate to each covered sector that sector's allotments determined by the Administrator under section 332 (adjusted for any such initial allocations and the allocation to the Climate Change Credit Corporation established under section 351); and

(2) allocate to the Climate Change Credit Corporation established under section 351 the tradeable allowances allocable to that Corporation.

(b) INTRASECTORIAL ALLOTMENTS.—The Administrator shall, by regulation, establish a process for the allocation of tradeable allowances under this section, without cost to covered entities, that will—

(1) encourage investments that increase the efficiency of the processes that produce greenhouse gas emissions;

(2) minimize the costs to the government of allocating the tradeable allowances;

(3) not penalize a covered entity for emissions reductions made before 2010 and registered with the database; and

(4) provide sufficient allocation for new entrants into the sector.

(c) POINT SOURCE ALLOCATION.—The Administrator shall allocate the tradeable allowances for the electricity generation, industrial, and commercial sectors to the entities owning or controlling the point sources of greenhouse gas emissions within that sector.

(d) HYDROFLUOROCARBONS, PERFLUOROCARBONS, AND SULFUR HEXAFLUORIDE.—The Administrator shall allocate the tradeable allowances for producers or importers of hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride to such producers or importers,

(e) SPECIAL RULE FOR ALLOCATION WITHIN THE TRANSPORTATION SECTOR.—The Administrator shall allocate the tradeable allowances for the transportation sector to petroleum refiners or importers that produce or import petroleum products that will be used as fuel for transportation.

(f) ALLOCATIONS TO RURAL ELECTRIC COOPERATIVES.—For each electric generating unit that is owned or operated by a rural electric cooperative, the Administrator shall allocate each year, at no cost, allowances in an amount equal to the greenhouse gas emissions of cash such unit in 2000, plus an amount equal to the average emissions growth expected for all such units. The allocations shall be offset from the allowances allocated to the Climate Change Credit Corporation.

SEC. 334. ENSURING TARGET ADEQUACY.

(a) IN GENERAL.—Beginning 2 years after the date of enactment of this Act, the Under Secretary of Commerce for Oceans and Atmosphere shall review the allowances established by section 331 no less frequently than biennially—

(1) to re-evaluate the levels established by that subsection, after taking into account the best available science and the most currently available data, and

(2) to re-evaluate the environmental and public health impacts of specific concentration levels of greenhouse gases,

to determine whether the allowances established by subsection (a) continue to be consistent with the objective of the United Nations' Framework Convention on Climate Change of stabilizing levels of greenhouse gas emissions at a level that will prevent dangerous anthropogenic interference with the climate system.

(b) REVIEW OF 2010 LEVELS.—The Under Secretary shall specifically review in 2008 the level established under section 331(a)(1), and transmit, a report on his reviews, together with any recommendations, including legislative recommendations, for modification of the levels, to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Environment and Public Works, the House of Representatives Committee on Science, and the House of Representatives Committee on Energy and Commerce.

SEC. 335. INITIAL ALLOCATIONS FOR EARLY PARTICIPATION AND ACCELERATED PARTICIPATION.

Before making any allocations under section 333, the Administrator shall allocate—

(1) to any covered entity an amount, of tradeable allowances equivalent to the amount, of greenhouse gas emissions reductions registered by that covered entity in the national greenhouse gas database if—

(A) the covered entity has registered to use the registered reduction in the year of allocation;

(B) the reduction was registered prior to 2010; and

(C) the Administrator retires the unique serial number assigned to the reduction under section 201(c)(3); and

(2) to any covered entity that has entered into an accelerated participation agreement under section 336, such tradeable allowances as the Administrator has determined to be appropriate under that section.

SEC. 336. BONUS FOR ACCELERATED PARTICIPATION.

(a) IN GENERAL.—If a covered entity executes an agreement with the Administrator under which it agrees to reduce its level of greenhouse gas emissions to a level no greater than the level of its greenhouse gas emissions for calendar year 1990 by the year 2010, then, for the 6–year period beginning with calendar year 2010, the Administrator shall—

(1) provide additional tradeable allowances to that entity when allocating allowances under section 334 in order to recognize the additional emissions reductions that will be required of the covered entity;

(2) allow that entity to satisfy 20 percent of its requirements under section 301 by—

(A) submitting tradeable allowances from another nation's market in greenhouse gas emissions under the conditions described in section 312(b)(1);

(B) submitting a registered net increase in sequestration, as registered in the National Greenhouse Gas Database established under section 201, and as adjusted by the appropriate sequestration discount rate established under section 371; or

(C) submitting a greenhouse gas emission reduction (other than a registered net increase in sequestration) that was registered in the National Greenhouse Gas Database by a person that is not a covered entity.

(b) TERMINATION.—An entity that executes an agreement described in subsection (a) may terminate the agreement at any time.

(c) FAILURE TO MEET COMMITMENT.—If an entity that executes an agreement described in subsection (a) fails to achieve the level of emissions to which it committed by calendar year 2010—

(1) its requirements under section 301 shall be increased by the amount of any tradeable allowances provided to it under subsection (a)(1); and

(2) any tradeable allowances submitted thereafter shall be counted first against the increase in those requirements.

Subtitle C—Climate Change Credit Corporation

SEC. 351. ESTABLISHMENT.

(a) IN GENERAL.—The Climate Change Credit Corporation is established as a nonprofit corporation without stock. The Corporation shall not be considered to be an agency or establishment of the United States Government.

(b) APPLICABLE LAWS.—The Corporation shall be subject to the provisions of this title and, to the extent consistent with this title, to the District of Columbia Business Corporation Act.

(c) BOARD OF DIRECTORS.—The Corporation shall have a board of directors of 5 individuals who are citizens of the United States, of whom 1 shall be elected annually by the board to serve as chairman. No more than 3 members of the board serving at any time may be affiliated with the same political party. The members of the board shall be appointed by the President of the United States, by and with the advice and consent of the Senate and shall serve for terms of 5 years.

SEC. 352. PURPOSES AND FUNCTIONS.

(a) TRADING.—The Corporation—

(1) shall receive and manage tradeable allowances allocated to it under section 333(a)(2); and

(2) shall buy and sell tradeable allowances, whether allocated to it under that section or obtained by purchase, trade, or donation from other entities; but

(3) may not retire tradeable allowances unused.

(b) USE OF TRADEABLE ALLOWANCES AND PROCEEDS.—

(1) IN GENERAL.—The Corporation shall use the tradeable allowances, and proceeds derived from its trading activities in tradeable allowances, to reduce costs borne by consumers as a result of the greenhouse gas reduction requirements of this Act. The reductions—

(A) may be obtained by buy-down, subsidy, negotiation of discounts, consumer rebates, or otherwise;

(B) shall be, as nearly as possible, equitably distributed across all regions of the United States; and

(C) may include arrangements for preferential treatment to consumers who can least afford any such increased costs.

(2) TRANSITION ASSISTANCE TO DISLOCATED WORKERS AND COMMUNITIES.—The Corporation shall allocate a percentage of the proceeds derived from its trading activities in tradeable allowances to provide transition assistance to dislocated workers and communities. Transition assistance may take the form of—

(A) grants to employers, employer associations, and representatives of employees—

(i) to provide training, adjustment assistance, and employment services to dislocated workers; and

(ii) to make income-maintenance and needs-related payments to dislocated workers; and

(B) grants to State and local governments to assist communities in attracting new employers or providing essential local government services.

(3) PHASE-OUT OF TRANSITION ASSISTANCE.—The percentage allocated by the Corporation under paragraph (2)—

(A) shall be 20 percent for 2010;

(B) shall be reduced by 2 percentage points each year thereafter; and

(C) may not be reduced below zero.

(4) TECHNOLOGY DEPLOYMENT PROGRAMS.—The Corporation shall establish and carry out a program, through direct grants, revolving loan programs, or other financial measures, to provide support for the deployment of technology to assist in compliance with this Act by distributing the proceeds from no less than 10 percent of the total allowances allocated to it. The support shall include the following:

(A) COAL GASIFICATION COMBINED-CYCLE AND GEOLOGICAL CARBON STORAGE PROGRAM.—The Corporation shall establish and carry out a program, through direct grants, to provide incentives for the repowering of existing facilities or construction of new facilities producing electricity or other products from coal gasification combined-cycle plants that capture and geologically store at least 90 percent of the carbon dioxide produced at the facility in accordance with requirements established by the Administrator to ensure the permanence of the storage and that such storage will not cause or contribute to significant adverse effects on public health or the environment. The Corporation shall ensure that no less than 20 percent of the funding under this program is distributed to rural electric cooperatives.

(B) AGRICULTURAL PROGRAMS.—The Corporation shall establish and carry out a program, through direct grants, revolving loan programs, or other financial measures, to provide incentives for greenhouse gas emissions reductions or net increases in greenhouse gas sequestration on agricultural lands. The program shall include incentives for—

(i) production of wind energy on agricultural lands;

(ii) agricultural management practices that achieve verified, incremental increases in net carbon sequestration, in accordance with the requirements established by the Administrator under section 371; and

(iii) production of renewable fuels that, after consideration of the energy needed to produce such fuels, result in a net reduction in greenhouse gas emissions.

Subtitle D—Sequestration Accounting; Penalties

SEC. 371. SEQUESTRATION ACCOUNTING.

(a) SEQUESTRATION ACCOUNTING.—If a covered entity uses a registered net increase in sequestration to satisfy the requirements of section 301 for any year, that covered entity shall submit information to the Administrator every 5 years thereafter sufficient to allow the Administrator to determine, using the methods and standards created under section 204, whether that net increase in sequestration still exists. Unless the Administrator determines that the net increase in sequestration continues to exist, the covered entity shall offset any loss of sequestration by submitting additional tradeable allowances of equivalent amount in the calendar year following that determination.

(b) REGULATIONS REQUIRED.—The Secretary, acting through the Under Secretary of Commerce for Science and Technology, in coordination with the Secretary of Agriculture, the Secretary of Energy, and the Administrator, shall issue regulations establishing the sequestration accounting rules for all classes of sequestration projects.

(c) CRITERIA FOR REGULATIONS.—In issuing regulations under this section, the Secretary shall use the following criteria:

(1) If the range of possible amounts of net increase in sequestration for a particular class of sequestration project is not more than 10 percent of the median of that range, the amount of sequestration awarded shall be equal to the median value of that range.

(2) If the range of possible amounts of net increase in sequestration for a particular class of sequestration project is more than 10 percent of the median of that range, the amount of sequestration awarded shall be equal to the fifth percentile of that range.

(3) The regulations shall include procedures for accounting for potential leakage from sequestration projects and for ensuring that any registered increase in sequestration is in addition to that which would have occurred if this Act had not been enacted.

(d) UPDATES.—The Secretary shall update the sequestration accounting rules for every class of sequestration project at least once every 5 years.

SEC. 372. PENALTIES.

Any covered entity that fails to meet the requirements of section 301 for a year shall be liable for a civil penalty, payable to the Administrator, equal to thrice the market value (determined as of the last day of the year at issue) of the tradeable allowances that would be necessary for that covered entity to meet those requirements on the date of the emission that resulted in the violation.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Committee on Energy and Natural Resources:

The hearing will be held on Tuesday, July 13, at 10 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony regarding the role of nuclear power in national energy policy.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Dr. Pete Lyons at 202–224–5861 or Shane Perkins at 202–224–7555.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, July 14, 2004, at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the following bills: S. 2317, to limit the royalty on soda ash; S. 2353, to reauthorize and amend the National Geologic Mapping Act of 1992; H.R. 1189, to increase the waiver requirement for certain local matching requirements for grants provided to American Samoa, Guam, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, and for other purposes; and H.R. 2010, to protect the voting rights of members of the Armed Services in elections for the Delegate representing American Samoa in the United States House of Representatives, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

For further information, please contact Dick Bouts at 202–224–7545, Kellie Donnelly at 202–224–9360, or Amy Millet at 202–224–8276.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that the Committee on Rules and Administration will meet at 9:30 a.m., Wednesday, July 14, 2004, to conduct an oversight hearing on the Federal Election Commission.

For further information concerning this meeting, please contact Susan Wells at 202–224–6352.

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources:

The hearing will be held on Thursday, July 15, 2004 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills: S. 1852, to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; S. 2142, to authorize appropriations for the New Jersey Coastal Heritage Trial Route, and for other purposes; S. 2181, to adjust the boundary of Rocky Mountain National Park in the State of Colorado; S. 2374, to provide for the conveyance of certain land to the United States and to revise the boundary of Chickasaw National Recreation Area, OK, and for other purposes; S. 2397 and H.R. 3706, to adjust the boundary of the John Muir national Historic Site, and for other purposes; S. 2432, to expand the boundaries of Wilson's Creek Battlefield National Park, and for other purposes; S. 2567, to adjust the boundary of Redwood National Park in the State of California; and H.R. 1113, to authorize an exchange of land at Fort Frederica National Monument, and for other purposes.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Tom Lillie at (202) 224–5161 or Sarah Creachbaum at (202) 224–6293.

PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that floor privileges be extended to the following staffers for the duration of debate on S. 2062: Harold Kim, Kevin O'Scannlain, Ryan Triplette, Brendan Dunn, Levi Smylie, and Kevin Madigan from the Judiciary Committee.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair announces the following appointment made by the Democratic Leader during the adjournment: Pursuant to Public Law 105–18, on behalf of the Democratic Leader, the appointment of Clare M. Cotton of Massachusetts to serve as a member of the National Commission on the cost of Higher Education on June 30, 2004.

THE CALENDAR

NATIONAL AIRBORNE DAY

NATIONAL HEALTH CENTER WEEK

NATIONAL ATTENTION DEFICIT DISORDER AWARENESS DAY

Mr. GRASSLEY. Mr. President, I ask unanimous consent the Senate proceed to immediate consideration of Calendar Nos. 585, 586, and 587, en bloc.

The assistant legislative clerk read as follows:

A resolution (S. Res. 322) designating August 16, 2004 as ''National Airborne Day.''

A resolution (S. Res. 357) designating the week of August 8 through August 14, 2004, as ''National Health Center Week.''

A resolution (S. Res. 370) designating September 7, 2004, as ''National Attention Deficit Disorder Awareness Day.''

There being no objection, the Senate proceeded to consider the resolutions en bloc.

Mr. GRASSLEY. I ask unanimous consent the resolutions be agreed to, the preambles be agreed to, and the motions to reconsider be laid on the table, all en bloc.

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

The resolutions were agreed to.

The preambles were agreed to.

The resolutions, with their preambles, read as follows:

S. RES. 322

Whereas the airborne forces of the United States Armed Forces have a long and honorable history as units of adventuresome, hardy, and fierce warriors who, for the national security of the United States and the defense of freedom and peace, project the effective ground combat power of the United States by Air Force air transport to the far reaches of the battle area and, indeed, to the far corners of the world;

Whereas August 16, 2004, marks the anniversary of the first official validation of the innovative concept of inserting United States ground combat forces behind the battle line by means of a parachute;

Whereas the United States experiment of airborne infantry attack began on June 25, 1940, when the Army Parachute Test Platoon was first authorized by the United States Department of War, and was launched when 48 volunteers began training in July of 1940;

Whereas the Parachute Test Platoon performed the first official Army parachute jump on August 16, 1940;

Whereas the success of the Parachute Test Platoon in the days immediately preceding the entry of the United States into World War II led to the formation of a formidable force of airborne units that, since then, have served with distinction and repeated success in armed hostilities;

Whereas among those units are the former 11th, 13th, and 17th Airborne Divisions, the venerable 82nd Airborne Division, the versatile 101st Airborne Division (Air Assault), and the airborne regiments and battalions (some as components of those divisions, some as separate units) that achieved distinction as the elite 75th Ranger Regiment, the 173rd Airborne Brigade, the 187th Infantry (Airborne) Regiment, the 503rd, 507th, 508th, 517th, 541st, and 542nd Parachute Infantry Regiments, the 88th Glider Infantry Regiment, the 509th, 551st, and 555th Parachute Infantry Batallions, and the 550th Airborne Infantry Battalion;

Whereas the achievements of the airborne forces during World War II provided a basis of evolution into a diversified force of parachute and air assault units that, over the years, have fought in Korea, Vietnam, Grenada, Panama, the Persian Gulf Region, and Somalia, and have engaged in peacekeeping operations in Lebanon, the Sinai Peninsula, the Dominican Republic, Haiti, Bosnia, and Kosovo;

Whereas the modern-day airborne force that has evolved from those World War II beginnings is an agile, powerful force that, in large part, is composed of the 82nd Airborne Division, the 101st Airborne Division (Air Assault), and the 75th Ranger Regiment which, together with other units, comprise the quick reaction force of the Army's XVIII Airborne Corps when not operating separately under a regional combatant commander;

Whereas that modern-day airborne force also includes other elite forces composed entirely of airborne trained and qualified special operations warriors, including Army Special Forces, Marine Corps Force Reconnaissance units, Navy SEALs, and Air Force combat control teams, all or most of which comprise the forces of the United States Special Operations Command;

Whereas in the aftermath of the terrorist attacks on the United States on September 11, 2001, the 75th Ranger Regiment, special forces units, and units of the 82nd Airborne Division and the 101st Airborne Division (Air Assault), together with other units of the Armed Forces, have been prosecuting the war against terrorism by carrying out combat operations in Afghanistan, training operations in the Philippines, and other operations elsewhere;

Whereas in the aftermath of the President's announcement of Operation Iraqi Freedom in March 2003, the 75th Ranger Regiment, special forces units, and units of the 82nd Airborne Division, the 101st Airborne Division (Air Assault), and the 173rd Airborne Brigade, together with other units of the Armed Forces, have been prosecuting the war against terrorism, carrying out combat operations, conducting civil affair missions, and assisting in establishing democracy in Iraq;

Whereas the airborne forces are and will continue to be at the ready and the forefront until the Global War on Terrorism is concluded;

Whereas of the members and former members of the United States combat airborne forces, all have achieved distinction by earning the right to wear the airborne's ''Silver Wings of Courage'', thousands have achieved the distinction of making combat jumps, 69 have earned the Medal of Honor, and hundreds have earned the Distinguished-Service Cross, Silver Star, or other decorations and awards for displays of such traits as heroism, gallantry, intrepidity, and valor;

Whereas the members and former members of the United States combat airborne forces are members of a proud and honorable fraternity of the profession of arms that is made exclusive by those distinctions which, together with their special skills and achievements, distinguish them as intrepid combat parachutists, special operations forces, and (in former days) glider troops; and

Whereas the history and achievements of the members and former members of the airborne forces of the United States Armed Forces warrant special expressions of the gratitude of the American people as the airborne community celebrates August 16, 2004, as the 64th anniversary of the first official jump by the Army Parachute Test Platoon: Now, therefore, be it

Resolved, That the Senate—

(1) designates August 16, 2004, as ''National Airborne Day''; and

(2) requests that the President issue a proclamation calling on Federal, State, and local administrators and the people of the United States to observe ''National Airborne Day'' with appropriate programs, ceremonies, and activities.

S. RES. 357

Whereas community, migrant, public housing, and homeless health centers are nonprofit, community owned and operated health providers and are vital to the Nation's communities;

Whereas there are more than 1,000 such health centers serving 15,000,000 people in over 3,500 communities in every State and territory, spanning urban and rural communities in all 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands;

Whereas these health centers have provided cost-effective, high-quality health care to the Nation's poor and medically underserved (including the working poor, the uninsured, and many high-risk and vulnerable populations), acting as a vital safety net in the Nation's health delivery system, meeting escalating health needs, and reducing health disparities;

Whereas these health centers provide care to individuals in the United States who would otherwise lack access to health care, including 1 of every 8 uninsured individuals, 1 of every 9 Medicaid beneficiaries, 1 of every 7 people of color, and 1 of every 9 rural Americans;

Whereas these health centers and other innovative programs in primary and preventive care reach out to over 621,000 homeless individuals and more than 709,000 migrant and seasonal farm workers;

Whereas these health centers make health care responsive and cost effective by integrating the delivery of primary care with aggressive outreach, patient education, translation, and enabling support services;

Whereas these health centers increase the use of preventive health services such as immunizations, Pap smears, mammograms, and glaucoma screenings;

Whereas in communities served by these health centers, infant mortality rates have been reduced between 10 and 40 percent;

Whereas these health centers are built by community initiative;

Whereas Federal grants provide seed money that empowers communities to find partners and resources and to recruit doctors and needed health professionals;

Whereas Federal grants on average form 25 percent of such a health center's budget, with the remainder provided by State and local governments, Medicare, Medicaid, private contributions, private insurance, and patient fees;

Whereas these health centers are community oriented and patient focused;

Whereas these health centers tailor their services to fit the special needs and priorities of communities, working together with schools, businesses, churches, community organizations, foundations, and State and local governments;

Whereas these health centers contribute to the health and well-being of their communities by keeping children healthy and in school and helping adults remain productive and on the job;

Whereas these health centers engage citizen participation and provide jobs for over 70,000 community residents; and

Whereas designating the week of August 8 through August 14, 2004, as ''National Health Center Week'' would raise awareness of the health services provided by health centers: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of August 8 through August 14, 2004, as ''National Health Center Week''; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the week with appropriate ceremonies and activities.

S. RES. 370

Whereas Attention Deficit/Hyperactivity Disorder (also known as AD/HD or ADD), is a chronic neurobiological disorder, affecting both children and adults, that can significantly interfere with an individual's ability to regulate activity level, inhibit behavior, and attend to tasks in developmentally appropriate ways;

Whereas AD/HD can cause devastating consequences, including failure in school and the workplace, antisocial behavior, encounters with the justice system, interpersonal difficulties, and substance abuse;

Whereas AD/HD, the most extensively studied mental disorder in children, affects an estimated 3 percent to 7 percent (2,000,000) of young school-age children and an estimated 4 percent (8,000,000) of adults across racial, ethnic, and socioeconomic lines;

Whereas scientific studies clearly indicate that AD/HD runs in families and suggest that genetic inheritance is an important risk factor, with between 10 and 35 percent of children with AD/HD having a first-degree relative with past or present AD/HD, and with

approximately 50 percent of parents who had AD/HD having a child with the disorder;

Whereas despite the serious consequences that can manifest in the family and life experiences of an individual with AD/HD, studies indicate that less than 85 percent of adults with the disorder are diagnosed and less than half of children and adults with the disorder are receiving treatment;

Whereas poor and minority communities are particularly underserved by AD/HD resources;

Whereas the Surgeon General, the American Medical Association (AMA), the American Psychiatric Association, the American Academy of Child and Adolescent Psychiatry (AACAP), the American Psychological Association, the American Academy of Pediatrics (AAP), the Centers for Disease Control and Prevention (CDC), and the National Institute of Mental Health, among others, recognize the need for proper diagnosis, education, and treatment of AD/HD;

Whereas the lack of public knowledge and understanding of the disorder play a significant role in the overwhelming numbers of undiagnosed and untreated cases of AD/HD, and the dissemination of inaccurate, misleading information contributes to the obstacles preventing diagnosis and treatment of the disorder;

Whereas lack of knowledge, combined with the issue of stigma associated with AD/HD, has a particularly detrimental effect on the diagnosis and treatment of AD/HD;

Whereas there is a need to educate health care professionals, employers, and educators about the disorder and a need for well-trained mental health professionals capable of conducting proper diagnosis and treatment activities; and

Whereas studies by the National Institute of Mental Health and others consistently reveal that through proper and comprehensive diagnosis and treatment, the symptoms of AD/HD can be substantially decreased and quality of life for the individual can be improved: Now, therefore, be it

Resolved, That the Senate—

(1) designates September 7, 2004, as ''National Attention Deficit Disorder Awareness Day'';

(2) recognizes Attention Deficit/Hyperactivity Disorder (AD/HD) as a major public health concern;

(3) encourages all people of the United States to find out more about AD/HD and its supporting mental health services, and to seek the appropriate treatment and support, if necessary;

(4) expresses the sense of the Senate that the Federal Government has a responsibility to—

(A) endeavor to raise public awareness about AD/HD; and

(B) continue to consider ways to improve access to, and the quality of, mental health services dedicated to the purpose of improving the quality of life for children and adults with AD/HD; and

(5) requests that the President issue a proclamation calling on Federal, State and local administrators and the people of the United States to observe the day with appropriate programs and activities.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

On Wednesday, June 23 (legislative day of Tuesday, June 22), 2004, the Senate passed S. 2400, as follows:

S. 2400

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 ''Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005''.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into three divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

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

SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES DEFINED.

For purposes of this Act, the term ''congressional defense committees'' means—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Army as follows:

(1) For aircraft, $2,702,640,000.

(2) For missiles, $1,488,321,000.

(3) For weapons and tracked combat vehicles, $1,693,595,000.

(4) For ammunition, $1,598,302,000.

(5) For other procurement, $5,384,296,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Navy as follows:

(1) For aircraft, $8,870,832,000.

(2) For weapons, including missiles and torpedoes, $2,183,829,000.

(3) For shipbuilding and conversion, $10,127,027,000.

(4) For other procurement, $4,904,978,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Marine Corps in the amount of $1,303,203,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement of ammunition for the Navy and the Marine Corps in the amount of $873,140,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Air Force as follows:

(1) For aircraft, $13,033,674,000.

(2) For missiles, $4,635,613,000.

(3) For ammunition, $1,396,457,000.

(4) For other procurement, $13,298,257,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2005 for Defense-wide procurement in the amount of $2,967,402,000.

Subtitle B—Army Programs

SEC. 111. LIGHT UTILITY HELICOPTER PROGRAM.

(a) LIMITATION.—Of the funds authorized to be appropriated under section 101(1) for the procurement of light utility helicopters, $45,000,000 may not be obligated or expended until 30 days after the date on which the Secretary of the Army submits to the congressional defense committees a report that contains—

(1) the Secretary's certification that all required documentation for the acquisition of light utility helicopters has been completed and approved; and

(2) the Army aviation modernization plan required by subsection (b).

(b) ARMY AVIATION MODERNIZATION PLAN.—(1) Not later than March 1, 2005, the Secretary of the Army shall submit to the congressional defense committees an updated modernization plan for Army aviation.

(2) The updated Army aviation modernization plan shall contain, at a minimum, the following matters:

(A) The analysis on which the plan is based.

(B) A discussion of the Secretary's decision to terminate the Comanche helicopter program and to restructure the aviation force of the Army.

(C) The actions taken or to be taken to accelerate the procurement and development of aircraft survivability equipment for Army aircraft, together with a detailed list of aircraft survivability equipment that specifies such equipment by platform and by the related programmatic funding for procurement.

(D) A discussion of the conversion of Apache helicopters to block III configuration, including the rationale for converting

only 501 Apache helicopters to that configuration and the costs associated with a conversion of all Apache helicopters to the block III configuration.

(E) A discussion of the procurement of light armed reconnaissance helicopters, including the rationale for the requirement for light armed reconnaissance helicopters and a discussion of the costs associated with upgrading the light armed reconnaissance helicopter to meet Army requirements.

(F) The rationale for the Army's requirement for light utility helicopters, together with a summary and copy of the analysis of the alternative means for meeting such requirement that the Secretary considered in the determination to procure light utility helicopters, including, at a minimum, the analysis of the alternative of using light armed reconnaissance helicopters and UH–60 Black Hawk helicopters instead of light utility helicopters to meet such requirement.

(G) The rationale for the procurement of cargo fixed-wing aircraft.

(H) The rationale for the initiation of a joint multi-role helicopter program.

(I) A description of the operational employment of the Army's restructured aviation force.

SEC. 112. UP-ARMORED HIGH MOBILITY MULTI-PURPOSE WHEELED VEHICLES OR WHEELED VEHICLE BALLISTIC ADD-ON ARMOR PROTECTION.

(a) AMOUNT.—Of the amount authorized to be appropriated for the Army for fiscal year 2005 for other procurement under section 101(5), $610,000,000 shall be available for both of the purposes described in subsection (b) and may be used for either or both of such purposes.

(b) PURPOSES.—The purposes referred to in subsection (a) are as follows:

(1) The procurement of up-armored high mobility multi-purpose wheeled vehicles at a rate up to 450 such vehicles each month.

(2) The procurement of wheeled vehicle ballistic add-on armor protection.

(c) ALLOCATION BY SECRETARY OF THE ARMY.—(1) The Secretary of the Army shall allocate the amount available under subsection (a) between the two purposes set forth in subsection (b) as the Secretary determines appropriate to meet the requirements of the Army.

(2) Not later than 15 days before making an allocation under paragraph (1), the Secretary shall transmit a notification of the proposed allocation to the congressional defense committees.

(d) PROHIBITION ON USE FOR OTHER PURPOSES.—The amount available under subsection (a) may not be used for any purpose other than a purpose specified in subsection (b).

SEC. 113. COMMAND-AND-CONTROL VEHICLES OR FIELD ARTILLERY AMMUNITION SUPPORT VEHICLES.

(a) INCREASED AMOUNT FOR PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES.—The amount authorized to be appropriated under section 101(3) is hereby increased by $5,000,000.

(b) AMOUNT FOR COMMAND-AND-CONTROL VEHICLES OR FIELD ARTILLERY AMMUNITION SUPPORT VEHICLES.—Of the amount authorized to be appropriated under section 101(3), $5,000,000 may be used for the procurement of command-and-control vehicles or field artillery ammunition support vehicles.

(c) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $5,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Subtitle C—Navy Programs

SEC. 121. LHA(R) AMPHIBIOUS ASSAULT SHIP PROGRAM.

(a) AUTHORIZATION OF SHIP.—The Secretary of the Navy is authorized to procure the first amphibious assault ship of the LHA(R) class, subject to the availability of appropriations for that purpose.

(b) AUTHORIZED AMOUNT.—Of the amount authorized to be appropriated under section 102(a)(3) for fiscal year 2005, $150,000,000 shall be available for the advance procurement and advance construction of components for the first amphibious assault ship of the LHA(R) class. The Secretary of the Navy may enter into a contract or contracts with the shipbuilder and other entities for the advance procurement and advance construction of those components.

SEC. 122. MULTIYEAR PROCUREMENT AUTHORITY FOR THE LIGHT WEIGHT 155-MILLIMETER HOWITZER PROGRAM.

(a) AUTHORITY.—Beginning with the fiscal year 2005 program year, the Secretary of the Navy may, in accordance with section 2306b of title 10, United States Code, enter into a multiyear contract for the procurement of the light weight 155-millimeter howitzer.

(b) LIMITATION.—The Secretary may not enter into a multiyear contract for the procurement of light weight 155 millimeter howitzers under subsection (a) until the Secretary determines on the basis of operational testing that the light weight 155-millimeter howitzer is effective for fleet use.

SEC. 123. PILOT PROGRAM FOR FLEXIBLE FUNDING OF SUBMARINE ENGINEERED REFUELING OVERHAUL AND CONVERSION.

(a) ESTABLISHMENT.—The Secretary of the Navy may carry out a pilot program of flexible funding of engineered refueling overhauls and conversions of submarines in accordance with this section.

(b) AUTHORITY.—Under the pilot program, the Secretary of the Navy may, subject to subsection (d), transfer amounts described in subsection (c) to the authorization of appropriations for the Navy for procurement for shipbuilding and conversion for any fiscal year to continue to provide authorization of appropriations for any engineered refueling conversion or overhaul of a submarine of the Navy for which funds were initially provided on the basis of the authorization of appropriations to which transferred.

(c) AMOUNTS AVAILABLE FOR TRANSFER.—The amounts available for transfer under this section are amounts authorized to be appropriated to the Navy for any fiscal year after fiscal year 2004 and before fiscal year 2013 for the following purposes:

(1) For procurement as follows:

(A) For shipbuilding and conversion.

(B) For weapons procurement.

(C) For other procurement.

(2) For operation and maintenance.

(d) LIMITATIONS.—(1) A transfer may be made with respect to a submarine under this section only to meet either (or both) of the following requirements:

(A) An increase in the size of the workload for engineered refueling overhaul and conversion to meet existing requirements for the submarine.

(B) A new engineered refueling overhaul and conversion requirement resulting from a revision of the original baseline engineered refueling overhaul and conversion program for the submarine.

(2) A transfer may not be made under this section before the date that is 30 days after the date on which the Secretary of the Navy transmits to the congressional defense committees a written notification of the intended transfer. The notification shall include the following matters:

(A) The purpose of the transfer.

(B) The amounts to be transferred.

(C) Each account from which the funds are to be transferred.

(D) Each program, project, or activity from which the amounts are to be transferred.

(E) Each account to which the amounts are to be transferred.

(F) A discussion of the implications of the transfer for the total cost of the submarine engineered refueling overhaul and conversion program for which the transfer is to be made.

(e) MERGER OF FUNDS.—A transfer made from one account to another with respect to the engineered refueling overhaul and conversion of a submarine under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred and shall be available for the engineered refueling overhaul and conversion of such submarine for the same period as the account to which transferred.

(f) RELATIONSHIP TO OTHER TRANSFER AUTHORITY.—The authority to make transfers under this section is in addition to any other transfer authority provided in this or any other Act and is not subject to any restriction, limitation, or procedure that is applicable to the exercise of any such other authority.

(g) FINAL REPORT.—Not later than October 1, 2011, the Secretary of the Navy shall submit to the congressional defense committees a report containing the Secretary's evaluation of the efficacy of the authority provided under this section.

(h) TERMINATION OF PROGRAM.—No transfer may be made under this section after September 30, 2012.

Subtitle D—Air Force Programs

SEC. 131. PROHIBITION OF RETIREMENT OF KC–135E AIRCRAFT.

The Secretary of the Air Force may not retire any KC–135E aircraft of the Air Force in fiscal year 2005.

SEC. 132. PROHIBITION OF RETIREMENT OF F–117 AIRCRAFT.

No F–117 aircraft in use by the Air Force during fiscal year 2004 may be retired during fiscal year 2005.

SEC. 133. SENIOR SCOUT MISSION BED-DOWN INITIATIVE.

(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 103(1) is hereby increased by $2,000,000, with the amount of the increase to be available for a bed-down initiative to enable the C–130 aircraft of the Idaho Air National Guard to be the permanent carrier of the SENIOR SCOUT mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $2,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Subtitle E—Other Matters

SEC. 141. REPORT ON OPTIONS FOR ACQUISITION OF PRECISION-GUIDED MUNITIONS.

(a) REQUIREMENT FOR REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit a report on options for the acquisition of precision-guided munitions to the congressional defense committees.

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

(1) A list of the precision-guided munitions in the inventory of the Department of Defense.

(2) For each such munition—

(A) the inventory level as of the most recent date that it is feasible to specify when the report is prepared;

(B) the inventory objective that is necessary to execute the current National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff;

(C) the year in which that inventory objective would be expected to be achieved—

(i) if the munition were procured at the minimum sustained production rate;

(ii) if the munition were procured at the most economic production rate; and

(iii) if the munition were procured at the maximum production rate; and

(D) the procurement cost (in constant fiscal year 2004 dollars) at each of the production rates specified in subparagraph (C).

SEC. 142. REPORT ON MATURITY AND EFFECTIVENESS OF THE GLOBAL INFORMATION GRID BANDWIDTH EXPANSION (GIG–BE) NETWORK.

(a) REPORT REQUIRED.—Not later that 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on a test program to demonstrate the maturity and effectiveness of the Global Information Grid-Bandwidth Expansion (GIG–BE) network architecture.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall—

(1) determine whether the results of the test program described in subsection (a) demonstrate compliance of the GIG–BE architecture with the overall goals of the GIG–BE program;

(2) identify—

(A) the extent to which the GIG–BE architecture does not meet the overall goals of the program; and

(B) the components that are not yet sufficiently developed to achieve the overall goals of the program;

(3) include a plan and cost estimates for achieving compliance; and

(4) document the equipment and network configuration used to demonstrate real-world scenarios within the continental United States.

TITLE II—RESEARCH, DEVELOPMENT, TEST AND EVALUATION

Subtitle A—Authorization of Appropriations

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Department of Defense for research, development, test, and evaluation as follows:

(1) For the Army, $9,686,958,000.

(2) For the Navy, $16,679,391,000.

(3) For the Air Force, $21,264,267,000.

(4) For Defense-wide activities, $20,635,937,000, of which $309,135,000 is authorized for the Director of Operational Test and Evaluation.

SEC. 202. AMOUNT FOR SCIENCE AND TECHNOLOGY.

(a) AMOUNT FOR PROJECTS.—Of the total amount authorized to be appropriated by section 201, $10,998,850,000 shall be available for science and technology projects.

(b) SCIENCE AND TECHNOLOGY DEFINED.—In this section, the term ''science and technology project'' means work funded in program elements for defense research, development, test, and evaluation under Department of Defense budget activities 1, 2, or 3.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 211. DD(X)-CLASS DESTROYER PROGRAM.

(a) AUTHORIZATION OF SHIP.—For the second destroyer in the DD(X)-class destroyer program, the Secretary of the Navy is authorized to use funds authorized to be appropriated to the Navy under section 201(2).

(b) AMOUNT FOR DETAIL DESIGN.—Of the amount authorized to be appropriated under section 201(2) for fiscal year 2005, $99,400,000 shall be available for the detail design of the second destroyer of the DD(X)-class.

SEC. 212. GLOBAL POSITIONING SYSTEM III SATELLITE.

Not more than 80 percent of the amount authorized to be appropriated by section 201(4) and available for the purpose of research, development, test, and evaluation on the Global Positioning System III satellite may be obligated or expended for that purpose until the Secretary of Defense—

(1) completes an analysis of alternatives for the satellite and ground architectures, satellite technologies, and tactics, techniques, and procedures for the next generation global positioning system (GPS); and

(2) submits to the congressional defense committees a report on the results of the analysis, including an assessment of the results of the analysis.

SEC. 213. INITIATION OF CONCEPT DEMONSTRATION OF GLOBAL HAWK HIGH ALTITUDE ENDURANCE UNMANNED AERIAL VEHICLE.

Section 221(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–40) is amended by striking ''March 1, 2001'' and inserting ''March 1, 2005''.

SEC. 214. JOINT UNMANNED COMBAT AIR SYSTEMS PROGRAM.

(a) EXECUTIVE COMMITTEE.—(1) The Secretary of Defense shall, subject to subsection (b), establish and require an executive committee to provide guidance and recommendations for the management of the Joint Unmanned Combat Air Systems program to the Director of the Defense Advanced Research Projects Agency and the personnel who are managing the program for such agency.

(2) The executive committee established under paragraph (1) shall be composed of the following members:

(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall chair the executive committee.

(B) The Assistant Secretary of the Navy for Research, Development, and Acquisition.

(C) The Assistant Secretary of the Air Force for Acquisition.

(D) The Deputy Chief of Naval Operations for Warfare Requirements and Programs.

(E) The Deputy Chief of Staff of the Air Force for Air and Space Operations.

(F) Any additional personnel of the Department of Defense whom the Secretary determines appropriate for membership on the executive committee.

(b) APPLICABILITY ONLY TO DARPA-MANAGED PROGRAM.—The requirements of subsection (a) apply with respect to the Joint Unmanned Combat Air Systems program only while the program is managed by the Defense Advanced Research Projects Agency.

SEC. 215. JOINT STRIKE FIGHTER AIRCRAFT PROGRAM.

(a) REQUIREMENT FOR STUDY.—The Secretary of Defense shall require the Defense Science Board to conduct a study on the Joint Strike Fighter aircraft program.

(b) MATTERS TO BE STUDIED.—The study shall include, for each of the three variants of the Joint Strike Fighter aircraft, the following matters:

(1) The current status.

(2) The extent of the effects of excess aircraft weight on estimated performance.

(3) The validity of the technical approaches being considered to achieve the required performance.

(4) The risks of those technical approaches.

(5) A list of any alternative technical approaches that have the potential to achieve the required performance.

(c) REPORT.—The Secretary shall submit a report on the results of the study to the congressional defense committees at the same time that the President submits the budget for fiscal year 2006 to Congress under section 1105(a) of title 31, United States Code.

SEC. 216. JOINT EXPERIMENTATION.

(a) DEFENSE-WIDE PROGRAM ELEMENT.—The Secretary of Defense shall plan, program, and budget for all joint experimentation of the Armed Forces as a separate, dedicated program element under research, development, test, and evaluation, Defense-wide activities.

(b) APPLICABILITY TO FISCAL YEARS AFTER FISCAL YEAR 2005.—This section shall apply with respect to fiscal years beginning after 2005.

SEC. 217. INFRASTRUCTURE SYSTEM SECURITY ENGINEERING DEVELOPMENT FOR THE NAVY.

(a) INCREASE IN AMOUNT FOR RESEARCH, DEVELOPMENT, TEST AND EVALUATION, NAVY.—The amount authorized to be appropriated by section 201(2) for research, development, test and evaluation, Navy, is hereby increased by $3,000,000.

(b) AVAILABILITY OF AMOUNT FOR INFRASTRUCTURE SYSTEM SECURITY ENGINEERING DEVELOPMENT.—Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation, Navy, as increased by subsection (a), $3,000,000 may be available for infrastructure system security engineering development.

(c) OFFSET.—(1) The amount authorized to be appropriated by section 101(5) for other procurement, Army, is hereby reduced by $1,000,000, with the amount of the reduction to be allocated to Buffalo Landmine Vehicles.

(2) The amount authorized to be appropriated by section 102(b) for procurement for the Marine Corps is hereby reduced by $500,000, with the amount of the reduction to be allocated to Combat Casualty Care.

(3) The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation, Army, is hereby reduced by $1,000,000, with the amount of the reduction to the allocated to Active Coating Technology.

(4) The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby reduced by $500,000, with the amount of the reduction to be allocated to Radiation Hardened Complementary Metal Oxide Semi-Conductors.

SEC. 218. NEUROTOXIN MITIGATION RESEARCH.

(a) INCREASE IN AMOUNT FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, DEFENSE-WIDE.—The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $2,000,000.

(b) AVAILABILITY FOR NEUROTOXIN MITIGATION RESEARCH.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, as increased by subsection (a), $2,000,000 may be available in Program Element PE 62384BP for neurotoxin mitigation research.

(c) OFFSET.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby reduced by $2,000,000, with the amount of the reduction to be allocated to Satellite Communications Language training activity (SCOLA) at the Army Defense Language Institute.

SEC. 219. SPIRAL DEVELOPMENT OF JOINT THREAT WARNING SYSTEM MARITIME VARIANTS.

(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 201(4) is hereby increased by $2,000,000, with the amount of the increase to be available in the program element PE 1160405BB for joint threat warning system maritime variants.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $2,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

SEC. 220. ADVANCED FERRITE ANTENNA.

(a) AMOUNT FOR DEVELOPMENT AND TESTING.—Of the amount authorized to be appropriated under section 201(2), $3,000,000 may be available for development and testing of the Advanced Ferrite Antenna.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $3,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

SEC. 221. PROTOTYPE LITTORAL ARRAY SYSTEM FOR OPERATING SUBMARINES.

(a) INCREASE IN AMOUNT FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION, NAVY.—The amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy is hereby increased by $5,000,000.

(b) AVAILABILITY OF AMOUNT.—Of the amount authorized to be appropriated by section 201(2) for research, development, test, and evaluation for the Navy, as increased by subsection (a), $5,000,000 may be available for Program Element PE 0604503N for the design, development, and testing of a prototype littoral array system for operating submarines.

(c) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $5,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

SEC. 222. ADVANCED MANUFACTURING TECHNOLOGIES AND RADIATION CASUALTY RESEARCH.

(a) ADDITIONAL AMOUNT FOR ADVANCED MANUFACTURING STRATEGIES.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, the amount available for Advanced Manufacturing Technologies (PE 0708011S) is hereby increased by $2,000,000.

(b) AMOUNT FOR RADIATION CASUALTY RESEARCH.—Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, $3,000,000 may be available for Radiation Casualty Research (PE 0603002D8Z).

(c) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $5,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Subtitle C—Ballistic Missile Defense

SEC. 231. FIELDING OF BALLISTIC MISSILE DEFENSE CAPABILITIES.

Funds authorized to be appropriated under section 201(4) for the Missile Defense Agency may be used for the development and fielding of an initial set of ballistic missile defense capabilities.

SEC. 232. PATRIOT ADVANCE CAPABILITY-3 AND MEDIUM EXTENDED AIR DEFENSE SYSTEM.

(a) OVERSIGHT.—In the management of the combined program for the acquisition of the Patriot Advanced Capability-3 missile system and the Medium Extended Air Defense System, the Secretary of Defense shall require the Secretary of the Army to obtain the approval of the Director of the Missile Defense Agency before the Secretary of the Army—

(1) either—

(A) changes any system level technical specifications that are in effect under the program as of the date of the enactment of this Act; or

(B) establishes any new system level technical specifications after such date;

(2) makes any significant change in a procurement quantity (including any quantity in any future block procurement) that, as of such date, is planned for—

(A) the Patriot Advanced Capabilities-3 missile system; or

(B) PAC–3 configuration-3 radars, launchers, or fire control units; or

(3) changes the baseline development schedule that is in effect for the program as of the date of the enactment of this Act.

(b) DEFINITIONS.—In this section:

(1) The term ''system level technical specifications'', with respect to a system to which this section applies, means technical specifications expressed in terms of technical performance, including test specifications, that affect the ability of the system to contribute to the capability of the ballistic missile defense system of the United States, as determined by the Director of the Missile Defense Agency.

(2) The term ''significant change'', with respect to a planned procurement quantity, means any change of such quantity that would result in a significant change in the contribution that, as of the date of the enactment of this Act, is planned for the Patriot Advanced Capability-3 system to make to the ballistic missile defense system of the United States.

(3) The term ''baseline development schedule'' means the schedule on which technology upgrades for the combined acquisition program referred to in subsection (a) are planned for development.

(4) The terms ''Patriot Advanced Capability-3'' and ''PAC–3 configuration-3''—

(A) mean the air and missile defense system that, as of June 1, 2004, is referred to by either such name in the management of the combined acquisition program referred to in subsection (a); and

(B) include such system as it is improved with new air and missile defense technologies.

SEC. 233. COMPTROLLER GENERAL ASSESSMENTS OF BALLISTIC MISSILE DEFENSE PROGRAMS.

(a) ANNUAL ASSESSMENTS.—At the conclusion of each of 2004 through 2009, the Comptroller General of the United States shall conduct an assessment of the extent to which each ballistic missile defense program met the cost, scheduling, testing, and performance goals for such program for such year as established pursuant to section 232(c) of the National Defense Authorization Act for Fiscal Year 2002 (10 U.S.C. 2431 note).

(b) REPORTS ON ANNUAL ASSESSMENTS.—Not later than February 15 of each of 2005 through 2010, the Comptroller General shall submit to the congressional defense committees a report on the assessment conducted by the Comptroller General under subsection (a) for the previous year.

SEC. 234. BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM.

(a) TESTING CRITERIA.—Not later than February 1, 2005, the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, shall prescribe appropriate criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program. The Secretary shall submit a copy of the prescribed criteria to the congressional defense committees.

(b) USE OF CRITERIA.—(1) The Secretary of Defense shall ensure that, not later than October 1, 2005, a test of the ballistic missile defense system is conducted consistent with the criteria prescribed under subsection (a).

(2) The Secretary of Defense shall ensure that each block configuration of the ballistic missile defense system is tested consistent with the criteria prescribed under subsection (a).

(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to exempt any spiral development program of the Department of Defense, after completion of the spiral development, from the applicability of any provision of chapter 144 of title 10, United States Code, or section 139, 181, 2366, 2399, or 2400 of such title in accordance with the terms and conditions of such provision.

(d) EVALUATION.—(1) The Director of Operational Test and Evaluation shall evaluate the results of each test conducted under subsection (a) as soon as practicable after the completion of such test.

(2) The Director shall submit to the Secretary of Defense and the congressional defense committees a report on the evaluation of each test conducted under subsection (a) upon completion of the evaluation of such test under paragraph (1).

(e) COST, SCHEDULE, AND PERFORMANCE BASELINES.—(1) The Director of the Missile Defense Agency shall establish cost, schedule, and performance baselines for each block configuration of the Ballistic Missile Defense System being fielded. The cost baseline for a block configuration shall include full life cycle costs for the block configuration.

(2) The Director shall include the baselines established under paragraph (1) in the first Selected Acquisition Report for the Ballistic Missile Defense System that is submitted to Congress under section 2432 of title 10, United States Code, after the establishment of such baselines.

(3) The Director shall also include in the Selected Acquisition Report submitted to Congress under paragraph (2) the significant assumptions used in determining the performance baseline under paragraph (1), including any assumptions regarding threat missile countermeasures and decoys.

(f) VARIATIONS AGAINST BASELINES.—In the event the cost, schedule, or performance of any block configuration of the Ballistic Missile Defense System varies significantly (as determined by the Director of the Ballistic Missile Defense Agency) from the applicable baseline established under subsection (d), the Director shall include such variation, and the reasons for such variation, in the Selected Acquisition Report submitted to Congress under section 2432 of title 10, United States Code.

(g) MODIFICATIONS OF BASELINES.—In the event the Director of the Missile Defense Agency elects to undertake any modification of a baseline established under subsection (d), the Director shall submit to the congressional defense committees a report setting forth the reasons for such modification.

Subtitle D—Other Matters

SEC. 241. ANNUAL REPORT ON SUBMARINE TECHNOLOGY INSERTION.

(a) REPORT REQUIRED.—(1) For each of fiscal years 2006, 2007, 2008, and 2009, the Secretary of Defense shall submit to the congressional defense committees a report on the submarine technologies that are available or potentially available for insertion in submarines of the Navy to reduce the production and operating costs of the submarines while maintaining or improving the effectiveness of the submarines.

(2) The annual report for a fiscal year under paragraph (1) shall be submitted at the same time that the President submits to Congress the budget for that fiscal year under section 1105(a) of title 31, United States Code.

(b) CONTENT.—The report on submarine technologies under subsection (a) shall include, for each class of submarines of the Navy, the following matters:

(1) A list of the technologies that have been demonstrated, together with—

(A) a plan for the insertion of any such technologies that have been determined appropriate for such submarines; and

(B) the estimated cost of such technology insertions.

(2) A list of the technologies that have not been demonstrated, together with a plan for the demonstration of any such technologies that have the potential for being appropriate for such submarines.

SEC. 242. SENSE OF THE SENATE REGARDING FUNDING OF THE ADVANCED SHIPBUILDING ENTERPRISE UNDER THE NATIONAL SHIPBUILDING RESEARCH PROGRAM OF THE NAVY.

(a) FINDINGS.—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides $10,300,000 for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF THE SENATE.—It is the sense of the Senate—

(1) that the Senate—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) is concerned that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further reduce the cost of designing, building, and repairing ships.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $26,305,611,000.

(2) For the Navy, $29,702,790,000.

(3) For the Marine Corps, $3,682,727,000.

(4) For the Air Force, $27,423,560,000.

(5) For Defense-wide activities, $17,453,576,000.

(6) For the Army Reserve, $1,925,728,000.

(7) For the Naval Reserve, $1,240,038,000.

(8) For the Marine Corps Reserve, $197,496,000.

(9) For the Air Force Reserve, $2,154,790,000.

(10) For the Army National Guard, $4,227,236,000.

(11) For the Air National Guard, $4,366,738,000.

(12) For the United States Court of Appeals for the Armed Forces, $10,825,000.

(13) For Environmental Restoration, Army, $405,598,000.

(14) For Environmental Restoration, Navy, $266,820,000.

(15) For Environmental Restoration, Air Force, $397,368,000.

(16) For Environmental Restoration, Defense-wide, $23,684,000.

(17) For Environmental Restoration, Formerly Used Defense Sites, $256,516,000.

(18) For Overseas Humanitarian, Disaster, and Civic Aid programs, $59,000,000.

(19) For Cooperative Threat Reduction programs, $409,200,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

(1) For the Defense Working Capital Funds, $1,625,686,000.

(2) For the National Defense Sealift Fund, $1,269,252,000.

SEC. 303. OTHER DEPARTMENT OF DEFENSE PROGRAMS.

(a) DEFENSE HEALTH PROGRAM.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for the Defense Health Program, $17,992,211,000, of which—

(1) $17,555,169,000 is for Operation and Maintenance;

(2) $72,407,000 is for Research, Development, Test and Evaluation; and

(3) $364,635,000 is for Procurement.

(b) CHEMICAL AGENTS AND MUNITIONS DESTRUCTION, DEFENSE.—(1) Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for Chemical Agents and Munitions Destruction, Defense, $1,518,990,000, of which—

(A) $1,138,801,000 is for Operation and Maintenance;

(B) $301,209,000 is for Research, Development, Test and Evaluation; and

(C) $78,980,000 is for Procurement.

(2) Amounts authorized to be appropriated under paragraph (1) are authorized for—

(A) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521); and

(B) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

(c) DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES, DEFENSE-WIDE.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-Wide, $852,697,000.

(d) DEFENSE INSPECTOR GENERAL.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense, $164,562,000, of which—

(1) $162,362,000 is for Operation and Maintenance;

(2) $100,000 is for Research, Development, Test, and Evaluation; and

(3) $2,100,000 is for Procurement.

SEC. 304. AMOUNT FOR ONE SOURCE MILITARY COUNSELING AND REFERRAL HOTLINE.

(a) AUTHORIZATION OF APPROPRIATION OF ADDITIONAL AMOUNT.—The amount authorized to be appropriated under section 301(5) is hereby increased by $5,000,000, which shall be available (in addition to other amounts available under this Act for the same purpose) only for the Department of Defense One Source counseling and referral hotline.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $5,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 311. COMMANDER'S EMERGENCY RESPONSE PROGRAM.

(a) FUNDING.—Of the amounts authorized to be appropriated for fiscal year 2005 by section 301(5) for operation and maintenance for Defense-wide activities, not more than $300,000,000 may be made available in fiscal year 2005 for the following:

(1) The Commander's Emergency Response Program, which was established by the Administrator of the Coalition Provisional Authority for the purpose of enabling United States military commanders in Iraq to respond to urgent humanitarian relief and reconstruction needs within their areas of responsibility by carrying out programs to provide immediate assistance to the people of Iraq.

(2) A similar program to enable United States military commanders in Afghanistan to respond in such manner to similar needs in Afghanistan.

(b) QUARTERLY REPORTS REQUIRED.—The Secretary of Defense shall submit to the congressional defense committees on a quarterly basis reports on the use of amounts made available under subsection (a).

SEC. 312. LIMITATION ON TRANSFERS OUT OF WORKING CAPITAL FUNDS.

Section 2208 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(r) LIMITATION ON TRANSFERS.—(1) Notwithstanding any authority for transfer of funds provided in this section, no transfer may be made out of a working capital fund or between or among working capital funds under such authority unless the Secretary of Defense has submitted a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

''(2) The amount of a transfer covered by a notification under paragraph (1) that is proposed to be made in a fiscal year does not count for the purpose of any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.''.

SEC. 313. FAMILY READINESS PROGRAM OF THE NATIONAL GUARD.

(a) AMOUNT FOR PROGRAM.—The amount authorized to be appropriated by section 301(1) for operation and maintenance for the Army is hereby increased by $10,000,000 for the Family Readiness Program of the National Guard.

(b) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $10,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

Subtitle C—Environmental Provisions

SEC. 321. PAYMENT OF CERTAIN PRIVATE CLEANUP COSTS IN CONNECTION WITH DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.

(a) PAYMENT FOR ACTIVITIES AT FORMER DEFENSE PROPERTY SUBJECT TO COVENANT FOR ADDITIONAL REMEDIAL ACTION.—Section 2701(d) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking ''paragraph (3)'' and inserting ''paragraph (4)'';

(2) by redesignating paragraphs (2), (3), and (4), as paragraphs (3), (4), and (5), respectively; and

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

''(2) ACTIVITIES AT CERTAIN FORMER DEFENSE PROPERTY.—In addition to agreements

under paragraph (1), the Secretary may also enter into agreements with owners of property subject to a covenant provided by the United States under section 120(h)(3)(A)(ii) of CERCLA (42 U.S.C. 9620(h)(3)(A)(ii)) to reimburse the owners of such property for activities under this section with respect to such property by reason of the covenant.''.

(b) SOURCE OF FUNDS FOR FORMER BRAC PROPERTY SUBJECT TO COVENANT FOR ADDITIONAL REMEDIAL ACTION.—Section 2703 of such title is amended—

(1) in subsection (g)(1), by striking ''The sole source'' and inserting ''Except as provided in subsection (h), the sole source''; and

(2) by adding at the end the following new subsection:

''(h) SOLE SOURCE OF FUNDS FOR ENVIRONMENTAL REMEDIATION AT CERTAIN BASE REALIGNMENT AND CLOSURE SITES.—In the case of property disposed of pursuant to a base closure law and subject to a covenant described in section 2701(d)(2) of this title, the sole source of funds for activities under such section shall be the base closure account established under the applicable base closure law.''.

SEC. 322. REIMBURSEMENT OF ENVIRONMENTAL PROTECTION AGENCY FOR CERTAIN COSTS IN CONNECTION WITH MOSES LAKE WELLFIELD SUPERFUND SITE, MOSES LAKE, WASHINGTON.

(a) AUTHORITY TO REIMBURSE.—(1) Using funds described in subsection (b), the Secretary of Defense may transfer not more than $524,926.54 to the Moses Lake Wellfield Superfund Site 10–6J Special Account.

(2) The payment under paragraph (1) is to reimburse the Environmental Protection Agency for its costs, including interest, incurred in overseeing a remedial investigation/feasibility study performed by the Department of the Army under the Defense Environmental Restoration Program at the former Larson Air Force Base, Moses Lake Superfund Site, Moses Lake, Washington.

(3) The reimbursement described in paragraph (2) is provided for in the interagency agreement entered into by the Department of the Army and the Environmental Protection Agency for the Moses Lake Wellfield Superfund Site in March 1999.

(b) SOURCE OF FUNDS.—Any payment under subsection (a) shall be made using funds authorized to be appropriated by section 301(17) for operation and maintenance for Environmental Restoration, Formerly Used Defense Sites.

(c) USE OF FUNDS.—The Environmental Protection Agency shall use the amount transferred under subsection (a) to pay costs incurred by the Agency at the Moses Lake Wellfield Superfund Site.

SEC. 323. SATISFACTION OF CERTAIN AUDIT REQUIREMENTS BY THE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.

(a) SATISFACTION OF REQUIREMENTS.—The Inspector General of the Department of Defense shall be deemed to be in compliance with the requirements of subsection (k) of section 111 of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) if the Inspector General conducts periodic audits of the payments, obligations, reimbursements and other uses of the Fund described in that section, even if such audits do not occur on an annual basis.

(b) REPORTS TO CONGRESS ON AUDITS.—The Inspector General shall submit to Congress a report on each audit conducted by the Inspector General as described in subsection (a).

SEC. 324. COMPTROLLER GENERAL STUDY AND REPORT ON DRINKING WATER CONTAMINATION AND RELATED HEALTH EFFECTS AT CAMP LEJEUNE, NORTH CAROLINA.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on drinking water contamination and related health effects at Camp Lejeune, North Carolina. The study shall consist of the following:

(1) A study of the history of drinking water contamination at Camp Lejeune to determine, to the extent practical—

(A) what contamination has been found in the drinking water;

(B) the source of such contamination and when it may have begun;

(C) when Marine Corps officials first became aware of such contamination;

(D) what actions have been taken to address such contamination;

(E) the appropriateness of such actions in light of the state of knowledge regarding contamination of that type, and applicable legal requirements regarding such contamination, as of the time of such actions; and

(F) any other matters that the Comptroller General considers appropriate.

(2) An assessment of the study on the possible health effects associated with the drinking of contaminated drinking water at Camp Lejeune as proposed by the Agency for Toxic Substances and Disease Registry (ATSDR), including whether the proposed study—

(A) will address the appropriate at-risk populations;

(B) will encompass an appropriate timeframe;

(C) will consider all relevant health effects; and

(D) can be completed on an expedited basis without compromising its quality.

(b) AUTHORITY TO USE EXPERTS.—The Comptroller General may use experts in conducting the study required by subsection (a). Any such experts shall be independent, highly qualified, and knowledgeable in the matters covered by the study.

(c) PARTICIPATION BY OTHER INTERESTED PARTIES.—In conducting the study required by subsection (a), the Comptroller General shall ensure that interested parties, including individuals who lived or worked at Camp Lejeune during the period when the drinking water may have been contaminated, have the opportunity to submit information and views on the matters covered by the study.

(d) CONSTRUCTION WITH ATSDR STUDY.—The requirement under subsection (a) that the Comptroller General conduct the study required by paragraph (2) of that subsection may not be construed as a basis for the delay of the study proposed by Agency for Toxic Substances and Disease Registry as described in that subsection, but is intended to provide an independent review of the appropriateness and credibility of the study proposed by the Agency and to identify possible improvements in the plan or implementation of the study proposed by the Agency.

(e) REPORT.—(1) Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the study required by subsection (a), including such recommendations as the Comptroller General considers appropriate for further study or for legislative or other action.

(2) Recommendations under paragraph (1) may include recommendations for modifications or additions to the study proposed by the Agency for Toxic Substances and Disease Registry, as described in subsection (a)(2), in order to improve the study.

SEC. 325. INCREASE IN AUTHORIZED AMOUNT OF ENVIRONMENTAL REMEDIATION, FRONT ROYAL, VIRGINIA.

Section 591(a)(2) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 378) is amended by striking ''$12,000,000'' and inserting ''$22,000,000''.

SEC. 326. COMPTROLLER GENERAL STUDY AND REPORT ON ALTERNATIVE TECHNOLOGIES TO DECONTAMINATE GROUNDWATER AT DEPARTMENT OF DEFENSE INSTALLATIONS.

(a) COMPTROLLER GENERAL STUDY.—The Comptroller General of the United States shall conduct a study to determine whether or not cost-effective technologies are available to the Department of Defense for the cleanup of groundwater contamination at Department installations in lieu of traditional methods, such as pump and treat, that can be expensive and take many years to complete.

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

(1) An identification of current technologies being used or field tested by the Department to treat groundwater at Department installations, including the contaminants being addressed.

(2) An identification of cost-effective technologies described in that subsection that are currently under research, under development by commercial vendors, or available commercially and being used outside the Department and that have potential for use by the Department to address the contaminants identified under paragraph (1).

(3) An evaluation of the potential benefits and limitations of using the technologies identified under paragraphs (1) and (2).

(4) A description of the barriers, such as cost, capability, or legal restrictions, to using the technologies identified under paragraph (2).

(5) Any other matters the Comptroller General considers appropriate.

(c) REPORT.—By April 1, 2005, the Comptroller General shall submit to Congress a report on the study under subsection (a). The report shall include the results of the study and any recommendations, including recommendations for administrative or legislative action, that the Comptroller General considers appropriate.

SEC. 327. SENSE OF SENATE ON PERCHLORATE CONTAMINATION OF GROUND AND SURFACE WATER.

(a) FINDINGS.—The Senate makes the following findings:

(1) Because finite water sources in the United States are stretched by regional drought conditions and increasing demand for water supplies, there is increased need for safe and dependable supplies of fresh water for drinking and use for agricultural purposes.

(2) Perchlorate, a naturally occurring and manmade compound with medical, commercial, and national defense applications, which has been used primarily in military munitions and rocket fuels, has been detected in fresh water sources intended for use as drinking water and water necessary for the production of agricultural commodities.

(3) If ingested in sufficient concentration and in adequate duration, perchlorate may interfere with thyroid metabolism, and this effect may impair the normal development of the brain in fetuses and newborns.

(4) The Federal Government has not yet established a drinking water standard for perchlorate.

(5) The National Academy of Sciences is conducting an assessment of the state of the science regarding the effects on human health of perchlorate ingestion that will aid in understanding the effect of perchlorate exposure on sensitive populations.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) perchlorate has been identified as a contaminant of drinking water sources or in the

environment in 34 States and has been used or manufactured in 44 States;

(2) perchlorate exposure at or above a certain level may adversely affect public health, particularly the health of vulnerable and sensitive populations; and

(3) the Department of Defense should—

(A) work to develop a national plan to remediate perchlorate contamination of the environment resulting from Department's activities to ensure the Department is prepared to respond quickly and appropriately once a drinking water standard is established;

(B) in cases in which the Department is already remediating perchlorate contamination, continue that remediation;

(C) prior to the development of a drinking water standard for perchlorate, develop a plan to remediate perchlorate contamination in cases in which such contamination from the Department's activities is present in ground or surface water at levels that pose a hazard to human health; and

(D) continue the process of evaluating and prioritizing sites without waiting for the development of a Federal standard.

SEC. 328. AMOUNT FOR RESEARCH AND DEVELOPMENT FOR IMPROVED PREVENTION OF LEISHMANIASIS.

(a) INCREASE IN AMOUNT FOR DEFENSE HEALTH PROGRAM.—The amount authorized to be appropriated by section 303(a)(2) for the Defense Health Program for research, development, test, and evaluation is hereby increased by $500,000, with the amount of the increase to be available for purposes relating to Leishmaniasis Diagnostics Laboratory.

(b) INCREASE IN AMOUNT FOR RDT&E, ARMY FOR LEISHMANIASIS TOPICAL TREATMENT.—The amount authorized to be appropriated by section 201(1) for research, development, test, and evaluation, Army, as increased by subsection (b), is hereby further increased by $4,500,000, with the amount of the increase to be available in Program Element PE 0604807A for purposes relating to Leishmaniasis Topical Treatment.

(c) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $5,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

SEC. 329. REPORT REGARDING ENCROACHMENT ISSUES AFFECTING UTAH TEST AND TRAINING RANGE, UTAH.

(a) REPORT REQUIRED.—(1) The Secretary of the Air Force shall prepare a report that outlines current and anticipated encroachments on the use and utility of the special use airspace of the Utah Test and Training Range in the State of Utah, including encroachments brought about through actions of other Federal agencies. The Secretary shall include such recommendations as the Secretary considers appropriate regarding any legislative initiatives necessary to address encroachment problems identified by the Secretary in the report.

(2) It is the sense of the Senate that such recommendations should be carefully considered for future legislative action.

(b) SUBMISSION OF REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit the report to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate.

(c) PROHIBITION ON GROUND MILITARY OPERATIONS.—Nothing in this section shall be construed to permit a military operation to be conducted on the ground in a covered wilderness study area in the Utah Test and Training Range.

(d) COMMUNICATIONS AND TRACKING SYSTEMS.—Nothing in this section shall be construed to prevent any required maintenance of existing communications, instrumentation, or electronic tracking systems (or the infrastructure supporting such systems) necessary for effective testing and training to meet military requirements in the Utah Test and Training Range.

Subtitle D—Depot-Level Maintenance and Repair

SEC. 331. SIMPLIFICATION OF ANNUAL REPORTING REQUIREMENTS CONCERNING FUNDS EXPENDED FOR DEPOT MAINTENANCE AND REPAIR WORKLOADS.

(a) CONSOLIDATION AND REVISION OF DEPARTMENTAL REPORTING REQUIREMENTS.—Section 2466(d) of title 10, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking ''February 1'' and inserting ''April 1''; and

(B) by striking ''the preceding two fiscal years'' and inserting ''the preceding fiscal year and are projected to be expended in the fiscal year in which submitted and ensuing fiscal years''; and

(2) by striking paragraph (2).

(b) TIMING AND CONTENT OF GAO VIEWS.—Paragraph (3) of such section—

(1) is redesignated as paragraph (2); and

(2) is amended—

(A) by striking ''60 days'' and inserting ''90 days''; and

(B) by striking ''whether—'' and all that follows and inserting the following: ''whether the Department of Defense has complied with the requirements of subsection (a) for the fiscal year preceding the fiscal year in which the report is submitted and whether the expenditure projections for the other fiscal years covered by the report are reasonable.''.

SEC. 332. REPEAL OF REQUIREMENT FOR ANNUAL REPORT ON MANAGEMENT OF DEPOT EMPLOYEES.

(a) REPEAL.—Section 2472 of title 10, United States Code, is amended by striking subsection (b).

(b) CONFORMING AMENDMENT.—Subsection (a) of such section is amended by striking ''(a) PROHIBITION ON MANAGEMENT BY END STRENGTH.—''.

SEC. 333. EXTENSION OF SPECIAL TREATMENT FOR CERTAIN EXPENDITURES INCURRED IN THE OPERATION OF CENTERS OF INDUSTRIAL AND TECHNICAL EXCELLENCE.

Section 2474(f)(1) of title 10, United States Code, is amended by striking ''through 2006'' and inserting ''through 2009''.

Subtitle E—Extensions of Program Authorities

SEC. 341. TWO-YEAR EXTENSION OF DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

Section 344(c) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1449) is amended by striking ''September 30, 2004'' and inserting ''September 30, 2006''.

SEC. 342. TWO-YEAR EXTENSION OF ARSENAL SUPPORT PROGRAM INITIATIVE.

Section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (10 U.S.C. 4551 note) is amended—

(1) in subsection (a), by striking ''2004'' and inserting ''2006''; and

(2) in subsection (g)—

(A) in paragraph (1), by striking ''2004'' and inserting ''2006''; and

(B) in paragraph (2), by striking ''2003'' and inserting ''2005''.

SEC. 343. REAUTHORIZATION OF WARRANTY CLAIMS RECOVERY PILOT PROGRAM.

Section 391(f) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 2304 note) is amended by striking ''September 30, 2004'' and inserting ''September 30, 2006''.

Subtitle F—Defense Dependents Education

SEC. 351. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) CONTINUATION OF DEPARTMENT OF DEFENSE PROGRAM FOR FISCAL YEAR 2005.—Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, $30,000,000 shall be available only for the purpose of providing educational agencies assistance to local educational agencies.

(b) NOTIFICATION.—Not later than June 30, 2005, the Secretary of Defense shall notify each local educational agency that is eligible for educational agencies assistance for fiscal year 2005 of—

(1) that agency's eligibility for the assistance; and

(2) the amount of the assistance for which that agency is eligible.

(c) DISBURSEMENT OF FUNDS.—The Secretary of Defense shall disburse funds made available under subsection (a) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (b).

(d) DEFINITIONS.—In this section:

(1) The term ''educational agencies assistance'' means assistance authorized under section 386(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 20 U.S.C. 7703 note).

(2) The term ''local educational agency'' has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(3) The term ''basic support payment'' means a payment authorized under section 8003(b)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(1)).

SEC. 352. IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.

Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, $5,000,000 shall be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77; 20 U.S.C. 7703a).

SEC. 353. SENSE OF THE SENATE REGARDING THE IMPACT OF THE PRIVATIZATION OF MILITARY HOUSING ON LOCAL SCHOOLS.

(a) FINDINGS.—The Senate finds the following:

(1) There are approximately 750,000 school-aged children of members of the active duty Armed Forces in the United States.

(2) Approximately 650,000 of those students are currently being served in public schools across the United States.

(3) The Department of Defense has embarked on military housing privatization initiatives using authorities provided in subchapter IV of chapter 169 of part IV of subtitle A of title 10, United States Code, which will result in the improvement or replacement of 120,000 military family housing units in the United States.

(4) The Secretary of each military department is authorized to include the construction of new school facilities in agreements carried out under subchapter IV of chapter 169 of part IV of subtitle A of title 10, United States Code.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Department of Defense should support the construction of schools in housing privatization agreements that severely impact student populations.

Subtitle G—Other Matters

SEC. 361. CHARGES FOR DEFENSE LOGISTICS INFORMATION SERVICES MATERIALS.

(a) AUTHORITY.—Subchapter I of chapter 8 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 197. Defense Logistics Agency: fees charged for logistics information

''(a) AUTHORITY.—The Secretary of Defense may charge fees for providing information in the Federal Logistics Information System through Defense Logistics Information Services to a department or agency of the executive branch outside the Department of Defense, or to a State, a political subdivision of a State, or any person.

''(b) AMOUNT.—The fee or fees prescribed under subsection (a) shall be such amount or amounts as the Secretary of Defense determines appropriate for recovering the costs of providing information as described in such subsection.

''(c) RETENTION OF FEES.—Fees collected under this section shall be credited to the appropriation available for Defense Logistics Information Services for the fiscal year in which collected, shall be merged with other sums in such appropriation, and shall be available for the same purposes and period as the appropriation with which merged.

''(d) DEFENSE LOGISTICS INFORMATION SERVICES DEFINED.—In this section, the term 'Defense Logistics Information Services' means the organization within the Defense Logistics Agency that is known as Defense Logistics Information Services.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''197. Defense Logistics Agency: fees charged for logistics information.''.

SEC. 362. TEMPORARY AUTHORITY FOR CONTRACTOR PERFORMANCE OF SECURITY-GUARD FUNCTIONS.

(a) CONDITIONAL EXTENSION OF AUTHORITY.—Subsection (c) of section 332 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2513) is amended—

(1) by inserting ''(1)'' after ''AUTHORITY.—''; and

(2) by striking ''at the end of the three-year period'' and all that follows through the period at the end and inserting ''at the end of September 30, 2006, except that such authority shall not be in effect under this section for any period after December 1, 2004, during which the Secretary has failed to comply with the requirement to submit the plan under subsection (d)(2).

''(2) No security-guard functions may be performed under any contract entered into using the authority provided under this section during any period for which the authority for contractor performance of security-guard functions under this section is not in effect.

''(3) The term of any contract entered into using the authority provided under this section may not extend beyond the date of the expiration of authority under paragraph (1).''.

(b) REAFFIRMATION AND REVISION OF REPORTING REQUIREMENT.—Subsection (d) of such section is amended—

(1) by striking ''180 days after the date of the enactment of this Act,'' and inserting ''December 1, 2004,'';

(2) by redesignating paragraphs (1) and (2) as paragraphs (2) and (4), respectively;

(3) by inserting after ''shall—'' the following new paragraph:

''(1) identify each contract for the performance of security-guard functions entered into pursuant to the authority in subsection (a) on or before September 30, 2004, including information regarding—

''(A) each installation at which such security-guard functions are performed or are to be performed;

''(B) the period and amount of such contract;

''(C) the number of security guards employed or to be employed under such contract; and

''(D) the actions taken or to be taken within the Department of Defense to ensure that the conditions applicable under paragraph (1) of subsection (a) or determined under paragraph (2) of such subsection are satisfied;'';

(4) by striking ''and'' at the end of paragraph (2), as redesignated by paragraph (2); and

(5) by inserting after paragraph (2), as so redesignated, the following new paragraph:

''(3) identify any limitation or constraint on the end strength of the civilian workforce of the Department of Defense that makes it difficult to meet requirements identified under paragraph (2) by hiring personnel as civilian employees of the Department of Defense; and''.

SEC. 363. PILOT PROGRAM FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES FOR DEPARTMENT OF DEFENSE INSTALLATIONS.

(a) AUTHORITY.—The Secretary of Defense may carry out a pilot program to provide for the purchase of certain services needed for a Department of Defense installation from a county or municipality where the installation is located.

(b) PURPOSE OF PROGRAM.—The purpose of the pilot program is to provide the Secretary with a basis for evaluating the efficacy of purchasing public works, utility, and other services needed for Department of Defense installations from counties or municipalities where the installations are located.

(c) SERVICES AUTHORIZED FOR PROCUREMENT.—Only the following services may be purchased for a participating installation under the pilot program:

(1) Refuse collection.
(2) Refuse disposal.
(3) Library services.
(4) Recreation services.
(5) Facility maintenance and repair.
(6) Utilities.

(d) PROGRAM INSTALLATIONS.—The Secretary of each military department may designate under this section not more than two installations of such military department for participation in the pilot program. Only installations located in the United States are eligible for designation under this subsection.

(e) REPORT.—Not later than February 1, 2010, the Secretary of Defense shall submit to Congress a report on any pilot program carried out under this section. The report shall include—

(1) the Secretary's evaluation of the efficacy of purchasing public works, utility, and other services for Department of Defense installations from counties or municipalities where the installations are located; and

(2) any recommendations that the Secretary considers appropriate regarding authority to make such purchases.

(f) PERIOD OF PILOT PROGRAM.—The pilot program may be carried out during fiscal years 2005 through 2010.

SEC. 364. CONSOLIDATION AND IMPROVEMENT OF AUTHORITIES FOR ARMY WORKING-CAPITAL FUNDED FACILITIES TO ENGAGE IN PUBLIC-PRIVATE PARTNERSHIPS.

(a) PUBLIC-PRIVATE PARTNERSHIPS AUTHORIZED.—Chapter 433 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 4544. Army industrial facilities: public-private partnerships

''(a) PUBLIC-PRIVATE PARTNERSHIPS AUTHORIZED.—A working-capital funded Army industrial facility may enter into cooperative arrangements with non-Army entities to carry out military or commercial projects with the non-Army entities. A cooperative arrangement under this section shall be known as a 'public-private partnership'.

''(b) AUTHORIZED PARTNERSHIP ACTIVITIES.—A public-private partnership entered into by an Army industrial facility may provide for any of the following activities:

''(1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of Defense.

''(2) The performance of—

''(A) work by a non-Army entity at the facility; or

''(B) work for a non-Army entity by the facility.

''(3) The sharing of work by the facility and one or more non-Army entities.

''(4) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

''(5) The preparation and submission of joint offers by the facility and one or more non-Army entities for competitive procurements entered into with a department or agency of the United States.

''(c) CONDITIONS FOR PUBLIC-PRIVATE PARTNERSHIPS.—An activity described in subsection (b) may be carried out as a public-private partnership at an Army industrial facility only under the following conditions:

''(1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.

''(2) The activity does not interfere with performance of—

''(A) work by the facility for the Department of Defense; or

''(B) a military mission of the facility.

''(3) The activity meets one of the following objectives:

''(A) Maximize utilization of the capacity of the facility.

''(B) Reduction or elimination of the cost of ownership of the facility.

''(C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.

''(D) Preservation of skills or equipment related to a core competency of the facility.

''(4) The non-Army entity partner or purchaser agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—

''(A) in any case of willful misconduct or gross negligence; and

''(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

''(d) METHODS OF PUBLIC-PRIVATE PARTNERSHIPS.—To conduct an activity of a public-private partnership under this section, the approval authority described in subsection (f) for an Army industrial facility may, in the exercise of good business judgment—

''(1) enter into a firm, fixed-price contract (or, if agreed to by the purchaser, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;

''(2) enter into a multiyear partnership contract for a period not to exceed five years, unless a longer period is specifically authorized by law;

''(3) charge a partner the amounts necessary to recover the full costs of the articles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

''(4) authorize a partner to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

''(5) accept payment-in-kind.

''(e) DEPOSIT OF PROCEEDS.—(1) The proceeds of sales of articles and services received in connection with the use of an Army industrial facility under this section shall be credited to the appropriation or working-capital fund that incurs the variable costs of manufacturing the articles or performing the services. Notwithstanding section 3302(b) of title 31, the amount so credited with respect to an Army industrial facility shall be available, without further appropriation, as follows:

''(A) Amounts equal to the amounts of the variable costs so incurred shall be available for the same purposes as the appropriation or working-capital fund to which credited.

''(B) Amounts in excess of the amounts of the variable costs so incurred shall be available for operations, maintenance, and environmental restoration at that Army industrial facility.

''(2) Amounts credited to a working-capital fund under paragraph (1) shall remain available until expended. Amounts credited to an appropriation under paragraph (1) shall remain available for the same period as the appropriation to which credited.

''(f) APPROVAL OF SALES.—The authority of an Army industrial facility to conduct a public-private partnership under this section shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such partnership on a case basis or a class basis.

''(g) COMMERCIAL SALES.—Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (f) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

''(h) EXCLUSION FROM DEPOT-LEVEL MAINTENANCE AND REPAIR PERCENTAGE LIMITATION.—Amounts expended for depot-level maintenance and repair workload by non-Federal personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by a non-Army entity pursuant to a public-private partnership established under this section.

''(i) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to affect the application of—

''(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act (22 U.S.C. 2770 and 2778) to activities of a public-private partnership under this section; and

''(2) section 2667 of this title to leases of non-excess property in the administration of a public-private partnership under this section.

''(j) DEFINITIONS.—In this section:

''(1) The term 'Army industrial facility' includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

''(2) The term 'non-Army entity' includes the following:

''(A) An executive agency.

''(B) An entity in industry or commercial sales.

''(C) A State or political subdivision of a State.

''(D) An institution of higher education or vocational training institution.

''(3) The term 'incremental funding' means a series of partial payments that—

''(A) are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

''(B) result in full payment being completed as the required work is being completed.

''(4) The term 'full costs', with respect to articles or services provided under this section, means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

''(5) The term 'variable costs' means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''4544. Army industrial facilities: public-private partnerships.''.

SEC. 365. PROGRAM TO COMMEMORATE 60TH ANNIVERSARY OF WORLD WAR II.

(a) IN GENERAL.—For fiscal year 2005, the Secretary of Defense may conduct a program—

(1) to commemorate the 60th anniversary of World War II; and

(2) to coordinate, support, and facilitate other such commemoration programs and activities of the Federal Government, State and local governments, and other persons.

(b) PROGRAM ACTIVITIES.—The program referred to in subsection (a) may include activities and ceremonies—

(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of World War II;

(2) to thank and honor veterans of World War II and their families;

(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States;

(4) to foster an awareness in the people of the United States that World War II was the central event of the 20th century that defined the postwar world;

(5) to highlight advances in technology, science, and medicine related to military research conducted during World War II;

(6) to inform wartime and postwar generations of the contributions of the Armed Forces of the United States to the United States;

(7) to recognize the contributions and sacrifices made by World War II allies of the United States; and

(8) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

(c) ESTABLISHMENT OF ACCOUNT.—(1) There is established in the Treasury of the United States an account to be known as the ''Department of Defense 60th Anniversary of World War II Commemoration Account'' which shall be administered by the Secretary as a single account.

(2) There shall be deposited in the account, from amounts appropriated to the Department of Defense for operation and maintenance of Defense Agencies, such amounts as the Secretary considers appropriate to conduct the program referred to in subsection (a).

(3) The Secretary may use the funds in the account established in paragraph (1) only for the purpose of conducting the program referred to in subsection (a).

(4) Not later than 60 days after the termination of the authority of the Secretary to conduct the program referred to in subsection (a), the Secretary shall transmit to the Committees on Armed Services of the Senate and House of Representatives a report containing an accounting of all the funds deposited into and expended from the account or otherwise expended under this section, and of any amount remaining in the account. Unobligated funds which remain in the account after termination of the authority of the Secretary under this section shall be held in the account until transferred by law after the Committees receive the report.

(d) ACCEPTANCE OF VOLUNTARY SERVICES.—(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept from any person voluntary services to be provided in furtherance of the program referred to in subsection (a).

(2) A person providing voluntary services under this subsection shall be considered to be an employee for the purposes of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

(3) The Secretary may reimburse a person providing voluntary services under this subsection for incidental expenses incurred by such person in providing such services. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph.

SEC. 366. MEDIA COVERAGE OF THE RETURN TO THE UNITED STATES OF THE REMAINS OF DECEASED MEMBERS OF THE ARMED FORCES FROM OVERSEAS.

(a) FINDINGS.—Congress makes the following findings:

(1) The Department of Defense, since 1991, has relied on a policy of no media coverage of the transfers of the remains of members Ramstein Air Force Base, Germany, nor at Dover Air Force Base, Delaware, and the Port Mortuary Facility at Dover Air Force Base, nor at interim stops en route to the point of final destination in the transfer of the remains.

(2) The principal focus and purpose of the policy is to protect the wishes and the privacy of families of deceased members of the Armed Forces during their time of great loss and grief and to give families and friends of the dead the privilege to decide whether to allow media coverage at the member's duty or home station, at the interment site, or at or in connection with funeral and memorial services.

(3) In a 1991 legal challenge to the Department of Defense policy, as applied during Operation Desert Storm, the policy was upheld by the United States District Court for the District of Columbia, and on appeal, by the United States Court of Appeals for the District of Columbia in the case of JB Pictures, Inc. v. Department of Defense and Donald B. Rice, Secretary of the Air Force on the basis that denying the media the right to view the return of remains at Dover Air Force Base does not violate the first amendment guarantees of freedom of speech and of the press.

(4) The United States Court of Appeals for the District of Columbia in that case cited the following two key Government interests that are served by the Department of Defense policy:

(A) Reducing the hardship on the families and friends of the war dead, who may feel obligated to travel great distances to attend arrival ceremonies at Dover Air Force Base if such ceremonies were held.

(B) Protecting the privacy of families and friends of the dead, who may not want media coverage of the unloading of caskets at Dover Air Force Base.

(5) The Court also noted, in that case, that the bereaved may be upset at the public display of the caskets of their loved ones and that the policy gives the family the right to grant or deny access to the media at memorial or funeral services at the home base and that the policy is consistent in its concern for families.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Department of Defense policy regarding no media coverage of the transfer of the remains of deceased members of the Armed Forces appropriately protects the privacy of the members' families and friends of and is consistent with United States constitutional guarantees of freedom of speech and freedom of the press.

SEC. 367. TRACKING AND CARE OF MEMBERS OF THE ARMED FORCES WHO ARE INJURED IN COMBAT.

(a) FINDINGS.—The Senate makes the following findings:

(1) Members of the Armed Forces of the United States place themselves in harm's way in the defense of democratic values and to keep the United States safe.

(2) This call to duty has resulted in the ultimate sacrifice of members of the Armed Forces of the United States who are killed or critically injured while serving the United States.

(b) SENSE OF SENATE.—It is the sense of the Senate—

(1) to honor the sacrifice of the members of the Armed Forces who have been killed or critically wounded while serving the United States;

(2) to recognize the heroic efforts of the medical personnel of the Armed Forces in treating wounded military personnel and civilians; and

(3) to support advanced medical technologies that assist the medical personnel of the Armed Forces in saving lives and reducing disability rates for members of the Armed Forces.

(c) POLICY ON TRACKING OF WOUNDED FROM COMBAT ZONES.—(1) Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall—

(A) prescribe the policy of the Department of Defense for providing timely notification to the next of kin of the status, including health and location, of members of the Armed Forces who are seriously ill or injured in a combat zone; and

(B) transmit to the Committees on Armed Services of the Senate and House of Representatives a copy of the policy prescribed under subparagraph (A).

(2) The policy prescribed under paragraph (1) shall ensure respect for the expressed desires of individual members of the Armed Forces regarding notification of next of kin under the policy, and shall also include standards of timeliness for the initial and continuing notification of next of kin under the policy.

(d) FUNDING FOR MEDICAL EQUIPMENT AND COMBAT CASUALTY TECHNOLOGIES.—(1) The amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, is hereby increased by $10,000,000, with the amount of the increase to be allocated to Program Element PE 0603826D8Z.

(2) Of the amount authorized to be appropriated by section 201(4) for research, development, test, and evaluation, Defense-wide activities, and allocated to Program Element PE 0603826D8Z, as provided by paragraph (1), $10,000,000 may be available for medical equipment and combat casualty care technologies.

(e) OFFSET.—The amount authorized to be appropriated by section 421 is hereby reduced by $10,000,000, with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

The Armed Forces are authorized strengths for active duty personnel as of September 30, 2005, as follows:

(1) The Army, 502,400, subject to the condition that costs of active duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation.

(2) The Navy, 365,900.

(3) The Marine Corps, 175,000.

(4) The Air Force, 359,700.

SEC. 402. ADDITIONAL AUTHORITY FOR INCREASES OF ARMY ACTIVE DUTY PERSONNEL END STRENGTHS FOR FISCAL YEARS 2005 THROUGH 2009.

(a) AUTHORITY.—During fiscal years 2005 through 2009, the Secretary of Defense is authorized to increase by up to 30,000 the end strength authorized for the Army for such fiscal year under section 115(a)(1)(A) of title 10, United States Code, as necessary to support the operational mission of the Army in Iraq and Afghanistan and to achieve transformational reorganization objectives of the Army, including objectives for increased numbers of combat brigades, unit manning, force stabilization and shaping, and rebalancing of the active and reserve component forces of the Army.

(b) RELATIONSHIP TO PRESIDENTIAL WAIVER AUTHORITY.—Nothing in this section shall be construed to limit the President's authority under section 123a of title 10, United States Code, to waive any statutory end strength in a time of war or national emergency.

(c) RELATIONSHIP TO OTHER VARIANCE AUTHORITY.—The authority under subsection (a) is in addition to the authority to vary authorized end strengths that is provided in subsections (e) and (f) of section 115 of title 10, United States Code.

(d) BUDGET TREATMENT.—If the Secretary of Defense plans to increase the Army active duty end strength for a fiscal year under subsection (a) of this section or pursuant to a suspension of end-strength limitation under section 123a of title 10, United States Code, then the budget for the Department of Defense for such fiscal year as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army in excess of 482,400 (the end strength authorized for active duty personnel of the Army for fiscal year 2004 in section 401(1) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1450)).

SEC. 403. EXCLUSION OF SERVICE ACADEMY PERMANENT AND CAREER PROFESSORS FROM A LIMITATION ON CERTAIN OFFICER GRADE STRENGTHS.

Section 523(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(8) Up to 50 permanent professors of each of the United States Military Academy and the United States Air Force Academy, and up to 50 professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy).''.

Subtitle B—Reserve Forces

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2005, as follows:

(1) The Army National Guard of the United States, 350,000.

(2) The Army Reserve, 205,000.

(3) The Naval Reserve, 83,400.

(4) The Marine Corps Reserve, 39,600.

(5) The Air National Guard of the United States, 106,800.

(6) The Air Force Reserve, 76,100.

(7) The Coast Guard Reserve, 10,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be proportionately increased by the total authorized strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2005, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 26,602.

(2) The Army Reserve, 14,970.

(3) The Naval Reserve, 14,152.

(4) The Marine Corps Reserve, 2,261.

(5) The Air National Guard of the United States, 12,253.

(6) The Air Force Reserve, 1,900.

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The minimum number of military technicians (dual status) as of the last day of fiscal year 2005 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

(1) For the Army Reserve, 7,299.

(2) For the Army National Guard of the United States, 25,076.

(3) For the Air Force Reserve, 9,954.

(4) For the Air National Guard of the United States, 22,956.

SEC. 414. FISCAL YEAR 2005 LIMITATIONS ON NON-DUAL STATUS TECHNICIANS.

(a) LIMITATIONS.—(1) Within the limitation provided in section 10217(c)(2) of title 10, United States Code, the number of non-dual status technicians employed by the National Guard as of September 30, 2005, may not exceed the following:

(A) For the Army National Guard of the United States, 1,600.

(B) For the Air National Guard of the United States, 350.

(2) The number of non-dual status technicians employed by the Army Reserve as of September 30, 2005, may not exceed 795.

(3) The number of non-dual status technicians employed by the Air Force Reserve as of September 30, 2005, may not exceed 90.

(b) NON-DUAL STATUS TECHNICIANS DEFINED.—In this section, the term ''non-dual status technician'' has the meaning given the term in section 10217(a) of title 10, United States Code.

SEC. 415. AUTHORIZED STRENGTHS FOR MARINE CORPS RESERVE OFFICERS IN ACTIVE STATUS IN GRADES BELOW GENERAL OFFICER.

(a) INCREASED STRENGTHS FOR FIELD GRADE AND COMPANY GRADE OFFICERS.—Section 12005(c)(1), of title 10, United States Code, is amended by amending the table to read as follows:

''Colonel	2 percent
''Lieutenant colonel	8 percent
''Major	16 percent
''Captain	39 percent
''First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	35 percent.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2004.

Subtitle C—Authorizations of Appropriations

SEC. 421. AUTHORIZATION OF APPROPRIATIONS FOR MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel for fiscal year 2005 a total of $104,535,458,000. The authorization in the preceding sentence supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2005.

SEC. 422. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2005 from the Armed Forces Retirement Home Trust Fund the sum of $61,195,000 for the operation of the Armed Forces Retirement Home.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Joint Officer Personnel Management

SEC. 501. MODIFICATION OF CONDITIONS OF ELIGIBILITY FOR WAIVER OF JOINT DUTY CREDIT REQUIREMENT FOR PROMOTION TO GENERAL OR FLAG OFFICER.

(a) CAREER FIELD SPECIALTIES WITH NO JOINT REQUIREMENTS.—Paragraph (2) of section 619a(b) of title 10, United States Code, is amended by striking ''scientific and technical qualifications'' and inserting ''career field specialty qualifications''.

(b) OFFICERS SELECTED FOR PROMOTION WHILE IN JOINT DUTY ASSIGNMENT.—Paragraph (4) of such section is amended by striking ''if—'' and all that follows and inserting ''if the officer's total consecutive service in joint duty assignments meets the requirements of section 664 of this title for credit for having completed a full tour of duty in a joint duty assignment.''.

SEC. 502. MANAGEMENT OF JOINT SPECIALTY OFFICERS.

(a) EDUCATION AND EXPERIENCE REQUIREMENTS.—(1) Subsection (c) of section 661 of title 10, United States Code, is amended by striking paragraph (1) and inserting the following: ''(1) An officer shall have the joint specialty (and shall be designated with a joint specialty officer identifier) upon—

''(A) successfully completing (in any sequence)—

''(i) a program accredited by Chairman of the Joint Chiefs of Staff that is presented by a joint professional military education institution; and

''(ii) a full tour of duty in a joint duty assignment; or

''(B) completing two full tours of duty in joint duty assignments.''.

(2) Subsection (c) of such section is further amended—

(A) by striking paragraphs (2) and (3); and

(B) by redesignating paragraph (4) as paragraph (2).

(b) DESIGNATION OF JOINT SPECIALTY GENERAL AND FLAG OFFICER POSITIONS.—Section 661 of such title is further amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection (f):

''(f) JOINT SPECIALTY OFFICER DESIGNATION FOR GENERAL AND FLAG POSITIONS.—(1) The Secretary of Defense shall ensure that the general and flag officer positions required to be filled by officers with the joint specialty as joint duty assignments are designated as such.

''(2) An officer without the joint specialty may be assigned to a position designated under paragraph (1) only if the Secretary of Defense determines that the assignment of that officer to such position is necessary and waives the requirement to assign an officer with the joint specialty to that position.''.

SEC. 503. REVISED PROMOTION POLICY OBJECTIVES FOR JOINT OFFICERS.

(a) QUALIFICATIONS.—Subsection (a) of section 662 of title 10, United States Code, is amended to read as follows:

''(a) QUALIFICATIONS.—(1) The Secretary of a military department shall prescribe for the officers in each of the armed forces under the jurisdiction of such Secretary policies and procedures to ensure that an adequate number of senior colonels, or in the case of the Navy, senior captains, who are serving in or have served in joint duty assignments meet the requirements of section 619a of this title for eligibility for promotion to brigadier general and rear admiral (lower half).

''(2) The Secretary of Defense shall ensure that the qualifications of officers assigned to joint duty assignments are such that—

''(A) officers who are serving on or have served on the Joint Staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on the headquarters staff of their armed force; and

''(B) officers who are serving in or have served in joint duty assignments are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

''(3) The Secretary of Defense shall prescribe policies to ensure that the Secretaries of the military departments provide for promotion selection boards to give appropriate consideration to officers who are serving in or have served in joint duty assignments and are eligible for consideration by such boards.''.

(b) CONFORMING AMENDMENT.—Subsection (b) of such section is amended by striking ''paragraphs (1), (2), and (3) of subsection (a)'' and inserting ''subparagraphs (A) and (B) of subsection (a)(2)''.

SEC. 504. LENGTH OF JOINT DUTY ASSIGNMENTS.

Section 664 of title 10, United States Code, is amended by striking subsection (b) and all that follows and inserting the following new subsections:

''(b) FULL CREDIT FOR JOINT DUTY.—An officer shall be credited with having completed a full tour of duty in a joint duty assignment upon the completion of any of the following:

''(1) Service in a joint duty assignment that meets the standards of subsection (a).

''(2) Service in a joint duty assignment for a period that equals or exceeds the standard length of the joint duty assignments that is prescribed under subsection (c) for the installation or other location of the officer's joint duty assignment.

''(3) Cumulative service of at least one year on one or more headquarters staffs within a United States or multinational joint task force.

''(4) Service in a second joint duty assignment for not less than 24 months, without regard to how much of the officer's service in the first joint duty assignment has been credited as service in a joint duty assignment.

''(5) Any service in a joint duty assignment if the Secretary of Defense has granted a waiver for such officer under subsection (d).

''(c) STANDARD LENGTH OF JOINT DUTY ASSIGNMENTS.—The Secretary of Defense shall prescribe in regulations, for each installation and other location authorized joint duty assignment positions, the standard length of the joint duty assignments in such positions at that installation or other location, as the case may be.

''(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the applicability of this section in the case of any particular officer if the Secretary determines that it is in the national security interests of the United States to do so.''.

SEC. 505. REPEAL OF MINIMUM PERIOD REQUIREMENT FOR PHASE II JOINT PROFESSIONAL MILITARY EDUCATION.

Section 663 of title 10, United States Code, is amended by striking subsection (e).

SEC. 506. REVISED DEFINITIONS APPLICABLE TO JOINT DUTY.

(a) JOINT DUTY ASSIGNMENT.—Subsection (b)(2) of section 668 of title 10, United States Code, is amended by striking ''a list'' in the matter preceding subparagraph (A) and inserting ''a joint duty assignment list''.

(b) TOUR OF DUTY.—Subsection (c) of such section is amended to read as follows:

''(c) TOUR OF DUTY.—In this chapter, the term 'tour of duty' includes two or more consecutive tours of duty in joint duty assignment positions that is credited as service in a joint duty assignment under this chapter.''.

Subtitle B—Other Officer Personnel Policy

SEC. 511. TRANSITION OF ACTIVE-DUTY LIST OFFICER FORCE TO A FORCE OF ALL REGULAR OFFICERS.

(a) ORIGINAL APPOINTMENTS AS COMMISSIONED OFFICERS.—(1) Section 532 of title 10, United States Code, is amended by striking subsection (e).

(2) Subsection (a)(2) of such section is amended by striking ''fifty-fifth birthday'' and inserting ''sixty-second birthday''.

(3)(A) Such section 532, as amended by paragraph (1), is further amended by adding at the end the following new subsection (e):

''(e) For an original appointment in a grade below major or, in the case of the Navy, a grade below lieutenant commander under subsection (a), the Secretary of Defense may waive the applicability of the requirement of subsection (a)(1) to an alien lawfully admitted to permanent residence in the United States when the Secretary determines that it is the national security interests of the United States to do so.''.

(B) Section 619(d) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(5) An officer in the grade of captain or, in the case of the Navy, lieutenant who is not a citizen of the United States.''.

(4) Section 531(a) of such title is amended to read as follows:

''(a)(1) Original appointments in the grades of second lieutenant through captain in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through lieutenant in the Regular Navy shall be made by the President. The President may delegate to the Secretary of Defense authority to make such appointments.

''(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.''.

(b) REPEAL OF TOTAL STRENGTH LIMITATION FOR ACTIVE DUTY REGULAR COMMISSIONED OFFICERS.—(1) Section 522 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 32 of such title is amended by striking the item relating to section 522.

(c) FORCE SHAPING AUTHORITY.—(1)(A) Subchapter V of chapter 36 of such title is amended by adding at the end the following new section:

''§ 647. Force shaping authority

''(a) AUTHORITY.—The Secretary concerned may, solely for the purpose of restructuring an armed force under the jurisdiction of that Secretary—

''(1) discharge an officer described in subsection (b); or

''(2) transfer such an officer from the active-duty list of that armed force to the reserve active-status list of a reserve component of that armed force.

''(b) COVERED OFFICERS.—(1) The authority under this section may be exercised in the case of an officer who—

''(A) has completed not more than 5 years of service as a commissioned officer in the armed forces; or

''(B) has completed more than 5 years of service as a commissioned officer in the armed forces, but has not completed a minimum service obligation applicable to that member.

''(2) In this subsection, the term 'minimum service obligation' means the initial period of required active duty service together with any additional period of required active duty service incurred during the initial period of required active duty service.

''(c) APPOINTMENT OF TRANSFERRED OFFICERS.—An officer of the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps who is transferred to a reserve active-status list under this section shall be discharged from the regular component concerned and appointed as a reserve commissioned officer under section 12203 of this title.

''(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the exercise of the Secretary's authority under this section.''.

(B) The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''647. Force shaping authority.''.

(2) Section 1174(e)(2)(B) of such title is amended by inserting after ''obligated service'' the following: '', unless the member is an officer discharged or released under the authority of section 647 of this title''.

(3) Section 12201(a) of such title is amended—

(A) by inserting ''(1)'' after ''(a)'';

(B) in the first sentence, by inserting '', except as provided in paragraph (2),'' after ''the armed force concerned and''; and

(C) by adding at the end the following new paragraph:

''(2) An officer transferred from the active-duty list of an armed force to a reserve active-status list of an armed force under section 647 of this title is not required to subscribe to the oath referred to in paragraph (1) in order to qualify for an appointment under that paragraph.''.

(4) Section 12203 of such title is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

''(b) Subject to the authority, direction, and control of the President, the Secretary concerned may appoint as a reserve commissioned officer any regular officer transferred from the active-duty list of an armed force to the reserve active-status list of a reserve component under section 647 of this title, notwithstanding the requirements of subsection (a).''.

(5) Section 531 of such title is amended by adding at the end the following new subsection:

''(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps may be made by the Secretary concerned in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).''.

(d) ACTIVE-DUTY READY RESERVE OFFICERS NOT ON ACTIVE-DUTY LIST.—Section 641(1)(F) of such title is amended by striking ''section 12304'' and inserting ''sections 12302 and 12304''.

(e) ALL REGULAR OFFICER APPOINTMENTS FOR STUDENTS ATTENDING THE UNIVERSITY OF HEALTH SCIENCES.—Section 2114(b) of such title is amended by striking ''Notwithstanding any other provision of law, they shall serve'' and all that follows through ''if qualified,'' and inserting ''Notwithstanding any other provision of law, they shall be appointed as regular officers in the grade of O–1 and shall serve on active duty in that grade. Upon graduation they shall be required to serve on active duty''.

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

SEC. 512. ELIGIBILITY OF NAVY STAFF CORPS OFFICERS TO SERVE AS DEPUTY CHIEFS OF NAVAL OPERATIONS AND ASSISTANT CHIEFS OF NAVAL OPERATIONS.

(a) DEPUTY CHIEFS OF NAVAL OPERATIONS.—Section 5036(a) of title 10, United States Code, is amended by striking ''in the line''.

(b) ASSISTANT CHIEFS OF NAVAL OPERATIONS.—Section 5037(a) of such title is amended by striking ''in the line''.

SEC. 513. ONE-YEAR EXTENSION OF AUTHORITY TO WAIVE JOINT DUTY EXPERIENCE AS ELIGIBILITY REQUIREMENT FOR APPOINTMENT OF CHIEFS OF RESERVE COMPONENTS.

Sections 3038(b)(4), 5143(b)(4), 5144(b)(4), and 8038(b)(4) of title 10, United States Code, are amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 514. LIMITATION ON NUMBER OF OFFICERS FROCKED TO MAJOR GENERAL AND REAR ADMIRAL (UPPER HALF).

Section 777(d) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by striking ''(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—'' and inserting the following:

''(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—(1) The total number of brigadier generals and Navy rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of major general or rear admiral (upper half), as the case may be, may not exceed 30.''.

SEC. 515. STUDY REGARDING PROMOTION ELIGIBILITY OF RETIRED WARRANT OFFICERS RECALLED TO ACTIVE DUTY.

(a) REQUIREMENT FOR STUDY.—The Secretary of Defense shall carry out a study to determine whether it would be equitable for retired warrant officers on active duty, but not on the active-duty list by reason of section 582(2) of title 10, United States Code, to be eligible for consideration for promotion under section 573 of such title.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the results of the study under subsection (a). The report shall include a discussion of the Secretary's determination regarding the issue covered by the study, the rationale for the Secretary's determination, and any recommended legislation that the Secretary considers appropriate regarding that issue.

Subtitle C—Reserve Component Personnel Policy

SEC. 521. REPEAL OF EXCLUSION OF ACTIVE DUTY FOR TRAINING FROM AUTHORITY TO ORDER RESERVES TO ACTIVE DUTY.

(a) GENERAL AUTHORITY TO ORDER RESERVES TO ACTIVE DUTY.—Section 12301 of title 10, United States Code, is amended—

(1) in the first sentence of subsection (a), by striking ''(other than for training)'';

(2) in subsection (c)—

(A) by striking ''(other than for training)'' and inserting ''as described in subsection (a)'' in the first sentence; and

(B) by striking ''(other than for training)'' in the second sentence; and

(3) in subsection (e), by striking ''(other than for training)'' and inserting ''as described in subsection (a)''.

(b) READY RESERVE 24-MONTH CALLUP AUTHORITY.—Section 12302 of such title is amended by striking ''(other than for training)'' in subsections (a) and (c).

(c) SELECTED RESERVE AND INDIVIDUAL READY RESERVE 270-DAY CALLUP AUTHORITY.—Section 12304(a) of such title is amended by striking ''(other than for training)''.

(d) STANDBY RESERVE CALLUP AUTHORITY.—Section 12306 of such title is amended—

(1) in subsection (a), by striking ''active duty (other than for training) only as provided in section 12301 of this title'' and inserting ''active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b)''; and

(2) in subsection (b)—

(A) in paragraph (1), by striking ''(other than for training)'' and inserting ''under section 12301(a) of this title''; and

(B) in paragraph (2), by striking ''no other member'' and all that follows through ''without his consent'' and inserting ''notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent''.

SEC. 522. EXCEPTION TO MANDATORY RETENTION OF RESERVES ON ACTIVE DUTY TO QUALIFY FOR RETIREMENT PAY.

Section 12686(a) of title 10, United States Code, is amended by inserting ''(other than retired pay for non-regular service under chapter 1223 of this title)'' after ''a purely military retirement system''.

Subtitle D—Education and Training

SEC. 531. ONE-YEAR EXTENSION OF ARMY COLLEGE FIRST PILOT PROGRAM.

Section 573(h) of the National Defense Authorization Act for Fiscal Year 2000 (Public

Law 106–65; 10 U.S.C. 513 note), is amended by striking ''September 30, 2004'' and inserting ''December 31, 2005''.

SEC. 532. MILITARY RECRUITER EQUAL ACCESS TO CAMPUS.

Subsection (b)(1) of section 983 of title 10, United States Code, is amended—

(1) by striking ''entry to campuses'' and inserting ''access to campuses''; and

(2) by inserting before the semicolon at the end the following: ''in a manner that is at least equal in quality and scope to the degree of access to campuses and to students that is provided to any other employer''.

SEC. 533. EXCLUSION FROM DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS OF AMOUNTS TO COVER INDIVIDUAL COSTS OF ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION.

(a) CODIFICATION AND EXTENSION OF EXCLUSION.—Subsection (d) of section 983 of title 10, United States Code, is amended—

(1) by striking ''The'' after ''(1)'' and inserting ''Except as provided in paragraph (3), the''; and

(2) by adding at the end the following new paragraph:

''(3) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.''.

(b) CONFORMING AMENDMENTS.—Subsections (a) and (b) of such section are amended by striking ''(including a grant of funds to be available for student aid)''.

(c) CONFORMING REPEAL OF CODIFIED PROVISION.—Section 8120 of the Department of Defense Appropriations Act, 2000 (Public Law 106–79; 10 U.S.C. 983 note), is repealed.

SEC. 534. TRANSFER OF AUTHORITY TO CONFER DEGREES UPON GRADUATES OF THE COMMUNITY COLLEGE OF THE AIR FORCE.

(a) AUTHORITY OF AIR UNIVERSITY COMMANDER.—Subsection (a) of section 9317 of title 10, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting ''; and''; and

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

''(4) an associate level degree upon graduates of the Community College of the Air Force who fulfill the requirements for that degree.''.

(b) TERMINATION OF EXISTING AUTHORITY.—(1) Paragraph (1) of section 9315(c) of such title is amended by striking ''the commander'' and all that follows through ''at the level of associate'' and inserting ''an academic degree at the level of associate may be conferred under section 9317 of this title''.

(2) Paragraph (2) of such section is amended by striking ''Air Education and Training Command of the Air Force'' and inserting ''Air University''.

(c) CONFORMING AND CLERICAL AMENDMENTS.—(1) The heading of section 9317 of title 10, United States Code, is amended by striking ''**graduate-level degrees**'' and inserting ''**conferral of degrees**''.

(2) The item relating to such section in the table of sections at the beginning of chapter 901 of such title is amended to read as follows:

''9317. Air University: conferral of degrees.''.

SEC. 535. REPEAL OF REQUIREMENT FOR OFFICER TO RETIRE UPON TERMINATION OF SERVICE AS SUPERINTENDENT OF THE AIR FORCE ACADEMY.

(a) REPEALS.—Sections 8921 and 9333a of title 10, United States Code, are repealed.

(b) CLERICAL AMENDMENTS.—Subtitle D of title 10, United States Code, is amended—

(1) in the table of sections at the beginning of chapter 867, by striking the item relating to section 8921; and

(2) in the table of sections at the beginning of chapter 903, by striking the item relating to section 9333a.

Subtitle E—Decorations, Awards, and Commendations

SEC. 541. AWARD OF MEDAL OF HONOR TO INDIVIDUAL INTERRED IN THE TOMB OF THE UNKNOWNS AS REPRESENTATIVE OF CASUALTIES OF A WAR.

(a) AWARD TO INDIVIDUAL AS REPRESENTATIVE.—Chapter 57 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war

''The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war.''.

SEC. 542. SEPARATE CAMPAIGN MEDALS FOR OPERATION ENDURING FREEDOM AND FOR OPERATION IRAQI FREEDOM.

(a) REQUIREMENT.—The President shall establish a campaign medal specifically to recognize service by members of the uniformed services in Operation Enduring Freedom and a separate campaign medal specifically to recognize service by members of the uniformed services in Operation Iraqi Freedom.

(b) ELIGIBILITY.—Subject to such limitations as may be prescribed by the President, eligibility for a campaign medal established pursuant to subsection (a) shall be set forth in regulations to be prescribed by the Secretary concerned (as defined in section 101 of title 10, United States Code). In the case of regulations prescribed by the Secretaries of the military departments, the regulations shall be subject to approval by the Secretary of Defense and shall be uniform throughout the Department of Defense.

SEC. 543. PLAN FOR REVISED CRITERIA AND ELIGIBILITY REQUIREMENTS FOR AWARD OF COMBAT INFANTRYMAN BADGE AND COMBAT MEDICAL BADGE FOR SERVICE IN KOREA AFTER JULY 28, 1953.

(a) REQUIREMENT FOR PLAN.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan for revising the Army's criteria and eligibility requirements for award of the Combat Infantryman Badge and the Combat Medical Badge for service in the Republic of Korea after July 28, 1953, to fulfill the purpose stated in subsection (b).

(b) PURPOSE OF REVISED CRITERIA AND ELIGIBILITY REQUIREMENTS.—The purpose for revising the criteria and eligibility requirements for award of the Combat Infantryman Badge and the Combat Medical Badge for service in the Republic of Korea after July 28, 1953, is to ensure fairness in the standards applied to Army personnel in the awarding of such badges for Army service in the Republic of Korea in comparison to the standards applied to Army personnel in the awarding of such badges for Army service in other areas of operations.

Subtitle F—Military Justice

SEC. 551. REDUCED BLOOD ALCOHOL CONTENT LIMIT FOR OFFENSE OF DRUNKEN OPERATION OF A VEHICLE, AIRCRAFT, OR VESSEL.

Section 911(b)(3) of title 10, United States Code (article 111(b)(3) of the Uniform Code of Military Justice), is amended by striking ''0.10 grams'' in both places it appears and inserting ''0.08 grams''.

SEC. 552. WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT IN CONNECTION WITH A TRIAL.

Section 972 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(c) WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT.—The Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a)(3), or exclusion of a period of confinement in connection with a trial under subsection (b)(3), in a case upon the occurrence of any of the following events:

''(1) For each charge—

''(A) the charge is dismissed before or during trial in a final disposition of the charge; or

''(B) the trial results in an acquittal of the charge.

''(2) For each charge resulting in a conviction in such trial—

''(A) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or

''(B) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.''.

SEC. 553. DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES.

(a) COMPREHENSIVE POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS.—(1) Not later than January 1, 2005, the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

(2) The policy shall be based on the recommendations of the Department of Defense Task Force on Care for Victims of Sexual Assaults and on such other matters as the Secretary considers appropriate.

(b) ELEMENTS OF COMPREHENSIVE POLICY.—The policy developed under subsection (a) shall address the following matters:

(1) Prevention measures.

(2) Education and training on prevention and response.

(3) Investigation of complaints by command and law enforcement personnel.

(4) Medical treatment of victims.

(5) Confidential reporting of incidents.

(6) Victim advocacy and intervention.

(7) Oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault.

(8) Disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault.

(9) Disposition of members of the Armed Forces accused of sexual assault.

(10) Liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault.

(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

(c) REPORT ON IMPROVEMENT OF CAPABILITY TO RESPOND TO SEXUAL ASSAULTS.—Not later than March 1, 2005, the Secretary of Defense shall submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the capability of the Department of Defense to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—(1) Not later than March 1, 2005, the Secretaries of the military departments shall prescribe regulations, or modify current regulations, on the policies and procedures of the military departments on the prevention of and response to sexual assaults involving members of the Armed Forces in order—

(A) to conform such policies and procedures to the policy developed under subsection (a); and

(B) to ensure that such policies and procedures include the elements specified in paragraph (2).

(2) The elements specified in this paragraph are as follows:

(A) A program to promote awareness of the incidence of sexual assaults involving members of the Armed Forces.

(B) A program to provide victim advocacy and intervention for members of the Armed Force concerned who are victims of sexual assault, which program shall make available, at home stations and in deployed locations, trained advocates who are readily available to intervene on behalf of such victims.

(C) Procedures for members of the Armed Force concerned to follow in the case of an incident of sexual assault involving a member of such Armed Force, including—

(i) specification of the person or persons to whom the alleged offense should be reported;

(ii) specification of any other person whom the victim should contact;

(iii) procedures for the preservation of evidence; and

(iv) procedures for confidential reporting and for contacting victim advocates.

(D) Procedures for disciplinary action in cases of sexual assault by members of the Armed Force concerned.

(E) Other sanctions authorized to be imposed in substantiated cases of sexual assault, whether forcible or nonforcible, by members of the Armed Force concerned.

(F) Training on the policies and procedures for all members of the Armed Force concerned, including specific training for members of the Armed Force concerned who process allegations of sexual assault against members of such Armed Force.

(G) Any other matters that the Secretary of Defense considers appropriate.

(f) ANNUAL ASSESSMENT OF POLICIES AND PROCEDURES.—Not later than January 15, 2006, and each year thereafter, each Secretary of a military department shall conduct an assessment of the implementation during the preceding fiscal year of the policies and procedures of such department on the prevention of and response to sexual assaults involving members of the Armed Forces in order to determine the effectiveness of such policies and procedures during such fiscal year in providing an appropriate response to such sexual assaults.

(g) ANNUAL REPORTS.—(1) Not later than April 1, 2005, and January 15 of each year thereafter, each Secretary of a military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Force concerned during the preceding year.

(2) Each report on an Armed Force under paragraph (1) shall contain the following:

(A) The number of sexual assaults against members of the Armed Force, and the number of sexual assaults by members of the Armed Force, that were reported to military officials during the year covered by such report, and the number of the cases so reported cases that were substantiated.

(B) A synopsis of and the disciplinary action taken in each substantiated case.

(C) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by such report in response to incidents of sexual assault involving members of the Armed Force concerned.

(D) A plan for the actions that are to be taken in the year following the year covered by such report on the prevention of and response to sexual assault involving members of the Armed Forces concerned.

(3) Each report under paragraph (1) in 2006, 2007, and 2008 shall also include the assessment conducted by the Secretary concerned under subsection (f).

(4) The Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and the House of Representatives each report submitted to the Secretary under this subsection, together with the comments of the Secretary on each such report. The Secretary shall transmit the report on 2004 not later than May 1, 2005, and shall transmit the report on any year after 2004 not later than March 15 of the year following such year.

(h) SEXUAL ASSAULT DEFINED.—In this section, the term ''sexual assault'' includes rape, acquaintance rape, sexual assault, and other criminal sexual offenses.

Subtitle G—Scope of Duties of Ready Reserve Personnel in Inactive Duty Status

SEC. 561. REDESIGNATION OF INACTIVE-DUTY TRAINING TO ENCOMPASS OPERATIONAL AND OTHER DUTIES PERFORMED BY RESERVES WHILE IN INACTIVE DUTY STATUS.

(a) REDESIGNATION OF DUTY STATUS.—(1) The duty status applicable to members of the reserve components of the Armed Forces that is known as ''inactive-duty training'' is redesignated as ''inactive duty''.

(2) Any reference that is made in any law, regulation, document, paper, or other record of the United States to inactive-duty training, as such term applies to members of the reserve components of the Armed Forces, shall be deemed to be a reference to inactive duty.

(b) TITLE 10 CONFORMING AND CLERICAL AMENDMENTS.—(1) The following provisions of title 10, United States Code, are amended by striking ''inactive-duty training'' each place it appears and inserting ''inactive duty'': sections 101(d)(7), 802(a)(3), 802(d)(2)(B), 802(d)(5)(B), 803(d), 936(a), 936(b), 976(a)(1)(C), 1061(b), 1074a(a), 1076(a)(2)(B), 1076(a)(2)(C), 1204(2), 1448(f)(1)(B), 1476(a)(1)(B), 1476(a)(2)(A), 1481(a)(2), 9446(a)(3), 12602(a)(3), 12602(b)(3), and 18505(a).

(2) The following provisions of such title are amended by striking ''inactive duty training'' each place it appears and inserting ''inactive duty'': sections 1086(c)(2)(B), 1175(e)(2), 1475(a)(2), 1475(a)(3), 2031(d)(2), and 10204(b).

(3) Section 1206(2) of such title is amended by striking ''in line of duty—'' and all that follows through ''residence; or'' and inserting the following: ''in line of duty while—

''(A) performing active duty or inactive duty;

''(B) traveling directly to or from the place at which such duty is performed; or

''(C) remaining overnight immediately before the commencement of inactive duty, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive duty, if the site is outside reasonable commuting distance of the member's residence;''.

(4) Section 1471(b)(3)(A) of such title is amended by striking ''for training'' in clauses (ii) and (iii).

(5) Section 1478(a) of such title is amended—

(A) in paragraph (3)—

(i) by striking ''from inactive duty training'' and inserting ''from the location of inactive duty''; and

(ii) by striking ''on inactive duty training'' and inserting ''on inactive duty'';

(B) in paragraph (7)—

(i) by striking ''inactive duty training'' and inserting ''inactive duty''; and

(ii) by striking ''or training''; and

(C) in paragraph (8), by striking ''inactive duty training'' both places it appears and inserting ''inactive duty''.

(6) Section 12317 of such title is amended by striking '', or to participate in inactive duty training,'' and inserting ''inactive duty''.

(7) Section 12319(c) of such title is amended—

(A) by striking ''inactive-duty training'' both places it appears and inserting ''inactive duty''; and

(B) by striking ''that training)'' and inserting ''that duty)''.

(8) Section 12603(a) of such title is amended—

(A) by striking ''inactive duty training'' and inserting ''inactive duty''; and

(B) by striking ''the training'' and inserting ''such duty''.

(9) Section 12604(a) of such title is amended by striking ''to inactive-duty training'' and inserting ''to perform inactive duty''.

(10)(A) The headings for sections 1204, 1206, 12603, and 18505 of such title are amended by striking ''**inactive-duty training**'' and inserting ''**inactive duty**''.

(B) The heading for section 1475 of such title is amended by striking ''**training**''.

(C) The heading for section 1476 of such title is amended by striking ''**or training**''.

(D) The heading for section 12604 of such title is amended by striking ''**attending inactive-duty training**'' and inserting ''**performing inactive duty**''.

(11)(A) The table of sections at the beginning of chapter 61 of such title is amended—

(i) by striking the item relating to section 1204 and inserting the following:

''1204. Members on active duty for 30 days or less or on inactive duty: retirement.'';

and

(ii) by striking the item relating to section 1206 and inserting the following:

''1206. Members on active duty for 30 days or less or on inactive duty: separation.''.

(B) The table of sections at the beginning of subchapter II of chapter 75 of such title is amended by striking the items relating to sections 1475 and 1476 and inserting the following:

''1475. Death gratuity: death of members on active duty or inactive duty and of certain other persons.

''1476. Death gratuity: death after discharge or release from duty.''.

(C) The table of sections at the beginning of chapter 1217 of such title is amended by striking the items relating to sections 12603 and 12604 and inserting the following:

''12603. Attendance of inactive duty assemblies: commercial travel at Federal supply schedule rates.

''12604. Billeting in Department of Defense facilities: Reserves performing inactive duty.''.

(D) The item relating to section 18505 in the table of sections at the beginning of chapter 1805 of such title is amended to read as follows:

''18505. Reserves traveling for inactive duty: space-required travel on military aircraft.''.

(c) TITLE 14 CONFORMING AMENDMENT.—Sections 704 and 705(a) of title 14, United States Code, are amended by striking ''inactive-duty training'' and inserting ''inactive duty''.

(d) TITLE 37 CONFORMING AND CLERICAL AMENDMENTS.—(1) Sections 101(22), 205(e)(2)(A), and 433(d) of title 37, United States Code, are amended by striking ''inactive-duty training'' each place it appears and inserting ''inactive duty''.

(2) Section 204 of such title is amended—

(A) in subsection (g)(1)—

(i) in subparagraphs (B) and (D), by striking ''inactive-duty training'' each place it appears and inserting ''inactive duty'' and

(ii) in subparagraph (C), by striking ''or training''; and

(B) in subsection (h)(1)—

(i) in subparagraphs (B) and (D), by striking ''inactive-duty training'' each place it appears and inserting ''inactive duty''; and

(ii) in subparagraph (C), by striking ''or training''; and

(3) Section 206 of such title is amended—

(A) in subsection (a)(3)—

(i) by striking clause (ii) of subparagraph (A) and inserting the following:

''(ii) inactive duty;'';

(ii) in subparagraph (B), by striking ''or training''; and

(iii) in subparagraph (C), by striking ''inactive-duty training'' each place it appears and inserting ''inactive duty''; and

(B) in subsection (b)(1), by inserting ''or duty'' after ''kind of training''.

(4) Section 308d(a) of such title is amended by striking ''for training''.

(5) Section 415 of such title is amended—

(A) in subsection (a)(3), by striking ''inactive-duty training'' and inserting ''inactive duty''; and

(B) in subsection (c)(1), by striking ''on inactive duty training status'' and inserting ''inactive duty''.

(6) Section 552 of such title is amended—

(A) in subsection (a)—

(i) by striking ''performing inactive-duty training,'' in the matter preceding paragraph (1), and inserting ''inactive duty,''; and

(ii) by striking ''or inactive-duty training'' in the second sentence and inserting ''or inactive duty''; and

(B) in subsection (d), by striking ''inactive-duty training'' and inserting ''on inactive duty''.

(7)(A) The heading for section 206 of such title is amended by striking ''**inactive-duty training**'' and inserting ''**inactive duty**''.

(B) The item relating to such section in the table of sections at the beginning of chapter 3 of such title is amended to read as follows:

''206. Reserves; members of National Guard: inactive duty.''.

(8) The heading for subsection (c) of section 305b of such title is amended by striking ''DUTY TRAINING.—'' and inserting ''DUTY.—''.

(9) The heading for subsection (e) of section 320 of such title is amended by striking ''DUTY TRAINING.—'' and inserting ''DUTY.—''.

(e) PUBLIC LAW 108–136.—Section 644(c) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1518) is amended by striking ''inactive-duty training'' and inserting ''inactive duty''.

SEC. 562. REPEAL OF UNNECESSARY DUTY STATUS DISTINCTION FOR FUNERAL HONORS DUTY.

(a) TITLE 10 DUTY.—(1) Section 12503 of title 10, United States Code, is repealed.

(2) Section 12552 of such title is repealed.

(b) TITLE 32 DUTY.—(1) Section 115 of title 32, United States Code, is repealed.

(2) Section 114 of such title is amended by striking the second sentence.

(c) TITLE 10 CONFORMING AND CLERICAL AMENDMENTS.—Title 10, United States Code, is amended as follows:

(1) Section 1074a(a) is amended—

(A) in paragraph (1)—

(i) by inserting ''or'' at the end of subparagraph (A);

(ii) by striking ''; or'' at the end of subparagraph (B) and inserting a period; and

(iii) by striking subparagraph (C);

(B) in paragraph (2)—

(i) by inserting ''or'' at the end of subparagraph (A);

(ii) by striking ''; or'' at the end of subparagraph (B) and inserting a period; and

(iii) by striking subparagraph (C); and

(C) by striking paragraph (4).

(2) Section 1076(a)(2) is amended by striking subparagraph (E).

(3) Section 1204(2) is amended—

(A) by inserting ''or'' at the end of subparagraph (A)(iii);

(B) by striking ''or'' at the end of subparagraph (B)(iii) and inserting a period; and

(C) by striking subparagraph (C).

(4) Section 1206(2) is amended by striking ''(B) while the member—'' and all that follows through ''immediately before so serving;''.

(5) Section 1481(a)(2) is amended—

(A) by inserting ''or'' at the end of subparagraph (D);

(B) by striking ''; or'' at the end of subparagraph (E) and inserting a period; and

(C) by striking subparagraph (F).

(6) Section 12732(a)(2)(E) is amended by inserting ''(as such section 12503 or 115, respectively, was in effect before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005)'' after ''section 115 of title 32''.

(7)(A) The table of sections at the beginning of chapter 1213 is amended by striking the item relating to section 12503.

(B) The table of sections at the beginning of chapter 1215 is amended by striking the item relating to 12552.

(c) TITLE 32 CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 32, United States Code, is amended by striking the item relating to section 115.

(d) TITLE 37 CONFORMING AMENDMENTS.—Section 204 of title 37, United States Code, is amended—

(1) in subsection (g)(1)—

(A) by inserting ''or'' at the end of subparagraph (C);

(B) by striking ''; or'' at the end of subparagraph (D) and inserting a period; and

(C) by striking subparagraph (E); and

(2) in subsection (h)(1)—

(A) by inserting ''or'' at the end of subparagraph (C);

(B) by striking ''; or'' at the end of subparagraph (D) and inserting a period; and

(C) by striking subparagraph (E).

SEC. 563. CONFORMING AMENDMENTS TO OTHER LAWS REFERRING TO INACTIVE-DUTY TRAINING.

(a) TITLE 5.—Section 6323(a)(1) of title 5, United States Code, is amended by striking ''inactive-duty training'' and inserting ''inactive duty''.

(b) TITLE 38.—(1) The following provisions of title 38, United States Code, are amended by striking ''inactive duty training'' each place it appears and inserting ''inactive duty'': sections 106(d)(1), 1112(c)(3)(A)(ii), 1302(b)(2), 1312(a)(2)(A), 1965(3), 1965(4), 1965(5), 1967(a)(1)(B), 1967(b), 1969(a)(3), 1977(e), 2402(2), 4303(13), and 4303(16).

(2) Section 1968 of such title is amended—

(A) by striking ''inactive duty training'' and inserting ''inactive duty''—

(i) in subsection (a), in the matter preceding paragraph (1);

(ii) in subsection (a)(3); and

(iii) in subsection (b)(2); and

(B) in subsection (a)(3)—

(i) by striking ''such scheduled training period'' and inserting ''such period of scheduled duty'';

(ii) by striking ''the date of such training'' and inserting ''the date on which such duty period ends''; and

(iii) by striking ''such training terminated'' and inserting ''on which such duty period ends''.

SEC. 564. CONFORMING AMENDMENTS TO OTHER LAWS REFERRING TO FUNERAL HONORS DUTY.

(a) TITLE 5.—Section 6323(a)(1) of title 5, United States Code, is amended by striking ''funeral honors duty (as described in section 12503 of title 10 and section 115 of title 32),''.

(b) TITLE 38.—Section 4303(13) of title 38, United States Code, is amended—

(1) by inserting ''and'' after ''full-time National Guard duty,''; and

(2) by striking '', and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.''.

Subtitle H—Other Matters

SEC. 571. ACCESSION OF PERSONS WITH SPECIALIZED SKILLS.

(a) INITIAL SERVICE OBLIGATION.—Subsection (a) of section 651 of title 10, United States Code, is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) by striking ''deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1))'' and inserting ''described in paragraph (3)''; and

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

''(2) The Secretary concerned may—

''(A) waive the applicability of paragraph (1) to a person who, as determined by the Secretary concerned, is accessed into an armed force under the jurisdiction of that Secretary based on unique skills acquired in a civilian occupation and is to serve in that armed force in a specialty requiring those skills; and

''(B) require any alternative period of obligated service that the Secretary considers appropriate to meet the needs of the armed force that such person is entering.

''(3) The requirement under paragraph (1) does not apply to a person who is deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)).

(b) BASIC TRAINING PERIOD.—Subsection (c) of section 671 of such title is amended—

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

(2) by striking ''(c)(1)'' and all that follows through ''Any such period'' in the second sentence of paragraph (1) and inserting the following:

''(c)(1) A period of basic training (or equivalent training) shorter than 12 weeks may be established by the Secretary concerned for members of the armed forces who, as determined by the Secretary under regulations prescribed under paragraph (3)—

''(A) have been credentialed in a medical profession or occupation and are serving in a health-care occupational specialty; or

''(B) have unique skills acquired in a civilian occupation and are to serve in a military specialty or position requiring those skills.

''(2) Any period of basic training under paragraph (1)''.

SEC. 572. FEDERAL WRITE-IN BALLOTS FOR ABSENTEE MILITARY VOTERS LOCATED IN THE UNITED STATES.

(a) DUTIES OF PRESIDENTIAL DESIGNEE.—Section 101(b)(3) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(3)) is amended by striking ''overseas voters'' and inserting ''absent uniformed services voters and overseas voters''.

(b) FEDERAL WRITE-IN ABSENTEE BALLOT.—Section 103 of such Act (42 U.S.C. 1973ff–2) is amended—

(1) in subsection (a), by striking ''overseas voters'' and inserting ''absent uniformed services voters and overseas voters'';

(2) in subsection (b), by striking the second sentence and inserting the following new sentence: ''A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted—

''(1) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of—

''(A) the deadline of the State for receipt of such application; or

''(B) the date that is 30 days before the general election; or

''(2) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.'';

(3) in subsection (c)(1), by striking ''overseas voter'' and inserting ''absent uniformed services voter or overseas voter'';

(4) in subsection (d), by striking ''overseas voter'' both places it appears and inserting ''absent uniformed services voter or overseas voter''; and

(5) in subsection (e)(2), by striking ''overseas voters'' and inserting ''absent uniformed services voters and overseas voters''.

(c) CONFORMING AMENDMENTS.—(1) The heading of section 103 of such Act is amended to read as follows:

''SEC. 103. FEDERAL WRITE-IN ABSENTEE BALLOT IN GENERAL ELECTIONS FOR FEDERAL OFFICE FOR ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.''.

(2) The subsection caption for subsection (d) of such section is amended by striking ''OVERSEAS VOTER'' and inserting ''ABSENT UNIFORMED SERVICES VOTER OR OVERSEAS VOTER''.

SEC. 573. RENAMING OF NATIONAL GUARD CHALLENGE PROGRAM AND INCREASE IN MAXIMUM FEDERAL SHARE OF COST OF STATE PROGRAMS UNDER THE PROGRAM.

(a) RENAMING.—The text of section 509 of title 32, United States Code, is amended by striking ''National Guard Challenge Program'' each place it appears and inserting ''National Guard Youth Challenge Program''.

(b) INCREASE IN MAXIMUM FEDERAL SHARE OF COST OF STATE PROGRAMS.—Subsection (d) of such section is amended by striking paragraphs (1), (2), (3), and (4), and inserting the following new paragraphs:

''(1) for fiscal year 2004, 60 percent of the costs of operating the State program during that year;

''(2) for fiscal year 2005, 65 percent of the costs of operating the State program during that year;

''(3) for fiscal year 2006, 70 percent of the costs of operating the State program during that year; and

''(4) for fiscal year 2007 and each subsequent fiscal year, 75 percent of the costs of operating the State program during such year.''.

(c) CONFORMING AND CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

''§ 509. National Guard Youth Challenge Program of opportunities for civilian youth''.

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 509 and inserting the following new item:

''509. National Guard Youth Challenge Program of opportunities for civilian youth.''.

SEC. 574. APPEARANCE OF VETERANS SERVICE ORGANIZATIONS AT PRESEPARATION COUNSELING PROVIDED BY THE DEPARTMENT OF DEFENSE.

(a) APPEARANCE TO COUNSELING FOR DISCHARGE OR RELEASE FROM ACTIVE DUTY.—Section 1142 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(d) APPEARANCE BY VETERANS SERVICE ORGANIZATIONS.—(1) The Secretary concerned may permit a representative of a veterans service organization to appear at and participate in any preseparation counseling provided to a member of the armed forces under this section.

''(2) For purposes of this subsection, a veterans service organization is any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38.''.

(b) MEETING WITH RESERVES RELEASED FROM ACTIVE DUTY FOR FURTHER SERVICE IN THE RESERVES.—(1) A unit of a reserve component on active duty in the Armed Forces may, upon release from active duty in the Armed Forces for further service in the reserve components, meet with a veterans service organization for information and assistance relating to such release if the commander of the unit authorizes the meeting.

(2) The time of a meeting for a unit under paragraph (1) may be scheduled by the commander of the unit for such time after the release of the unit as described in that paragraph as the commander of the unit determines appropriate to maximize the benefit of the meeting to the members of the unit.

(3) For purposes of this subsection, a veterans service organization is any organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38, United States Code.

SEC. 575. SENSE OF THE SENATE REGARDING RETURN OF MEMBERS TO ACTIVE DUTY SERVICE UPON REHABILITATION FROM SERVICE-RELATED INJURIES.

(a) FINDINGS.—Congress makes the following findings:

(1) The generation of young men and women currently serving on active duty in the Armed Forces, which history will record as being among the greatest, has shown in remarkable numbers an individual resolve to recover from injuries incurred in such service and to return to active service in the Armed Forces.

(2) Since September 11, 2001, numerous brave soldiers, sailors, airmen, and Marines have incurred serious combat injuries, including (as of June 2004) approximately 100 members of the Armed Forces who have been fitted with artificial limbs as a result of devastating injuries sustained in combat overseas.

(3) In cases involving combat-related injuries and other service-related injuries it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume the performance of active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) members of the Armed Forces who on their own initiative are highly motivated to return to active duty service following rehabilitation from injuries incurred in their service in the Armed Forces, after appropriate medical review should be given the opportunity to present their cases for continuing to serve on active duty in varied military capacities;

(2) other than appropriate medical review, there should be no barrier in policy or law to such a member having the option to return to military service on active duty; and

(3) the Secretary of Defense should develop specific protocols that expand options for such members to return to active duty service and to be retrained to perform military missions for which they are fully capable.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

SEC. 601. GEOGRAPHIC BASIS FOR HOUSING ALLOWANCE DURING SHORT-ASSIGNMENT PERMANENT CHANGES OF STATION FOR EDUCATION OR TRAINING.

(a) AUTHORITY.—Paragraph (3) of subsection (d) of section 403 of title 37, United States Code, is amended by adding at the end the following new subparagraph:

''(C) In the case of a member who is reassigned for a permanent change of station or permanent change of assignment from a duty station within the continental United States to another duty station within the continental United States for a period of not more than one year for the purpose of participating in professional military education or training classes, the amount of the basic allowance for housing for the member may be based on whichever of the following areas the Secretary concerned determines to provide the more equitable basis for the allowance:

''(i) The area of the duty station to which the member is reassigned.

''(ii) The area of the member's last duty station, but only if, and for the period that, the member's dependents reside in that area on and after the date of the member's departure for the duty station to which the member is reassigned.''.

(b) CONFORMING AMENDMENT.—The heading of such subsection is amended by striking ''ARE UNABLE TO'' and inserting ''DO NOT''.

SEC. 602. IMMEDIATE LUMP-SUM REIMBURSEMENT FOR UNUSUAL NONRECURRING EXPENSES INCURRED FOR DUTY OUTSIDE THE CONTINENTAL UNITED STATES.

Section 405 of title 37, United States Code, is amended by adding at the end the following new subsection:

''(d) NONRECURRING EXPENSES.—(1) The Secretary concerned may pay a member of the uniformed services on duty as described in subsection (a) a reimbursement for a nonrecurring expense incurred by the member incident to such duty that—

''(A) is directly related to the conditions or location of the duty;

''(B) is of a nature or a magnitude not normally incurred by members of the uniformed services on duty inside the continental United States; and

''(C) is not included in the per diem determined under subsection (b) as payable to the member under subsection (a).

''(2) Any reimbursement payable to a member under paragraph (1) is in addition to a per diem payable to that member under subsection (a).''.

SEC. 603. PERMANENT INCREASE IN AUTHORIZED AMOUNT OF FAMILY SEPARATION ALLOWANCE.

(a) PERMANENT AMOUNT.—Subsection (a)(1) of section 427 of title 37, United States Code, is amended by striking ''$100'' and inserting ''$250''.

(b) REPEAL OF TEMPORARY AUTHORITY.—Subsection (e) of such section is repealed.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the earlier of—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) January 1, 2005.

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES.

(a) SELECTED RESERVE REENLISTMENT BONUS.—Section 308b(g) of title 37, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(b) SELECTED RESERVE ENLISTMENT BONUS.—Section 308c(e) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(c) SPECIAL PAY FOR ENLISTED MEMBERS ASSIGNED TO CERTAIN HIGH PRIORITY UNITS.—Section 308d(c) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(d) SELECTED RESERVE AFFILIATION BONUS.—Section 308e(e) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(e) READY RESERVE ENLISTMENT AND REENLISTMENT BONUS.—Section 308h(g) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(f) PRIOR SERVICE ENLISTMENT BONUS.—Section 308i(f) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 612. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) NURSE OFFICER CANDIDATE ACCESSION PROGRAM.—Section 2130a(a)(1) of title 10, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(b) REPAYMENT OF EDUCATION LOANS FOR CERTAIN HEALTH PROFESSIONALS WHO SERVE IN THE SELECTED RESERVE.—Section 16302(d) of such title is amended by striking ''January 1, 2005'' and inserting ''January 1, 2006''.

(c) ACCESSION BONUS FOR REGISTERED NURSES.—Section 302d(a)(1) of title 37, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(d) INCENTIVE SPECIAL PAY FOR NURSE ANESTHETISTS.—Section 302e(a)(1) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(e) SPECIAL PAY FOR SELECTED RESERVE HEALTH PROFESSIONALS IN CRITICALLY SHORT WARTIME SPECIALTIES.—Section 302g(f) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(f) ACCESSION BONUS FOR DENTAL OFFICERS.—Section 302h(a)(1) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 613. ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS.

(a) SPECIAL PAY FOR NUCLEAR-QUALIFIED OFFICERS EXTENDING PERIOD OF ACTIVE SERVICE.—Section 312(e) of title 37, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(b) NUCLEAR CAREER ACCESSION BONUS.—Section 312b(c) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(c) NUCLEAR CAREER ANNUAL INCENTIVE BONUS.—Section 312c(d) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 614. ONE-YEAR EXTENSION OF OTHER BONUS AND SPECIAL PAY AUTHORITIES.

(a) AVIATION OFFICER RETENTION BONUS.—Section 301b(a) of title 37, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(b) ASSIGNMENT INCENTIVE PAY.—Section 307a(f) of such title is amended by striking ''December 31, 2005'' and inserting ''December 31, 2006''.

(c) REENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 308(g) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(d) ENLISTMENT BONUS FOR ACTIVE MEMBERS.—Section 309(e) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(e) RETENTION BONUS FOR MEMBERS WITH CRITICAL MILITARY SKILLS.—Section 323(i) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

(f) ACCESSION BONUS FOR NEW OFFICERS IN CRITICAL SKILLS.—Section 324(g) of such title is amended by striking ''December 31, 2004'' and inserting ''December 31, 2005''.

SEC. 615. REDUCED SERVICE OBLIGATION FOR NURSES RECEIVING NURSE ACCESSION BONUS.

(a) PERIOD OF OBLIGATED SERVICE.—Section 302d(a)(1) of title 37, United States Code, is amended by striking ''four years'' and inserting ''three years''.

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendment made by subsection (a) shall take effect on October 1, 2004, and shall apply with respect to agreements entered into under section 302d of title 37, United States Code, on or after such date.

SEC. 616. ASSIGNMENT INCENTIVE PAY.

(a) DISCONTINUATION UPON COMMENCEMENT OF TERMINAL LEAVE.—(1) Subsection (e) of section 307a of title 37, United States Code, is amended by striking ''absence of the member for authorized leave.'' and inserting the following:

''(2) absence of the member for authorized leave, other than leave authorized for a period ending upon the discharge of the member or the release of the member from active duty.''.

(2) Such subsection is further amended by striking ''by reason of'' and all that follows through ''pursuant to orders or'' and inserting ''by reason of—

''(1) temporary duty performed by the member pursuant to orders; or''.

(b) DISCRETIONARY WRITTEN AGREEMENTS.—Subsection (b) of such section is amended to read as follows:

''(b) WRITTEN AGREEMENT.—The Secretary concerned may require a member to enter into a written agreement with the Secretary in order to qualify for the incentive pay under this section. A written agreement under this subsection shall set forth the period for which the incentive pay is to be provided and the monthly rate at which the incentive pay is to be paid.''.

(c) EFFECTIVE DATE AND APPLICABILITY.—(1) The amendments made by subsection (a) shall take effect on October 1, 2004.

(2) Paragraph (2) of section 307a(e) of title 37, United States Code, shall apply with respect to authorized leave for days after September 30, 2004.

SEC. 617. PERMANENT INCREASE IN AUTHORIZED AMOUNT OF HOSTILE FIRE AND IMMINENT DANGER SPECIAL PAY.

(a) PERMANENT AMOUNT.—Subsection (a) of section 310 of title 37, United States Code, is amended by striking ''$150'' in the matter preceding paragraph (1) and inserting ''$225''.

(b) REPEAL OF TEMPORARY AUTHORITY.—Subsection (e) of such section is repealed.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the earlier of—

(1) the first day of the first month that begins after the date of the enactment of this Act; or

(2) January 1, 2005.

SEC. 618. ELIGIBILITY OF ENLISTED MEMBERS TO QUALIFY FOR CRITICAL SKILLS RETENTION BONUS WHILE SERVING ON INDEFINITE REENLISTMENT.

Paragraph (2) of section 323(a) of title 37, United States Code, is amended to read as follows:

''(2) in the case of an enlisted member—

''(A) the member, if serving under an enlistment for a definite period—

''(i) reenlists for a period of at least one year; or

''(ii) voluntarily extends the member's enlistment for a period of at least one year; or

''(B) the member, if serving under an enlistment for an indefinite period, enters into a written agreement with the Secretary concerned to remain on active duty for at least one year under such enlistment.''.

SEC. 619. CLARIFICATION OF EDUCATIONAL PURSUITS QUALIFYING FOR SELECTED RESERVE EDUCATION LOAN REPAYMENT PROGRAM FOR HEALTH PROFESSIONS OFFICERS.

Section 16302(a)(5) of title 10, United States Code, is amended by striking ''regarding'' and inserting ''for a basic professional qualifying degree (as determined under regulations prescribed by the Secretary), or graduate education, in''.

SEC. 620. BONUS FOR CERTAIN INITIAL SERVICE OF COMMISSIONED OFFICERS IN THE SELECTED RESERVE.

(a) AUTHORITY.—Chapter 5 of title 37, United States Code, is amended by inserting after section 308i the following new section:

''§ 308j. Special pay: bonus for certain initial service of commissioned officers in the Selected Reserve

''(a) AFFILIATION BONUS.—(1) The Secretary concerned may pay an affiliation bonus under this section to an eligible commissioned officer in any of the armed forces who enters into an agreement with the Secretary to serve, for the period specified in the agreement, in the Selected Reserve of the Ready Reserve of an armed force under the Secretary's jurisdiction—

''(A) in a critical officer skill designated under paragraph (3); or

''(B) to meet a manpower shortage in—

''(i) a unit of that Selected Reserve; or

''(ii) a particular pay grade in that armed force.

''(2) A commissioned officer is eligible for an affiliation bonus under this section if the officer—

''(A) either—

''(i) is serving on active duty for a period of more than 30 days; or

''(ii) is a member of a reserve component not on active duty and, if the member formerly served on active duty, was released from active duty under honorable conditions;

''(B) has not previously served in the Selected Reserve of the Ready Reserve; and

''(C) is not entitled to receive retired or retainer pay.

''(3)(A) The Secretary concerned shall designate for an armed force under the Secretary's jurisdiction the critical officer skills to which the bonus authority under this subsection is to be applied.

''(B) A skill may be designated as a critical officer skill for an armed force under subparagraph (A) if, to meet requirements of that armed force, it is critical for that armed

force to have a sufficient number of officers who are qualified in that skill.

''(4) An affiliation bonus payable pursuant to an agreement under this section to an eligible officer accrues on the date on which the person is assigned to a unit or position in the Selected Reserve pursuant to such agreement.

''(b) ACCESSION BONUS.—(1) The Secretary concerned may pay an accession bonus under this section to an eligible person who enters into an agreement with the Secretary—

''(A) to accept an appointment as a commissioned officer in the armed forces; and

''(B) to serve in the Selected Reserve of the Ready Reserve in a skill designated under paragraph (2) for a period specified in the agreement.

''(2)(A) The Secretary concerned shall designate for an armed force under the Secretary's jurisdiction the officer skills to which the authority under this subsection is to be applied.

''(B) A skill may be designated for an armed force under subparagraph (A) if, to mitigate a current or projected significant shortage of personnel in that armed force who are qualified in that skill, it is critical to increase the number of persons accessed into that armed force who are qualified in that skill or are to be trained in that skill.

''(3) An accession bonus payable to a person pursuant to an agreement under this section accrues on the date on which that agreement is accepted by the Secretary concerned.

''(c) PERIOD OF OBLIGATED SERVICE.—An agreement entered into with the Secretary concerned under this section shall require the person entering into that agreement to serve in the Selected Reserve for a specified period. The period specified in the agreement shall be any period not less than three years that the Secretary concerned determines appropriate to meet the needs of the reserve component in which the service is to be performed.

''(d) AMOUNT.—The amount of a bonus under this section may be any amount not in excess of $6,000 that the Secretary concerned determines appropriate.

''(e) PAYMENT.—Upon acceptance of a written agreement by the Secretary concerned under this section, the total amount of the bonus payable under the agreement becomes fixed. The agreement shall specify whether the bonus is to be paid in one lump sum or in installments.

''(f) RELATION TO OTHER ACCESSION BONUS AUTHORITY.—No person may receive an affiliation bonus or accession bonus under this section and financial assistance under chapter 1608, 1609, or 1611 of title 10, or under section 302g of this title, for the same period of service.

''(g) REPAYMENT FOR FAILURE TO COMMENCE OR COMPLETE OBLIGATED SERVICE.—(1) A person who, after receiving all or part of the bonus under an agreement entered into by that person under this section, does not accept a commission as an officer or does not commence to participate or does not satisfactorily participate in the Selected Reserve for the total period of service specified in the agreement shall repay to the United States such compensation or benefit, except under conditions prescribed by the Secretary concerned.

''(2) The Secretary concerned shall include in each agreement entered into by the Secretary under this section the requirements that apply for any repayment under this subsection, including the method for computing the amount of the repayment and any exceptions.

''(3) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States. A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement entered into under this section does not discharge a person from a debt arising under an agreement entered into under this subsection or a debt arising under paragraph (1).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''308j. Special pay: bonus for certain initial service of commissioned officers in the Selected Reserve.''.

SEC. 621. RELATIONSHIP BETWEEN ELIGIBILITY TO RECEIVE SUPPLEMENTAL SUBSISTENCE ALLOWANCE AND ELIGIBILITY TO RECEIVE IMMINENT DANGER PAY, FAMILY SEPARATION ALLOWANCE, AND CERTAIN FEDERAL ASSISTANCE.

(a) ENTITLEMENT NOT AFFECTED BY RECEIPT OF IMMINENT DANGER PAY AND FAMILY SEPARATION ALLOWANCE.—Subsection (b)(2) of section 402a of title 37, United States Code, is amended by striking subparagraph (A) and inserting the following:

''(A) shall not take into consideration—

''(i) the amount of the supplemental subsistence allowance that is payable under this section;

''(ii) the amount of special pay (if any) that is payable under section 310 of this section, relating to duty subject to hostile fire or imminent danger; or

''(iii) the amount of family separation allowance (if any) that is payable under section 427 of this title; but''.

(b) ELIGIBILITY FOR OTHER FEDERAL ASSISTANCE.—Section 402a of such title is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following new subsection (g):

''(g) ELIGIBILITY FOR OTHER FEDERAL ASSISTANCE.—(1)(A) A child or spouse of a member of the armed forces receiving the supplemental subsistence allowance under this section who, except for the receipt of such allowance, would otherwise be eligible to receive a benefit described in subparagraph (B) shall be considered to be eligible for that benefit.

''(B) The benefits referred to in subparagraph (A) are as follows:

''(i) Assistance provided under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

''(ii) Assistance provided under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

''(iii) A service under the Head Start Act (42 U.S.C. 9831 et seq.).

''(iv) Assistance under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

''(2) A household that includes a member of the armed forces receiving the supplemental subsistence allowance under this section and, except for the receipt of such allowance, would otherwise be eligible to receive a benefit under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) shall be considered to be eligible for that benefit.''.

(c) REQUIREMENT FOR REPORT.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the committees of Congress named in paragraph (2) a report on the accessibility of social services to members of the Armed Forces and their families. The report shall include the following matters:

(A) The social services for which members of the Armed Forces and their families are eligible under social services programs generally available to citizens and other nationals of the United States.

(B) The extent to which members of the Armed Forces and their families utilize the social services for which they are eligible under the programs identified under subparagraph (A).

(C) The efforts made by each of the military departments—

(i) to ensure that members of the Armed Forces and their families are aware of the social services for which they are eligible under the programs identified under subparagraph (A); and

(ii) to assist members and their families in applying for and obtaining such social services.

(2) The committees of Congress referred to in paragraph (1) are as follows:

(A) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(B) The Committee on Armed Services of the House of Representatives.

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on October 1, 2004.

(2) Subsection (c) shall take effect on the date of the enactment of this Act.

Subtitle C—Travel and Transportation Allowances

SEC. 631. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND BURIAL CEREMONIES OF MEMBERS WHO DIE ON DUTY.

(a) AUTHORIZED TRAVEL DESTINATION.—Subsection (a)(1) of section 411f of title 37, United States Code, is amended by inserting before the period at the end the following: ''at the location determined under subsection (a)(8) or (d)(2) of section 1482 of title 10''.

(b) LIMITATION ON AMOUNT.—Subsection (b) of such section is amended to read as follows:

''(b) LIMITATION ON AMOUNT.—Allowances for travel under subsection (a) may not exceed the rates for two days and the time necessary for such travel.''.

(c) UNCONDITIONAL ELIGIBILITY OF DECEASED'S PARENTS.—Subsection (c)(1)(C) of such section is amended by striking ''If no person described in subparagraph (A) or (B) is provided travel and transportation allowances under subsection (a)(1), the'' and inserting ''The''.

SEC. 632. LODGING COSTS INCURRED IN CONNECTION WITH DEPENDENT STUDENT TRAVEL.

(a) AUTHORITY.—Section 430(b)(1) of title 37, United States Code, is amended—

(1) by inserting ''(A)'' after ''(b) ALLOWANCE AUTHORIZED.—(1)''; and

(2) by adding at the end the following new subparagraph:

''(B) The allowance authorized under subparagraph (A) for an eligible dependent's travel may include reimbursement for costs that are incurred by or for the dependent for lodging of the dependent that is necessitated by an interruption in the travel caused by extraordinary circumstances prescribed in the regulations under subsection (a). The amount of a reimbursement payable under this subparagraph shall be a rate that is applicable to the circumstances under regulations prescribed by the Secretaries concerned.''.

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendments made by subsection (a) shall take effect on October 1, 2004, and shall apply with respect to lodging that commences on or after such date.

Subtitle D—Retired Pay and Survivor Benefits

SEC. 641. SPECIAL RULE FOR COMPUTING THE HIGH-36 MONTH AVERAGE FOR DISABLED MEMBERS OF RESERVE COMPONENTS.

(a) COMPUTATION OF HIGH 36-MONTH AVERAGE.—Subsection (c) of section 1407 of title

10, United States Code, is amended by adding at the end the following new paragraph:

''(3) SPECIAL RULE FOR RESERVE COMPONENT MEMBERS.—In the application of paragraphs (1) and (2) to a member of a reserve component of a uniformed service who is entitled to retired pay under section 1201 or 1202 of this title, each month during which the member performed duty for which basic pay is paid under section 203 of title 37 or compensation is paid under section 206 of such title shall be treated as if it were one month of active service.''.

(b) EFFECTIVE DATES AND APPLICABILITY.—(1) Paragraph (3) of section 1407(c) of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2004, and shall apply with respect to months beginning on or after such date, except as provided in paragraph (2).

(2) For the computation of survivor annuities under subparagraph (A)(i) or (B) of section 1451(c)(1) of title 10, United States Code (as amended by section 642(b) of Public Law 107–107; 115 Stat. 1152)), paragraph (3) of section 1407(c) of title 10, United States Code (as added by subsection (a)), shall take effect as of September 10, 2001, and shall apply with respect to deaths of members of the uniformed services occurring on or after that date.

SEC. 642. DEATH BENEFITS ENHANCEMENT.

(a) FINAL ACTIONS ON FISCAL YEAR 2004 DEATH BENEFITS STUDY.—(1) Congress finds that the study of the Federal death benefits for survivors of deceased members of the Armed Forces under section 647 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1520) has given Congress sufficient insight to initiate action to provide for the enhancement of the current set of death benefits that are provided under law for the survivors.

(2) The Secretary of Defense shall expedite the completion and submission of the final report, which was due on March 1, 2004, under section 647 of the National Defense Authorization Act for Fiscal Year 2004.

(3) It is the sense of Congress that the President should promptly submit to Congress any recommendation for legislation, together with a request for appropriations, that the President determines necessary to implement the death benefits enhancements that are recommended in the final report under section 647 of the National Defense Authorization Act for Fiscal Year 2004.

(b) INCREASES OF DEATH GRATUITY CONSISTENT WITH INCREASES OF RATES OF BASIC PAY.—Section 1478 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting ''(as adjusted under subsection (c)'' before the period at the end of the first sentence; and

(2) by adding at the end the following new subsection:

''(c) Effective on the date on which rates of basic pay under section 204 of this title are increased under section 1009 of title 37 or any other provision of law, the amount of the death gratuity provided under subsection (a) shall be increased by the same overall average percentage of the increase in the rates of basic pay taking effect on that date.''.

(c) FISCAL YEAR 2005 ACTIONS.—At the same time that the President submits to Congress the budget for fiscal year 2006 under section 1105(a) of title 31, United States Code, the President shall submit to the appropriate committees of Congress referred to in subsection (g) a draft or drafts of legislation to provide enhanced death benefits for survivors of deceased members of the uniformed services. The draft legislation shall include provisions for the following:

(1) Revision of the Servicemembers' Group Life Insurance program to provide for—

(A) an increase of the maximum benefit provided under Servicemembers' Group Life Insurance to $350,000, together with an increase, each fiscal year, by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code; and

(B) a minimum benefit of $100,000 at no cost to the insured members of the uniformed services who elect the maximum coverage, together with an increase in such minimum benefit each fiscal year by the same percentage increase as is described in subparagraph (A).

(2) An additional set of death benefits for each member of the uniformed services who dies in the line of duty while on active duty that includes, at a minimum, an additional death gratuity in the amount that—

(A) in the case of a member not described in subparagraph (B), is equal to the sum of—

(i) the total amount of the basic pay to which the deceased member would have been entitled under section 204 of title 37, United States Code, if the member had not died and had continued to serve on active duty for an additional year; and

(ii) the total amount of all allowances and special pays that the member would have been entitled to receive under title 37, United States Code, over the one-year period beginning on the member's date of death if the member had not died and had continued to serve on active duty for an additional year with the unit to which the member was assigned or detailed on such date; and

(B) in the case of a member who dies as a result of an injury caused by or incurred while exposed to hostile action (including any hostile fire or explosion and any hostile action from a terrorist source), is equal to twice the amount calculated under subparagraph (A).

(3) Any other new death benefits or enhancement of existing death benefits that the President recommends.

(4) Retroactive applicability of the benefits referred to in paragraph (2) and, as appropriate, the benefits recommended under paragraph (3) so as to provide the benefits—

(A) for members of the uniformed services who die in line of duty on or after October 7, 2001, of a cause incurred or aggravated while deployed in support of Operation Enduring Freedom; and

(B) for members of the uniformed services who die in line of duty on or after March 19, 2003, of a cause incurred or aggravated while deployed in support of Operation Iraqi Freedom.

(d) CONSULTATION.—The President shall consult with the Secretary of Defense and the Secretary of Veterans Affairs in developing the draft legislation required under subsection (c).

(e) FISCAL YEAR 2006 BUDGET SUBMISSION.—The budget for fiscal year 2006 that is submitted to Congress under section 1105(a) of title 31, United States Code, shall include draft legislation (other than draft appropriations) that includes provisions that, on the basis of the assumption that the draft legislation submitted under subsection (c) would be enacted and would take effect in fiscal year 2006—

(1) would offset fully the increased outlays that would result from enactment of the provisions of the draft legislation submitted under subsection (c), for fiscal year 2006 and each of the ensuing nine fiscal years;

(2) expressly state that they are proposed for the purpose of the offset described in paragraph (1); and

(3) are included in full in the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(d)) with respect to the fiscal years referred to in paragraph (1).

(f) EARLY SUBMISSION OF PROPOSAL FOR ADDITIONAL DEATH BENEFITS.—Congress urges the President to submit the draft of legislation for the additional set of death benefits under paragraph (2) of subsection (c) before the time for submission required under that subsection and as soon as is practicable after the date of the enactment of this Act.

(g) APPROPRIATE COMMITTEES OF CONGRESS.—For the purposes of subsection (c), the appropriate committees of Congress are as follows:

(1) The Committees on Armed Services of the Senate and the House of Representatives, with respect to draft legislation that is within the jurisdiction of such committees.

(2) The Committees on Veterans Affairs of the Senate and the House of Representatives, with respect to draft legislation within the jurisdiction of such committees.

SEC. 643. REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES RATED AS 100 PERCENT.

Section 1414 of title 10, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by inserting after the first sentence the following new sentence: ''During the period beginning on January 1, 2004, and ending on December 31, 2004, payment of retired pay to such a qualified retiree described in subsection (c)(1)(B) is subject to subsection (c).''; and

(B) in the last sentence, by inserting ''(other than a qualified retiree covered by the preceding sentence)'' after ''such a qualified retiree''; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting ''(other than a retiree described by subparagraph (B))'' after ''the retiree'';

(ii) by redesignating subparagraphs (B) through (F) as subparagraphs (C) through (G), respectively; and

(iii) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) For a month for which the retiree receives veterans' disability compensation for a disability rated as 100 percent, $750.'';

(B) by redesignating paragraph (11) as paragraph (12); and

(C) by inserting after paragraph (10) the following new paragraph (11):

''(11) INAPPLICABILITY TO VETERANS WITH DISABILITIES RATED AS 100 PERCENT AFTER CALENDAR YEAR 2004.—This subsection shall not apply to a qualified retiree described by paragraph (1)(B) after calendar year 2004.''.

SEC. 644. FULL SBP SURVIVOR BENEFITS FOR SURVIVING SPOUSES OVER AGE 62.

(a) PHASED INCREASE IN BASIC ANNUITY.—

(1) INCREASE TO 55 PERCENT.—Subsection (a)(1)(B)(i) of section 1451 of title 10, United States Code, is amended by striking ''35 percent of the base amount.'' and inserting ''the product of the base amount and the percent applicable for the month. The percent applicable for a month is 35 percent for months beginning before October 2005, 40 percent for months beginning after September 2005 and before October 2008, 45 percent for months beginning after September 2008, and 55 percent for months beginning after September 2014.''.

(2) RESERVE-COMPONENT ANNUITY.—Subsection (a)(2)(B)(i)(I) of such section is amended by striking ''35 percent'' and inserting ''the percent specified under paragraph (1)(B)(i) as being applicable for the month''.

(3) SPECIAL-ELIGIBILITY ANNUITY.—Subsection (c)(1)(B)(i) of such section is amended—

(A) by striking ''35 percent'' and inserting ''the applicable percent''; and

(B) by adding at the end the following: ''The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for the month.''.

(4) CONFORMING AMENDMENT.—The heading for subsection (d)(2)(A) of such section is amended to read as follows: ''COMPUTATION OF ANNUITY.—''.

(b) PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.—

(1) DECREASING PERCENTAGES.—Section 1457(b) of title 10, United States Code, is amended—

(A) by striking ''5, 10, 15, or 20 percent'' and inserting ''the applicable percent''; and

(B) by inserting after the first sentence the following: ''The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months beginning before October 2005, 15 percent for months beginning after September 2005 and before October 2008, and 10 percent for months beginning after September 2008.''.

(2) REPEAL OF PROGRAM IN 2014.—Effective on October 1, 2014, chapter 73 of such title is amended—

(A) by striking subchapter III; and

(B) by striking the item relating to subchapter III in the table of subchapters at the beginning of that chapter.

(c) RECOMPUTATION OF ANNUITIES.—

(1) REQUIREMENT FOR RECOMPUTATION.—Effective on the first day of each month referred to in paragraph (2)—

(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

(B) each supplemental survivor annuity under section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

(2) TIMES FOR RECOMPUTATION.—The requirements for recomputation of annuities under paragraph (1) apply with respect to the following months:

(A) October 2005.

(B) October 2008.

(C) October 2014.

(d) RECOMPUTATION OF RETIRED PAY REDUCTIONS FOR SUPPLEMENTAL SURVIVOR ANNUITIES.—The Secretary of Defense shall take such actions as are necessitated by the amendments made by subsection (b) and the requirements of subsection (c)(1)(B) to ensure that the reductions in retired pay under section 1460 of title 10, United States Code, are adjusted to achieve the objectives set forth in subsection (b) of that section.

SEC. 645. OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.

(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, during the open enrollment period specified in subsection (f).

(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(A) is entitled to retired pay; or

(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code.

(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

(d) MANNER OF MAKING ELECTIONS.—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section shall be the one-year period beginning on October 1, 2005.

(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(i) ADDITIONAL PREMIUM.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

(i) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

(ii) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

(iii) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(A) Premiums paid under the regulations shall be credited to the Department of Defense Military Retirement Fund.

(B) In this paragraph, the term ''Department of Defense Military Retirement Fund'' means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.

Subtitle E—Other Matters

SEC. 651. INCREASED MAXIMUM PERIOD FOR LEAVE OF ABSENCE FOR PURSUIT OF A PROGRAM OF EDUCATION IN A HEALTH CARE PROFESSION.

Section 708(a) of title 10, United States Code, is amended—

(1) by striking ''for a period not to exceed two years''; and

(2) by adding at the end the following: ''The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.''.

SEC. 652. ELIGIBILITY OF MEMBERS FOR REIMBURSEMENT OF EXPENSES INCURRED FOR ADOPTION PLACEMENTS MADE BY FOREIGN GOVERNMENTS.

Section 1052(g)(3) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

''(D) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which—

''(i) the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

''(ii) a certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).''.

SEC. 653. ACCEPTANCE OF FREQUENT TRAVELER MILES, CREDITS, AND TICKETS TO FACILITATE THE AIR OR SURFACE TRAVEL OF CERTAIN MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES.

Section 2608 of title 10, United States Code, is amended—

(1) by redesignating subsections (g) through (k) as subsections (h) through (l), respectively; and

(2) by inserting after subsection (f) the following new subsection:

''(g) OPERATION HERO MILES.—(1) The Secretary of Defense may use the authority of subsection (a) to accept the donation of frequent traveler miles, credits, and tickets for air or surface transportation issued by any air carrier or surface carrier that serves the public and that consents to such donation, and under such terms and conditions as the air or surface carrier may specify. The Secretary shall designate a single office in the Department of Defense to carry out this subsection, including the establishment of such rules and procedures as may be necessary to facilitate the acceptance of such frequent traveler miles, credits, and tickets.

''(2) Frequent traveler miles, credits, and tickets accepted under this subsection shall be used only in accordance with the rules established by the air carrier or surface carrier that is the source of the miles, credits, or tickets and shall be used only for the following purposes:

''(A) To facilitate the travel of a member of the armed forces who—

''(i) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

''(ii) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member.

''(B) In the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during such deployment, to facilitate the travel of family members of the member to be reunited with the member.

''(3) For the use of miles, credits, or tickets under paragraph (2)(B) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

''(A) eligibility to family members who, by reason of affinity, degree of consanguinity, or otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance;

''(B) the number of family members who may travel; and

''(C) the number of trips that family members may take.

''(4) Notwithstanding paragraph (2), the Secretary of Defense may, in an exceptional case, authorize a person not described in subparagraph (B) of that paragraph to use frequent traveler miles, credits, or a ticket accepted under this subsection to visit a member of the armed forces described in such subparagraph if that person has a notably close relationship with the member. The frequent traveler miles, credits, or ticket may be used by such person only in accordance with such conditions and restrictions as the Secretary determines appropriate and the rules established by the air carrier or surface carrier that is the source of the miles, credits, or ticket.

''(5) The Secretary of Defense shall encourage air carriers and surface carriers to participate in, and to facilitate through minimization of restrictions and otherwise, the donation, acceptance, and use of frequent traveler miles, credits, and tickets under this section.

''(6) The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—

''(A) to promote the donation of frequent traveler miles, credits, and tickets under paragraph (1), except that amounts appropriated to the Department of Defense may not be expended for this purpose; and

''(B) to assist in administering the collection, distribution, and use of donated frequent traveler miles, credits, and tickets.

''(7) Members of the armed forces, family members, and other persons who receive air or surface transportation using frequent traveler miles, credits, or tickets donated under this subsection are deemed to recognize no income from such use. Donors of frequent traveler miles, credits, or tickets under this subsection are deemed to obtain no tax benefit from such donation.

''(8) In this subsection, the term 'family member' has the meaning given that term in section 411h(b)(1) of title 37.''.

SEC. 654. CHILD CARE FOR CHILDREN OF MEMBERS OF ARMED FORCES ON ACTIVE DUTY FOR OPERATION ENDURING FREEDOM OR OPERATION IRAQI FREEDOM.

(a) CHILD CARE FOR CHILDREN WITHOUT ACCESS TO MILITARY CHILD CARE.—(1) In any case where the children of a covered member of the Armed Forces are geographically dispersed and do not have practical access to a military child development center, the Secretary of Defense may, to the extent funds are available for such purpose, provide such funds as are necessary permit the member's family to secure access for such children to State licensed child care and development programs and activities in the private sector that are similar in scope and quality to the child care and development programs and activities the Secretary would otherwise provide access to under subchapter II of chapter 88 of title 10, United States Code, and other applicable provisions of law.

(2) Funds may be provided under paragraph (1) in accordance with the provisions of section 1798 of title 10, United States Code, or by such other mechanism as the Secretary considers appropriate.

(3) The Secretary shall prescribe in regulations priorities for the allocation of funds for the provision of access to child care under paragraph (1) in circumstances where funds are inadequate to provide all children described in that paragraph with access to child care as described in that paragraph.

(b) PRESERVATION OF SERVICES AND PROGRAMS.—The Secretary shall provide for the attendance and participation of children in military child development centers and child care and development programs and activities under subsection (a) in a manner that preserves the scope and quality of child care and development programs and activities otherwise provided by the Secretary.

(c) FUNDING.—Amounts otherwise available to the Department of Defense and the military departments under this Act may be available for purposes of providing access to child care under subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''covered members of the Armed Forces'' means members of the Armed Forces on active duty, including members of the Reserves who are called or ordered to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, for Operation Enduring Freedom or Operation Iraqi Freedom.

(2) The term ''military child development center'' has the meaning given such term in section 1800(1) of title 10, United States Code.

SEC. 655. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

The Consolidated Farm and Rural Development Act is amended by inserting after section 331F (7 U.S.C. 1981f) the following:

''SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

''(a) DEFINITION OF MOBILIZED MILITARY RESERVIST.—In this section, the term 'mobilized military reservist' means an individual who—

''(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

''(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.

''(b) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is rescinded.

''(c) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

''(d) NONACCRUAL OF INTEREST.—Interest on a direct loan made to a borrower described in this section shall not accrue during the period the borrower is a mobilized military reservist.

''(e) BORROWER NOT CONSIDERED TO BE DELINQUENT OR RECEIVING DEBT FORGIVENESS.—Notwithstanding section 373 or any other

provision of this title, a borrower who receives assistance under this section shall not, as a result of the assistance, be considered to be delinquent or receiving debt forgiveness for purposes of receiving a direct or guaranteed loan under this title.''.

TITLE VII—HEALTH CARE

Subtitle A—Enhanced Benefits for Reserves

SEC. 701. DEMONSTRATION PROJECT ON HEALTH BENEFITS FOR RESERVES.

(a) DEMONSTRATION PROJECT REQUIRED.—The Secretary of Defense shall carry out a demonstration project under section 1092 of title 10, United States Code, to assess the need for, and feasibility of, providing benefits under the TRICARE program to members of the Ready Reserve of the Armed Forces who are (1) eligible unemployment compensation recipients, (2) in a period of continuous unemployment from the end of their last month as eligible unemployment compensation recipients, or (3) ineligible for coverage by employer-sponsored health benefits plans for employees.

(b) DEFINITION.—In this section, the term ''eligible unemployment compensation recipient'' has the meaning given such term in section 1076b(j) of title 10, United States Code.

SEC. 702. PERMANENT EARLIER ELIGIBILITY DATE FOR TRICARE BENEFITS FOR MEMBERS OF RESERVE COMPONENTS.

Section 1074(d) of title 10, United States Code, is amended by striking paragraph (3).

SEC. 703. WAIVER OF CERTAIN DEDUCTIBLES FOR MEMBERS ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.

Section 1095d(a) of title 10, United States Code, is amended by striking ''a period of less than one year'' both places that it appears and inserting ''a period of more than 30 days''.

SEC. 704. PROTECTION OF DEPENDENTS FROM BALANCE BILLING.

Section 1079(h)(4) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

''(C) In the case of a member of the reserve components serving on active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title, the Secretary may pay the amount applicable under subparagraph (B) to a dependent of such member who is referred to in subparagraph (A).''.

SEC. 705. PERMANENT EXTENSION OF TRANSITIONAL HEALTH CARE BENEFITS AND ADDITION OF REQUIREMENT FOR PRESEPARATION PHYSICAL EXAMINATION.

(a) PERMANENT REQUIREMENT.—(1) Paragraph (3) of section 1145(a) of title 10, United States Code, is amended to read as follows:

''(3) Transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty.''.

(2) The following provisions of law are repealed:

(A) Section 704 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1527; 10 U.S.C. 1145 note).

(B) Section 1117 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1218; 10 U.S.C. 1145 note).

(b) REQUIREMENT FOR PHYSICAL EXAMINATION.—Such section 1145(a), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

''(4) The Secretary concerned shall require each member referred to in paragraph (1) to undergo a comprehensive physical examination immediately before the member is separated from active duty as described in paragraph (2).''.

SEC. 706. EXPANDED ELIGIBILITY OF READY RESERVE MEMBERS UNDER TRICARE PROGRAM.

(a) UNCONDITIONAL ELIGIBILITY.—Subsection (a) of section 1076b of title 10, United States Code, is amended by striking ''is eligible, subject to subsection (h), to enroll in TRICARE'' and all that follows through ''an employer-sponsored health benefits plan'' and inserting '', except for a member who is enrolled or is eligible to enroll in a health benefits plan under chapter 89 of title 5, is eligible to enroll in TRICARE, subject to subsection (h)''.

(b) PERMANENT AUTHORITY.—Subsection (l) of such section is repealed.

(c) CONFORMING REPEAL OF OBSOLETE PROVISIONS.—Such section is further amended—

(1) by striking subsections (i) and (j); and

(2) by redesignating subsection (k) as subsection (i).

SEC. 707. CONTINUATION OF NON-TRICARE HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN RESERVES CALLED OR ORDERED TO ACTIVE DUTY AND THEIR DEPENDENTS.

(a) REQUIRED CONTINUATION.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1078a the following new section:

''§ 1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty

''(a) PAYMENT OF PREMIUMS.—The Secretary concerned shall pay the applicable premium to continue in force any qualified health benefits plan coverage for the members of the family of an eligible reserve component member for the benefits coverage continuation period if timely elected by the member in accordance with regulations prescribed under subsection (j).

''(b) ELIGIBLE MEMBER; FAMILY MEMBERS.—(1) A member of a reserve component is eligible for payment of the applicable premium for continuation of qualified health benefits plan coverage under subsection (a) while serving on active duty pursuant to a call or order issued under a provision of law referred to in section 101(a)(13)(B) of this title during a war or national emergency declared by the President or Congress.

''(2) For the purposes of this section, the members of the family of an eligible reserve component member include only the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

''(c) QUALIFIED HEALTH BENEFITS PLAN COVERAGE.—For the purposes of this section, health benefits plan coverage for the members of the family of a reserve component member called or ordered to active duty is qualified health benefits plan coverage if—

''(1) the coverage was in force on the date on which the Secretary notified the reserve component member that issuance of the call or order was pending or, if no such notification was provided, the date of the call or order;

''(2) on such date, the coverage applied to the reserve component member and members of the family of the reserve component member; and

''(3) the coverage has not lapsed.

''(d) APPLICABLE PREMIUM.—The applicable premium payable under this section for continuation of health benefits plan coverage for the family members of a reserve component member is the amount of the premium payable by the member for the coverage of the family members.

''(e) MAXIMUM AMOUNT.—The total amount that the Department of Defense may pay for the applicable premium of a health benefits plan for the family members of a reserve component member under this section in a fiscal year may not exceed the amount determined by multiplying—

''(1) the sum of one plus the number of the family members covered by the health benefits plan, by

''(2) the per capita cost of providing TRICARE coverage and benefits for dependents under this chapter for such fiscal year, as determined by the Secretary of Defense.

''(f) BENEFITS COVERAGE CONTINUATION PERIOD.—The benefits coverage continuation period under this section for qualified health benefits plan coverage for the family members of an eligible reserve component member called or ordered to active duty is the period that—

''(1) begins on the date of the call or order; and

''(2) ends on the earlier of—

''(A) the date on which the reserve component member's eligibility for transitional health care under section 1145(a) of this title terminates under paragraph (3) of such section; or

''(B) the date on which the reserve component member elects to terminate the continued qualified health benefits plan coverage of the member's family members.

''(g) EXTENSION OF PERIOD OF COBRA COVERAGE.—Notwithstanding any other provision of law—

''(1) any period of coverage under a COBRA continuation provision (as defined in section 9832(d)(1) of the Internal Revenue Code of 1986) for an eligible reserve component member under this section shall be deemed to be equal to the benefits coverage continuation period for such member under this section; and

''(2) with respect to the election of any period of coverage under a COBRA continuation provision (as so defined), rules similar to the rules under section 4980B(f)(5)(C) of such Code shall apply.

''(h) NONDUPLICATION OF BENEFITS.—A member of the family of a reserve component member who is eligible for benefits under qualified health benefits plan coverage paid on behalf of the reserve component member by the Secretary concerned under this section is not eligible for benefits under the TRICARE program during a period of the coverage for which so paid.

''(i) REVOCABILITY OF ELECTION.—A reserve component member who makes an election under subsection (a) may revoke the election. Upon such a revocation, the member's family members shall become eligible for benefits under the TRICARE program as provided for under this chapter.

''(j) REGULATIONS.—The Secretary of Defense shall prescribe regulations for carrying out this section. The regulations shall include such requirements for making an election of payment of applicable premiums as the Secretary considers appropriate.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1078a the following new item:

''1078b. Continuation of non-TRICARE health benefits plan coverage for dependents of certain Reserves called or ordered to active duty.''.

(b) APPLICABILITY.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department before, on, or after the date of the enactment of this Act, but only with respect

to qualified health benefits plan coverage (as described in subsection (c) of such section) that is in effect on or after the date of the enactment of this Act.

Subtitle B—Other Matters

SEC. 711. REPEAL OF REQUIREMENT FOR PAYMENT OF SUBSISTENCE CHARGES WHILE HOSPITALIZED.

(a) REPEAL.—Section 1075 of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of such title is amended by striking the item relating to section 1075.

SEC. 712. OPPORTUNITY FOR YOUNG CHILD DEPENDENT OF DECEASED MEMBER TO BECOME ELIGIBLE FOR ENROLLMENT IN A TRICARE DENTAL PLAN.

Section 1076a(k)(2) of title 10, United States Code, is amended—

(1) by striking ''under subsection (a) or'' and inserting ''under subsection (a),''; and

(2) by inserting after ''under subsection (f),'' the following: ''or is not enrolled because the dependent is a child under the minimum age for enrollment,''.

SEC. 713. PEDIATRIC DENTAL PRACTICE NECESSARY FOR PROFESSIONAL ACCREDITATION.

Section 1077(c) of title 10, United States Code, is amended—

(1) by striking ''A dependent'' and inserting ''(1) Except as specified in paragraph (2), a dependent''; and

(2) by adding at the end the following new paragraph:

''(2)(A) Dependents 12 years of age or younger who are covered by a dental plan under section 1076a of this title may be treated by postgraduate dental students in a dental treatment facility of the uniformed services accredited by the American Dental Association under a graduate dental education program accredited by the American Dental Association if—

''(i) treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such facility or program, or training in pediatric dental care is necessary for the students to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

''(ii) the caseload of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such facility, program, or students.

''(B) The total number of dependents treated in all facilities of the uniformed services under subparagraph (A) in a fiscal year may not exceed 2,000.''.

SEC. 714. SERVICES OF MARRIAGE AND FAMILY THERAPISTS.

(a) AUTHORITY TO ENTER INTO PERSONAL SERVICES CONTRACTS.—Section 704(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2799; 10 U.S.C. 1091 note) is amended by inserting ''marriage and family therapists certified as such by a certification recognized by the Secretary of Defense,'' after ''psychologists,''.

(b) APPLICABILITY OF LICENSURE REQUIREMENT FOR HEALTH-CARE PROFESSIONALS.—Section 1094(e)(2) of title 10, United States Code, is amended by inserting ''marriage and family therapist certified as such by a certification recognized by the Secretary of Defense,'' after ''psychologist,''.

SEC. 715. CHIROPRACTIC HEALTH CARE BENEFITS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Defense shall establish an oversight advisory committee to provide the Secretary with advice and recommendations regarding the continued development and implementation of an effective program of chiropractic health care benefits for members of the uniformed services on active duty.

(b) MEMBERSHIP.—The advisory committee shall be composed of members selected from among persons who, by reason of education, training, and experience, are experts in chiropractic health care, as follows:

(1) Members appointed by the Secretary of Defense in such number as the Secretary determines appropriate for carrying out the duties of the advisory committee effectively.

(2) A representative of each of the Armed Forces, as designated by the Secretary of the military department concerned.

(c) CHAIRMAN.—The Secretary of Defense shall designate one member of the advisory committee to serve as the Chairman of the advisory committee.

(d) MEETINGS.—The advisory committee shall meet at the call of the Chairman, but not fewer than three times each fiscal year, beginning in fiscal year 2005.

(e) DUTIES.—The advisory committee shall have the following duties:

(1) Review and evaluate the program of chiropractic health care benefits provided to members of the uniformed services on active duty under chapter 55 of title 10, United States Code.

(2) Provide the Secretary of Defense with advice and recommendations as described in subsection (a).

(3) Upon the Secretary's determination that the program of chiropractic health care benefits referred to in paragraph (1) has been fully implemented, prepare and submit to the Secretary a report containing the advisory committee's evaluation of such program as implemented.

(f) APPLICABILITY OF TEMPORARY ORGANIZATIONS LAW.—(1) Section 3161 of title 5, United States Code, shall apply to the advisory committee under this section.

(2) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee under this section.

(g) TERMINATION.—The advisory committee shall terminate 90 days after the date on which the committee submits the report to the Secretary of Defense under subsection (e)(3).

SEC. 716. GROUNDS FOR PRESIDENTIAL WAIVER OF REQUIREMENT FOR INFORMED CONSENT OR OPTION TO REFUSE REGARDING ADMINISTRATION OF DRUGS NOT APPROVED FOR GENERAL USE.

(a) INVESTIGATIONAL NEW DRUGS.—Section 1107(f) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking ''obtaining consent—'' and all that follows through ''(C) is'' and inserting ''obtaining consent is''; and

(2) by striking paragraph (2) and inserting the following new paragraph:

''(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which prior consent for administration of a particular drug is required by reason of a determination by the Secretary of Health and Human Services that such drug is subject to the investigational new drug requirements of section 505(i) of the Federal Food, Drug, and Cosmetic Act.''.

(b) EMERGENCY USE DRUGS.—Section 1107a(a) of such title is amended—

(1) by inserting ''(A)'' after ''PRESIDENT.—(1)'';

(2) by striking ''is not feasible,'' and all that follows through ''members affected, or''; and

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

''(B) The waiver authority provided in subparagraph (A) shall not be construed to apply to any case other than a case in which an individual is required to be informed of an option to accept or refuse administration of a particular product by reason of a determination by the Secretary of Health and Human Services that emergency use of such product is authorized under section 564 of the Federal Food, Drug, and Cosmetic Act.''.

SEC. 717. ELIGIBILITY OF CADETS AND MIDSHIPMEN FOR MEDICAL AND DENTAL CARE AND DISABILITY BENEFITS.

(a) MEDICAL AND DENTAL CARE.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1074a the following new section:

''§ 1074b. Medical and dental care: cadets and midshipmen

''(a) ELIGIBILITY.—Under joint regulations prescribed by the administering Secretaries, the following persons are, except as provided in subsection (c), entitled to the benefits described in subsection (b):

''(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, and a midshipman at the United States Naval Academy, who incurs or aggravates an injury, illness, or disease in the line of duty.

''(2) Each member of, and each designated applicant for membership in, the Senior Reserve Officers' Training Corps who incurs or aggravates an injury, illness, or disease in the line of duty while performing duties under section 2109 of this title.

''(b) BENEFITS.—A person eligible for benefits in subsection (a) for an injury, illness, or disease is entitled to—

''(1) the medical and dental care under this chapter that is appropriate for the treatment of the injury, illness, or disease until the injury, illness, disease, or any resulting disability cannot be materially improved by further hospitalization or treatment; and

''(2) meals during hospitalization.

''(c) EXCEPTION.—A person is not entitled to benefits under subsection (b) for an injury, illness, or disease, or the aggravation of an injury, illness, or disease that is a result of the gross negligence or the misconduct of that person.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1074a the following new item:

''1074b. Medical and dental care: cadets and midshipmen of the service academies.''.

(b) ELIGIBILITY OF ACADEMY CADETS AND MIDSHIPMEN FOR DISABILITY RETIRED PAY.—(1)(A) Section 1217 of title 10, United States Code, is amended to read as follows:

''§ 1217. Cadets, midshipmen, and aviation cadets: applicability of chapter

''(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the United States Naval Academy.

''(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and severance and separation pay to which entitlement is established under this chapter.''.

(B) The item related to section 1217 in the table of sections at the beginning of chapter 61 of such title is amended to read as follows:

''1217. Cadets, midshipmen, and aviation cadets: applicability of chapter.''.

(2) The amendments made by paragraph (1) shall take effect on October 1, 2004.

SEC. 718. CONTINUATION OF SUB-ACUTE CARE FOR TRANSITION PERIOD.

Section 1074j(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.''.

SEC. 719. TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY DISABLED PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) AUTHORITY TO WAIVE DEBT.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, may waive (in whole or in part) the collection of payments otherwise due from a person described in subsection (b) for health benefits received by such person under section 1086 of title 10, United States Code, after the termination of that person's eligibility for such benefits.

(2) If the Secretary of Defense waives collection of payments from a person under paragraph (1), the Secretary may also authorize a continuation of benefits for such person under such section 1086 for a period ending not later than the end of the period specified in subsection (c) of this section.

(b) ELIGIBLE PERSONS.—A person is eligible for relief under subsection (a)(1) if—

(1) the person is described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) except for such paragraph, the person would have been eligible for the health benefits under such section; and

(3) at the time of the receipt of such benefits—

(A) the person satisfied the criteria specified in paragraph (2)(B) of such subsection (d); and

(B) the person was unaware of the loss of eligibility to receive the health benefits.

(c) PERIOD OF APPLICABILITY.—The authority provided under this section to waive collection of payments and to continue benefits shall apply, under terms and conditions prescribed by the Secretary of Defense, to health benefits provided under section 1086 of title 10, United States Code, during the period beginning on July 1, 1999, and ending at the end of December 31, 2004.

(d) CONSULTATION WITH OTHER ADMINISTERING SECRETARIES.—(1) The Secretary of Defense shall consult with the other administering Secretaries in exercising the authority provided in this section.

(2) In this subsection, the term ''administering Secretaries'' has the meaning given such term in section 1072(3) of title 10, United States Code.

SEC. 720. VACCINE HEALTHCARE CENTERS NETWORK.

Section 1110 of title 10, United States Code, is amended by adding at the end the following:

''(c) VACCINE HEALTHCARE CENTERS NETWORK.—(1) The Secretary shall carry out this section through the Vaccine Healthcare Centers Network as established by the Secretary in collaboration with the Director of the Centers for Disease Control and Prevention.

''(2) In addition to conducting the activities described in subsection (b), it shall be the purpose of the Vaccine Healthcare Centers Network to improve—

''(A) the safety and quality of vaccine administration for the protection of members of the armed forces;

''(B) the submission of data to the Vaccine-related Adverse Events Reporting System to include comprehensive content and follow-up data;

''(C) the access to clinical management services to members of the armed forces who experience vaccine adverse events;

''(D) the knowledge and understanding by members of the armed forces and vaccine-providers of immunization benefits and risks.

''(E) networking between the Department of Defense, the Department of Health and Human Services, the Department of Veterans Affairs, and private advocacy and coalition groups with regard to immunization benefits and risks; and

''(F) clinical research on the safety and efficacy of vaccines.

''(3) To achieve the purposes described in paragraph (2), the Vaccine Healthcare Centers Network, in collaboration with the medical departments of the armed forces, shall carry out the following:

''(A)(i) Establish a network of centers of excellence in clinical immunization safety assessment that provides for outreach, education, and confidential consultative and direct patient care services for vaccine related adverse events prevention, diagnosis, treatment and follow-up with respect to members of the armed services.

''(ii) Such centers shall provide expert second opinions for such members regarding medical exemptions under this section and for additional care that is not available at the local medical facilities of such members.

''(B) Develop standardized educational outreach activities to support the initial and ongoing provision of training and education for providers and nursing personnel who are engaged in delivering immunization services to the members of the armed forces.

''(C) Develop a program for quality improvement in the submission and understanding of data that is provided to the Vaccine-related Adverse Events Reporting System, particularly among providers and members of the armed forces.

''(D) Develop and standardize a quality improvement program for the Department of Defense relating to immunization services.

''(E) Develop an effective network system, with appropriate internal and external collaborative efforts, to facilitate integration, educational outreach, research, and clinical management of adverse vaccine events.

''(F) Provide education and advocacy for vaccine recipients to include access to vaccine safety programs, medical exemptions, and quality treatment.

''(G) Support clinical studies with respect to the safety and efficacy of vaccines, including outcomes studies on the implementation of recommendations contained in the clinical guidelines for vaccine-related adverse events.

''(H) Develop implementation recommendations for vaccine exemptions or alternative vaccine strategies for members of the armed forces who have had prior, or who are susceptible to, serious adverse events, including those with genetic risk factors, and the discovery of treatments for adverse events that are most effective.

''(4) It is the sense of the Senate—

''(A) to recognize the important work being done by the Vaccine Healthcare Center Network for the members of the armed forces; and

''(B) that each of the military departments (as defined in section 102 of title 5, United States Code) is strongly encouraged to fund the Vaccine Healthcare Center Network.''.

SEC. 721. USE OF DEPARTMENT OF DEFENSE FUNDS FOR ABORTIONS IN CASES OF RAPE AND INCEST.

Section 1093(a) of title 10, United States Code, is amended by inserting before the period at the end the following: ''or in a case in which the pregnancy is the result of an act of rape or incest''.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

SEC. 801. RESPONSIBILITIES OF ACQUISITION EXECUTIVES AND CHIEF INFORMATION OFFICERS UNDER THE CLINGER-COHEN ACT.

(a) ACQUISITIONS OF INFORMATION TECHNOLOGY EQUIPMENT INTEGRAL TO A WEAPON OR WEAPON SYSTEM.—(1) Chapter 131 of title 10, United States Code, is amended by inserting after section 2223 the following:

''§ 2223a. Acquisition of information technology equipment integral to a weapon or a weapon system

''(a) RESPONSIBILITIES OF ACQUISITION EXECUTIVES.—The acquisition executive of each military department shall be responsible for ensuring that, with regard to a weapon or weapon system acquired or to be acquired by or for that military department—

''(1) the acquisition of information technology equipment that is integral to the weapon or a weapon system is conducted in a manner that is consistent with the capital planning, investment control, and performance and results-based management processes and requirements provided under sections 11302, 11303, 11312, and 11313 of title 40, to the extent that such processes requirements are applicable to the acquisition of such equipment;

''(2) issues of spectrum availability, interoperability, and information security are appropriately addressed in the development of the weapon or weapon system; and

''(3) in the case of information technology equipment that is to be incorporated into a weapon or a weapon system under a major defense acquisition program, the information technology equipment is incorporated in a manner that is consistent with—

''(A) the planned approach to applying certain provisions of law to major defense acquisition programs following the evolutionary acquisition process that the Secretary of Defense reported to Congress under section 802 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2602);

''(B) the acquisition policies that apply to spiral development programs under section 803 of such Act (116 Stat. 2603; 10 U.S.C. 2430 note); and

''(C) the software acquisition processes of the military department or Defense Agency concerned under section 804 of such Act (116 Stat. 2604; 10 U.S.C. 2430 note).

''(b) BOARD OF SENIOR ACQUISITION OFFICIALS.—(1) The Secretary of Defense shall establish a board of senior acquisition officials to develop policy and provide oversight on the implementation of the requirements of this section and chapter 113 of title 40 in procurements of information technology equipment that is integral to a weapon or a weapon system.

''(2) The board shall be composed of the following officials:

''(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall be the Chairman.

''(B) The acquisition executives of the military departments.

''(C) The Chief Information Officer of the Department of Defense.

''(3) Any question regarding whether information technology equipment is integral to

a weapon or weapon system shall be resolved by the board in accordance with policies established by the board.

''(c) INAPPLICABILITY OF OTHER LAWS.—The following provisions of law do not apply to information technology equipment that is integral to a weapon or a weapon system:

''(1) Section 11315 of title 40.

''(2) The policies and procedures established under section 11316 of title 40.

''(3) Subsections (d) and (e) of section 811 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–211), and the requirements and prohibitions that are imposed by Department of Defense Directive 5000.1 pursuant to subsections (b) and (c) of such section.

''(4) Section 351 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2516; 10 U.S.C. 221 note).

''(d) DEFINITIONS.—In this section:

''(1) The term 'acquisition executive', with respect to a military department, means the official who is designated as the senior procurement executive of the military department under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

''(2) The term 'information technology' has the meaning given such term in section 11101 of title 40.

''(3) The term 'major defense acquisition program' has the meaning given such term in section 2430 of this title.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2223 the following new item:

''2223a. Acquisition of information technology equipment integral to a weapon or a weapon system.''.

(b) CONFORMING AMENDMENTS.—Section 2223 of such title is amended—

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

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

''(c) EQUIPMENT INTEGRAL TO A WEAPON OR WEAPON SYSTEM.—(1) In the case of information technology equipment that is integral to a weapon or weapon system acquired or to be acquired by or for a military department, the responsibilities under this section shall be performed by the acquisition executive of that military department pursuant to the guidance and oversight of the board of senior acquisition officials established under section 2223a(b) of this title.

''(2) In this subsection, the term 'acquisition executive' has the meaning given said term in section 2223a(d) of this title.''.

SEC. 802. SOFTWARE-RELATED PROGRAM COSTS UNDER MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) CONTENT OF QUARTERLY UNIT COST REPORT.—Subsection (b) of section 2433 of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(5) Any significant changes in the total program cost for development and procurement of the software component of the program, schedule milestones for the software component of the program, or expected performance for the software component of the program that are known, expected, or anticipated by the program manager.''.

(b) CONTENT OF SELECTED ACQUISITION REPORT.—(1) Subsection (g)(1) of such section is amended by adding at the end the following new subparagraph:

''(Q) In any case in which one or more problems with the software component of the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.''.

(2) Section 2432(e) of title 10, United States Code, is amended—

(A) by redesignating paragraphs (7), (8), and (9), as paragraphs (8), (9) and (10), respectively; and

(B) by inserting after paragraph (6) the following new paragraph (7):

''(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program, schedule milestones for the software component of the program, or expected performance for the software component of the program that are known, expected, or anticipated by the program manager.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004, and shall apply with respect to reports due to be submitted to Congress on or after such date.

SEC. 803. INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PURCHASES THROUGH GSA CLIENT SUPPORT CENTERS.

(a) LIMITATION.—No official of the Department of Defense may place an order for, make a purchase of, or otherwise procure property or services in an amount in excess of $100,000 through any particular GSA Client Support Center until the Inspector General of the Department of Defense has, after the date of the enactment of this Act—

(1) reviewed the policies, procedures, and internal controls of such Client Support Center in consultation with the Inspector General of the General Services Administration; and

(2) certified in writing to the Secretary of Defense and the Administrator of General Services that such policies, procedures, and internal controls are adequate to ensure the compliance of such Client Support Center with the requirements of law and regulations that are applicable to orders, purchases, and other procurements of property and services.

(b) GSA CLIENT SUPPORT CENTER DEFINED.—In this section, the term ''GSA Client Support Center'' means a Client Support Center of the Federal Technology Service of the General Services Administration.

(c) EFFECTIVE DATE AND APPLICABILITY.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to orders, purchases, and other procurements that are initiated by the Department of Defense with a GSA Client Support Center on or after such date.

SEC. 804. DEFENSE COMMERCIAL SATELLITE SERVICES PROCUREMENT PROCESS.

(a) REQUIREMENT FOR DETERMINATION.—The Secretary of Defense shall review alternative mechanisms for procuring commercial satellite services and provide guidance to the Director of the Defense Information Systems Agency and the Secretaries of the military departments on how such procurements should be conducted. The alternative procurement mechanisms reviewed by the Secretary of Defense shall, at a minimum, include the following:

(1) Procurement under indefinite delivery, indefinite quantity contracts of the Federal Technology Service of the General Services Administration.

(2) Procurement directly from commercial sources that are qualified as described in subsection (b), using full and open competition (as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))).

(3) Procurement by any other means that has been used by the Director of the Defense Information Systems Agency or the Secretary of a military department to enter into a contract for the procurement of commercial satellite services that is in force on the date of the enactment of this Act.

(b) QUALIFIED SOURCES.—A source of commercial satellite services referred to in paragraph (2) of subsection (a) is a qualified source if the source is incorporated under the laws of a State of the United States and is either—

(1) a source of commercial satellite services under a Federal Technology Service contract for the procurement of commercial satellite services described in paragraph (1) of such subsection that is in force on the date of the enactment of this Act; or

(2) a source of commercial satellite services that meets qualification requirements (as defined in section 2319 of title 10, United States Code, and established in accordance with that section) to enter into a Federal Technology Service contract for the procurement of commercial satellite services.

(c) REPORT.—Not later than April 30, 2005, the Secretary of Defense shall submit to Congress a report setting forth the conclusions resulting from the Secretary's review under subsection (a). The report shall include—

(1) the guidance provided under such subsection; and

(2) a discussion of the rationale for that guidance.

SEC. 805. REVISION AND EXTENSION OF AUTHORITY FOR ADVISORY PANEL ON REVIEW OF GOVERNMENT PROCUREMENT LAWS AND REGULATIONS.

(a) RELATIONSHIP OF RECOMMENDATIONS TO SMALL BUSINESSES.—Section 1423 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 106–136; 117 Stat. 1669; 41 U.S.C. 405 note) is amended—

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

(2) by inserting after subsection (c) the following new subsection (d):

''(d) ISSUES RELATING TO SMALL BUSINESSES.—In developing recommendations under subsection (c)(2), the panel shall—

''(1) consider the effects of its recommendations on small business concerns; and

''(2) include any recommended modifications of laws, regulations, and policies that the panel considers necessary to enhance and ensure competition in contracting that affords small business concerns meaningful opportunity to participate in Federal Government contracts.''.

(b) REVISION AND EXTENSION OF REPORTING REQUIREMENT.—Section 1423(d) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1669; 41 U.S.C. 405 note) is amended—

(1) by striking ''one year after the establishment of the panel'' and inserting ''one year after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005'';

(2) by striking ''Services and'' both places it appears and inserting ''Services,'';

(3) by inserting '', and Small Business'' after ''Government Reform''; and

(4) by inserting '', and Small Business and Entrepreneurship'' after ''Governmental Affairs''.

Subtitle B—General Contracting Authorities, Procedures, and Limitations, and Other Matters

SEC. 811. INCREASED THRESHOLDS FOR APPLICABILITY OF CERTAIN REQUIREMENTS.

(a) SENIOR PROCUREMENT EXECUTIVE APPROVAL OF USE OF PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.—Section 2304(f)(1)(B) of title 10, United States Code, is amended by striking ''$50,000,000'' both places it appears and inserting ''$75,000,000''.

(b) INFORMATION ON SUBCONTRACTING AUTHORITY OF DEFENSE CONTRACTOR PERSONNEL.—Section 2416(d) of such title is

amended by striking ''$500,000'' and inserting ''$1,000,000''.

SEC. 812. PERIOD FOR MULTIYEAR TASK AND DELIVERY ORDER CONTRACTS.

(a) REVISED MAXIMUM PERIOD.—Section 2304a(f) of title 10, United States Code, is amended by striking ''a total period of not more than five years.'' and inserting ''any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed eight years unless such head of an agency personally determines in writing that exceptional circumstances necessitate a longer contract period.''.

(b) ANNUAL REPORT.—Not later than 60 days after the end of each of fiscal years 2005 through 2009, the Secretary of Defense shall submit to Congress a report setting forth each extension of a contract period to a total of more than eight years that was granted for task and delivery order contracts of the Department of Defense during such fiscal year under section 2304a(f) of title 10, United States Code. The report shall include, with respect to each such contract period extension—

(1) a discussion of the exceptional circumstances on which the extension was based; and

(2) the justification for the determination of exceptional circumstances.

SEC. 813. SUBMISSION OF COST OR PRICING DATA ON NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.

(a) INAPPLICABILITY OF COMMERCIAL ITEMS EXCEPTION TO NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.—Subsection (b) of section 2306a of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(3) NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.—(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000.

''(B) In this paragraph, the term 'noncommercial modification', with respect to a commercial item, means a modification of such item that is not a modification described in section 4(12)(C)(i) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(C)(i)).

''(C) Nothing in subparagraph (A) shall be construed—

''(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial item; or

''(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial item other than the cost and pricing of noncommercial modifications of such item.''.

(b) EFFECTIVE DATE AND APPLICABILITY.—Paragraph (3) of section 2306a of title 10, United States Code (as added by subsection (a)), shall take effect on January 1, 2005, and shall apply with respect to offers submitted, and to modifications of contracts or subcontracts made, on or after that date.

SEC. 814. DELEGATIONS OF AUTHORITY TO MAKE DETERMINATIONS RELATING TO PAYMENT OF DEFENSE CONTRACTORS FOR BUSINESS RESTRUCTURING COSTS.

Section 2325(a)(2) of title 10, United States Code, is amended—

(1) by striking ''paragraph (1) to an official'' and all that follows and inserting ''paragraph (1), with respect to a business combination, to an official of the Department of Defense—''; and

(2) by adding at the end the following:

''(A) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed $25,000,000 over a 5-year period; or

''(B) below the level of the Director of the Defense Contract Management Agency for all other cases.''.

SEC. 815. LIMITATION REGARDING SERVICE CHARGES IMPOSED FOR DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES.

(a) LIMITATION.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2382 the following new section 2383:

''§ 2383. Procurements through contracts of other agencies: service charges

''(a) LIMITATION.—The head of an agency may not procure goods or services (under section 1535 of title 31, pursuant to a designation under section 11302(e) of title 40, or otherwise) through a contract entered into by an agency outside the Department of Defense if the amount charged such head of an agency by the contracting agency for the goods or services includes a service charge in a total amount that exceeds one percent of the amount charged by the contractor for such goods or services under the contract.

''(b) WAIVER AUTHORITY.—(1) The appropriate official of the Department of Defense may waive the limitation in subsection (a) in the case of any procurement for which that official determines that it is in the national security interests of the United States to do so.

''(2) The appropriate official for exercise of the waiver authority under paragraph (1) is as follows:

''(A) In the case of a procurement by a Defense Agency or Department of Defense Field Activity, the Secretary of Defense.

''(B) In the case of a procurement for a military department, the Secretary of that military department.

''(3)(A) The Secretary of Defense may not delegate the authority under paragraph (1) to any person other than the Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(B) The Secretary of a military department may not delegate the authority under paragraph (1) to any person other than the acquisition executive of that military department.

''(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

''(1) Printing, binding, or blank-book work to which section 502 of title 44 applies.

''(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

''(d) INAPPLICABILITY TO COAST GUARD AND NASA.—This section does not apply to the Coast Guard when it is not operating as a service in the Navy or to the National Aeronautics and Space Administration.

''(e) DEFINITIONS.—In this section:

''(1) The term 'head of an agency' has the meaning given such term in section 2302 of this title.

''(2) The term 'acquisition executive', with respect to a military department, means the official who is designated as the senior procurement executive of that military department under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2382 the following new item:

''2383. Procurements through contracts of other agencies: service charges.''.

(b) EFFECTIVE DATE AND APPLICABILITY.—Section 2383 of title 10, United States Code, shall take effect on October 1, 2004, and shall apply with respect to orders for goods or services that are issued by the head of an agency (as defined in section 2302 of such title) on or after such date.

SEC. 816. SENSE OF THE SENATE ON EFFECTS OF COST INFLATION ON THE VALUE RANGE OF THE CONTRACTS TO WHICH A SMALL BUSINESS CONTRACT RESERVATION APPLIES.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) in the administration of the requirement for reservation of contracts for small businesses under subsection (j) of section 15 of the Small Business Act (15 U.S.C. 644), the maximum amount in the contract value range provided under that subsection should be treated as being adjusted to the same amount to which the simplified acquisition threshold is increased whenever such threshold is increased under law; and

(2) the Administrator for Federal Procurement Policy, in consultation with the Federal Acquisition Regulatory Council, should ensure that appropriate governmentwide policies and procedures are in place—

(A) to monitor socioeconomic data concerning purchases made by means of purchase cards or credit cards issued for use in transactions on behalf of the Federal Government; and

(B) to encourage the placement of a fair portion of such purchases with small businesses consistent with governmentwide goals for small business prime contracting established under section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

(b) SIMPLIFIED ACQUISITION THRESHOLD DEFINED.—In this section, the term ''simplified acquisition threshold'' has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

Subtitle C—Extensions of Temporary Program Authorities

SEC. 821. EXTENSION OF CONTRACT GOAL FOR SMALL DISADVANTAGED BUSINESS AND CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

Section 2323(k) of title 10, United States Code, is amended by striking ''2006'' both places it appears and inserting ''2009''.

SEC. 822. EXTENSION OF MENTOR-PROTEGE PROGRAM.

Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is amended—

(1) in subsection (j)—

(A) in paragraph (1), by striking ''September 30, 2005'' and inserting ''September 30, 2010''; and

(B) in paragraph (2), by striking ''September 30, 2008'' and inserting ''September 30, 2013''; and

(2) in subsection (l)(3), by striking ''2007'' and inserting ''2012''.

SEC. 823. EXTENSION OF TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.

Section 834(e) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 15 U.S.C. 637 note) is amended by striking ''September 30, 2005'' and inserting ''September 30, 2010''.

SEC. 824. EXTENSION OF PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES.

Section 141(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 4543 note) is amended by striking ''through 2004'' in the first sentence and inserting ''through 2009''.

Subtitle D—Industrial Base Matters

SEC. 831. COMMISSION ON THE FUTURE OF THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission on the Future of the National Technology and Industrial Base (hereafter in this section referred to as the ''Commission'').

(b) MEMBERSHIP.—(1) The Commission shall be composed of 12 members appointed by the President.

(2) The members of the Commission shall include—

(A) persons with extensive experience and national reputations for expertise in the defense industry, commercial industries that support the defense industry, and the economics, finance, national security, international trade, or foreign policy areas; and

(B) persons who are representative of labor organizations associated with the defense industry, and persons who are representative of small business concerns or organizations of small business concerns that are involved in Department of Defense contracting and other Federal Government contracting.

(3) The appointment of the members of the Commission under this subsection shall be made not later than March 1, 2005.

(4) Members shall be appointed for the life of the Commission. A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(5) The President shall designate one member of the Commission to serve as the Chairman of the Commission.

(c) MEETINGS.—(1) The Commission shall meet at the call of the Chairman.

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

(d) DUTIES.—(1) The Commission shall—

(A) study the issues associated with the future of the national technology and industrial base in the global economy, particularly with respect to its effect on United States national security; and

(B) assess the future ability of the national technology and industrial base to attain the national security objectives set forth in section 2501 of title 10, United States Code.

(2) In carrying out the study and assessment under paragraph (1), the Commission shall consider the following matters:

(A) Existing and projected future capabilities of the national technology and industrial base.

(B) The impact on the national technology and industrial base of civil-military integration and the growing dependence of the Department of Defense on the commercial market for defense products and services.

(C) Any current or projected shortages of a critical technology (as defined in section 2500(6) of title 10, United States Code), or the raw materials necessary for the production of such technology, that could adversely affect the national security of the United States.

(D) The effects of domestic source restrictions on the strength of the national technology and industrial base.

(E) The effects of the policies and practices of United States allies and trading partners on the national technology and industrial base.

(F) The effects on the national technology and industrial base of laws and regulations related to international trade and the export of defense technologies and dual-use technologies.

(G) The adequacy of programs that support science and engineering education, including programs that support defense science and engineering efforts at institutions of higher learning, with respect to meeting the needs of the national technology and industrial base.

(H) The implementation of policies and planning required under subchapter II of chapter 148 of title 10, United States Code, and other provisions of law designed to support the national technology and industrial base.

(I) The role of the Manufacturing Technology program, other Department of Defense research and development programs, and the utilization of the authorities of the Defense Production Act of 1950 to provide transformational breakthroughs in advanced manufacturing technologies and processes that ensure the strength and productivity of the national technology and industrial base.

(J) The role of small business concerns in strengthening the national technology and industrial base.

(e) REPORT.—Not later than March 1, 2007, the Commission shall submit a report on its activities to the President and Congress. The report shall include the following matters:

(1) The findings and conclusions of the Commission.

(2) The recommendations of the Commission for actions by Federal Government officials to support the maintenance of a robust national technology and industrial base in the 21st century.

(3) The recommendations of the Commission for addressing shortages in critical technologies, and shortages of raw materials necessary for the production of critical technologies, that could adversely affect the national security of the United States.

(4) Any recommendations for legislation or changes in regulations to support the implementation of the findings of the Commission.

(5) A discussion of appropriate measures to implement the recommendations of the Commission.

(f) ADMINISTRATIVE REQUIREMENTS AND AUTHORITIES.—(1) The Director of the Office of Management and Budget shall ensure that the Commission is provided such administrative services, facilities, staff, and other support services as may be necessary for the Commission to carry out its duties. Expenses of the Commission shall be paid out of funds available to the Director.

(2) The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.

(3) The Commission may secure directly from any Federal department or agency such information as the commission considers necessary to carry out the provisions of this section. Upon a request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) PERSONNEL MATTERS.—(1) Members of the Commission shall serve without compensation for their service on the Commission, except that each member of the Commission who is not an officer or employee of the United States shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(2) Section 3161 of title 5, United States Code, shall apply to the Commission, except that—

(A) members of the Commission shall not be entitled to pay for services under subsection (d) of such section; and

(B) subsection (b)(2) of such section shall not apply to the employees of the Commission.

(h) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(i) TERMINATION.—The Commission shall terminate 30 days after the date on which the Commission submits its report under subsection (e).

(j) DEFINITION OF NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—In this section, the term ''national technology and industrial base'' has the meaning given such term in section 2500 of title 10, United States Code.

SEC. 832. WAIVER AUTHORITY FOR DOMESTIC SOURCE OR CONTENT REQUIREMENTS.

(a) AUTHORITY.—Subchapter V of chapter 148 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2539c. Waiver of domestic source or content requirements

''(a) AUTHORITY.—Except as provided in subsection (f), the Secretary of Defense may waive the application of any domestic source requirement or domestic content requirement referred to in subsection (b) and thereby authorize the procurement of items that are grown, reprocessed, reused, produced, or manufactured—

''(1) in a foreign country that has a Declaration of Principles with the United States;

''(2) in a foreign country that has a Declaration of Principles with the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a Declaration of Principles with the United States; or

''(3) in the United States substantially from components and materials grown, reprocessed, reused, produced, or manufactured in the United States or any foreign country that has a Declaration of Principles with the United States.

''(b) COVERED REQUIREMENTS.—For purposes of this section:

''(1) A domestic source requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item that is grown, reprocessed, reused, produced, or manufactured in the United States or by a manufacturer that is a part of the national technology and industrial base (as defined in section 2500(1) of this title).

''(2) A domestic content requirement is any requirement under law that the Department of Defense satisfy its requirements for an item by procuring an item produced or manufactured partly or wholly from components and materials grown, reprocessed, reused, produced, or manufactured in the United States.

''(c) APPLICABILITY.—The authority of the Secretary to waive the application of a domestic source or content requirements under subsection (a) applies to the procurement of items for which the Secretary of Defense determines that—

''(1) application of the requirement would impede the reciprocal procurement of defense items under a Declaration of Principles with the United States; and

''(2) such country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

''(d) LIMITATION ON DELEGATION.—The authority of the Secretary to waive the application of domestic source or content requirements under subsection (a) may not be delegated to any officer or employee other than

the Under Secretary of Defense for Acquisition, Technology and Logistics.

''(e) CONSULTATIONS.—The Secretary may grant a waiver of the application of a domestic source or content requirement under subsection (a) only after consultation with the United States Trade Representative, the Secretary of Commerce, and the Secretary of State.

''(f) LAWS NOT WAIVABLE.—The Secretary of Defense may not exercise the authority under subsection (a) to waive any domestic source or content requirement contained in any of the following laws:

''(1) The Small Business Act (15 U.S.C. 631 et seq.).

''(2) The Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

''(3) Sections 7309 and 7310 of this title.

''(4) Section 2533a of this title.

''(g) RELATIONSHIP TO OTHER WAIVER AUTHORITY.—The authority under subsection (a) to waive a domestic source requirement or domestic content requirement is in addition to any other authority to waive such requirement.

''(h) CONSTRUCTION WITH RESPECT TO LATER ENACTED LAWS.—This section may not be construed as being inapplicable to a domestic source requirement or domestic content requirement that is set forth in a law enacted after the enactment of this section solely on the basis of the later enactment.

''(i) DECLARATION OF PRINCIPLES.—(1) In this section, the term 'Declaration of Principles' means a written understanding (including any Statement of Principles) between the Department of Defense and its counterpart in a foreign country signifying a cooperative relationship between the Department and its counterpart to standardize or make interoperable defense equipment used by the armed forces and the armed forces of the foreign country across a broad spectrum of defense activities, including—

''(A) harmonization of military requirements and acquisition processes;

''(B) security of supply;

''(C) export procedures;

''(D) security of information;

''(E) ownership and corporate governance;

''(F) research and development;

''(G) flow of technical information; and

''(H) defense trade.

''(2) A Declaration of Principles is underpinned by a memorandum of understanding or other agreement providing for the reciprocal procurement of defense items between the United States and the foreign country concerned without unfair discrimination in accordance with section 2531 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 2539b the following new item:

''2539c. Waiver of domestic source or content requirements.''.

SEC. 833. CONSISTENCY WITH UNITED STATES OBLIGATIONS UNDER TRADE AGREEMENTS.

No provision of this Act or any amendment made by this Act shall apply to a procurement by or for the Department of Defense to the extent that the Secretary of Defense, in consultation with the Secretary of Commerce, the United States Trade Representative, and the Secretary of State, determines that it is inconsistent with United States obligations under a trade agreement.

SEC. 834. REPEAL OF CERTAIN REQUIREMENTS AND LIMITATIONS RELATING TO THE DEFENSE INDUSTRIAL BASE.

(a) ESSENTIAL ITEM IDENTIFICATION AND DOMESTIC PRODUCTION CAPABILITIES IMPROVEMENT.—Sections 812, 813, and 814 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1542, 1543, 1545; 10 U.S.C. 2501 note) are repealed.

(b) ELIMINATION OF UNRELIABLE SOURCE FOR ITEMS AND COMPONENTS.—Section 821 of such Act (117 Stat. 1546; 10 U.S.C. 2534 note) is repealed.

Subtitle E—Defense Acquisition and Support Workforce

SEC. 841. LIMITATION AND REINVESTMENT AUTHORITY RELATING TO REDUCTION OF THE DEFENSE ACQUISITION AND SUPPORT WORKFORCE.

(a) LIMITATION.—Notwithstanding any other provision of law, the defense acquisition and support workforce may not be reduced, during fiscal years 2005, 2006, and 2007, below the level of that workforce as of September 30, 2003, determined on the basis of full-time employee equivalence, except as may be necessary to strengthen the defense acquisition and support workforce in higher priority positions in accordance with this section.

(b) INCREASE AND REALIGNMENT OF WORKFORCE.—(1)(A) During fiscal years 2005, 2006, and 2007, the Secretary of Defense shall increase the number of persons employed in the defense acquisition and support workforce as follows:

(i) During fiscal year 2005, to 105 percent of the baseline number (as defined in subparagraph (B)).

(ii) During fiscal year 2006, to 110 percent of the baseline number.

(iii) During fiscal year 2007, to 115 percent of the baseline number.

(B) In this paragraph, the term ''baseline number'', with respect to persons employed in the defense acquisition and support workforce, means the number of persons employed in such workforce as of September 30, 2003 (determined on the basis of full-time employee equivalence).

(C) The Secretary of Defense may waive a requirement in subparagraph (A) and, subject to subsection (a), employ in the defense acquisition and support workforce a lesser number of employees if the Secretary determines and certifies to the congressional defense committees that the cost of increasing such workforce to the larger size as required under that subparagraph would exceed the savings to be derived from the additional oversight that would be achieved by having a defense acquisition and support workforce of such larger size.

(2) During fiscal years 2005, 2006, and 2007, the Secretary of Defense may realign any part of the defense acquisition and support workforce to support reinvestment in other, higher priority positions in such workforce.

(c) HIGHER PRIORITY POSITIONS.—For the purposes of this section, higher priority positions in the defense acquisition and support workforce include the following positions:

(1) Positions the responsibilities of which include drafting performance-based work statements for services contracts and overseeing the performance of contracts awarded pursuant to such work statements.

(2) Positions the responsibilities of which include conducting spending analyses, negotiating company-wide pricing agreements, and taking other measures to reduce contract costs.

(3) Positions the responsibilities of which include reviewing contractor quality control systems, assessing and analyzing quality deficiency reports, and taking other measures to improve product quality.

(4) Positions the responsibilities of which include effectively conducting public-private competitions in accordance with Office of Management and Budget Circular A–76.

(5) Any other positions in the defense acquisition and support workforce that the Secretary of Defense identifies as being higher priority positions that are staffed at levels not likely to ensure efficient and effective performance of all of the responsibilities of those positions.

(d) STRATEGIC ASSESSMENT AND PLAN.—(1) The Secretary of Defense shall—

(A) assess the extent to which the Department of Defense can recruit, retain, train, and provide professional development opportunities for acquisition professionals over the 10-fiscal year period beginning with fiscal year 2005; and

(B) develop a human resources strategic plan for the defense acquisition and support workforce that includes objectives and planned actions for improving the management of such workforce.

(2) The Secretary shall submit to Congress, not later than April 1, 2005, a report on the progress made in—

(A) completing the assessment required under paragraph (1); and

(B) completing and implementing the strategic plan required under such paragraph.

(e) DEFENSE ACQUISITION AND SUPPORT WORKFORCE DEFINED.—In this section, the term ''defense acquisition and support workforce'' means members of the Armed Forces and civilian personnel who are assigned to, or are employed in, an organization of the Department of Defense that has acquisition as its predominant mission, as determined by the Secretary of Defense.

SEC. 842. DEFENSE ACQUISITION WORKFORCE IMPROVEMENTS.

(a) SELECTION CRITERIA FOR ACQUISITION CORPS AND FOR CRITICAL ACQUISITION POSITIONS.—(1) Section 1732(b)(1)(A) of title 10, United States Code, is amended by striking ''within grade GS–13 or above of'' and inserting ''for which the employee is being paid at a rate of basic pay that equals or exceeds the minimum rate of basic pay provided for grade GS–13 under''.

(2) Section 1733(b)(1)(A)(i) of such title is amended by striking ''in a position within grade GS–14 or above of the General Schedule, or'' and inserting ''who is currently serving in a position for which the employee is being paid at a rate of basic pay that equals or exceeds the minimum rate of basic pay provided for grade GS–14 under the General Schedule or is required to be filled by an employee who is''.

(b) SCHOLARSHIP PROGRAM.—Section 1742 of such title is amended—

(1) by inserting ''(a) REQUIRED PROGRAMS.—'' before ''The Secretary of Defense shall conduct''; and

(2) by adding at the end the following new subsection:

''(b) SCHOLARSHIP PROGRAM REQUIREMENTS.—(1) Each recipient of a scholarship under a program conducted under subsection (a)(3) shall be required to sign a written agreement that sets forth the terms and conditions of the scholarship. The agreement shall include the following:

''(A) Criteria for the recipient's continued eligibility for the scholarship.

''(B) The terms of any requirement for the recipient to reimburse the United States for educational assistance provided under the scholarship upon—

''(i) a failure by the recipient to satisfy the criteria for continued eligibility for the scholarship; or

''(ii) a termination of the recipient's service in the Department of Defense before the end of any period of obligated service provided in the agreement, as described in paragraph (2).

''(2) Subject to paragraph (3)(C), a recipient of a scholarship under the program shall reimburse the United States the total amount of educational assistance provided to the recipient under the program if the recipient is voluntarily separated from service or involuntarily separated for cause from the Department of Defense before the end of any

period for which the recipient has agreed, as a condition of the scholarship, to continue in the service of the Department of Defense in an acquisition position.

''(3)(A) If an employee fails to fulfill an agreement to pay the Government any amount of educational assistance provided to that person under the program, a sum equal to such amount of the educational assistance is recoverable by the Government from the employee or his estate by—

''(i) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

''(ii) such other method as is provided by law for the recovery of amounts owing to the Government.

''(B) An obligation to reimburse the United States under an agreement entered into under this subsection is for all purposes a debt owed to the United States.

''(C) The Secretary of Defense may waive in whole or in part a reimbursement required under this subsection or under an agreement entered into under this subsection if the Secretary determines that the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(D) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement entered into under this subsection does not discharge a person executing the agreement from a debt arising under this subsection or such agreement.

''(4) Nothing in this subsection shall be considered to require that a position be offered to a recipient of a scholarship under the program after such recipient successfully completes the course of education for which the scholarship is granted. However, the agreement entered into under this subsection with respect to such scholarship shall be considered terminated if the recipient is not, within the time specified in the agreement, offered a full-time acquisition position in the Department of Defense that—

''(A) is commensurate with the recipient's academic degree and experience; and

''(B) is—

''(i) in the excepted service, if the recipient has not previously acquired competitive status, with the right, after successful completion of two years of service and such other requirements as the Office of Personnel Management may prescribe, to be appointed to a position in the competitive service, notwithstanding subchapter I of chapter 33 of title 5; or

''(ii) in the competitive service, if the recipient has previously acquired competitive status.''.

(c) AUTHORITY TO ESTABLISH DIFFERENT MINIMUM REQUIREMENTS.—(1) Section 1764(b) of such title is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph (5):

''(5) Deputy program manager.''.

(2) Paragraph (1) of such section is amended by striking ''in paragraph (5)'' and inserting ''in paragraph (6)''.

Subtitle F—Public-Private Competitions

SEC. 851. PUBLIC-PRIVATE COMPETITION FOR WORK PERFORMED BY CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE.

(a) LIMITATION.—Section 2461(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(5)(A) Notwithstanding subsection (d), a function of the Department of Defense performed by 10 or more civilian employees may not be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition process that—

''(i) formally compares the cost of civilian employee performance of that function with the costs of performance by a contractor;

''(ii) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A–76, as implemented on May 29, 2003;

''(iii) requires continued performance of the function by civilian employees unless the competitive sourcing official concerned determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of $10,000,000 or 10 percent of the most efficient organization's personnel-related costs for performance of that activity or function by Federal employees; and

''(iv) ensures that the public sector bid would not be disadvantaged in the cost comparison process by a proposal of an offeror to reduce costs for the Department of Defense by not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of such function under a contract or by offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than that which is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5.

''(B) Any function that is performed by civilian employees of the Department of Defense and is proposed to be reengineered, reorganized, modernized, upgraded, expanded, or changed in order to become more efficient shall not be considered a new requirement for the purpose of the competition requirements in subparagraph (A) or the requirements for public-private competition in Office of Management and Budget Circular A–76.

''(C) A function performed by more than 10 Federal Government employees may not be separated into separate functions for the purposes of avoiding the competition requirement in subparagraph (A) or the requirements for public-private competition in Office of Management and Budget Circular A–76.

''(D) The Secretary of Defense may waive the requirement for a public-private competition under subparagraph (A) in specific instances if—

''(i) the written waiver is prepared by the Secretary of Defense or the relevant Assistant Secretary of Defense, Secretary of a military department, or head of a Defense Agency;

''(ii) the written waiver is accompanied by a detailed determination that national security interests are so compelling as to preclude compliance with the requirement for a public-private competition; and

''(iii) a copy of the waiver is published in the Federal Register within 10 working days after the date on which the waiver is granted, although use of the waiver need not be delayed until its publication.''.

(b) INAPPLICABILITY TO BEST-VALUE SOURCE SELECTION PILOT PROGRAM.—(1) Paragraph (5) of section 2461(b) of title 10, United States Code, as added by subsection (a), shall not apply with respect to the pilot program for best-value source selection for performance of information technology services authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1444; 10 U.S.C. 2461 note).

SEC. 852. PERFORMANCE OF CERTAIN WORK BY FEDERAL GOVERNMENT EMPLOYEES.

(a) GUIDELINES.—(1) The Secretary of Defense shall prescribe guidelines and procedures for ensuring that consideration is given to using Federal Government employees on a regular basis for work that is performed under Department of Defense contracts and could be performed by Federal Government employees.

(2) The guidelines and procedures prescribed under paragraph (1) shall provide for special consideration to be given to contracts that—

(A) have been performed by Federal Government employees at any time on or after October 1, 1980;

(B) are associated with the performance of inherently governmental functions;

(C) were not awarded on a competitive basis; or

(D) have been determined by a contracting officer to be poorly performed due to excessive costs or inferior quality.

(b) NEW REQUIREMENTS.—(1) No public-private competition may be required under Office of Management and Budget Circular A–76 or any other provision of law or regulation before the performance of a new requirement by Federal Government employees commences, the performance by Federal Government employees of work pursuant to subsection (a) commences, or the scope of an existing activity performed by Federal Government employees is expanded. Office of Management and Budget Circular A–76 shall be revised to ensure that the heads of all Federal agencies give fair consideration to the performance of new requirements by Federal Government employees.

(2) The Secretary of Defense shall, to the maximum extent practicable, ensure that Federal Government employees are fairly considered for the performance of new requirements, with special consideration given to new requirements that include functions that—

(A) are similar to functions that have been performed by Federal Government employees at any time on or after October 1, 1980; or

(B) are associated with the performance of inherently governmental functions.

(c) USE OF FLEXIBLE HIRING AUTHORITY.—The Secretary shall include the use of the flexible hiring authority available through the National Security Personnel System in order to facilitate performance by Federal Government employees of new requirements and work that is performed under Department of Defense contracts.

(d) INSPECTOR GENERAL REPORT.—Not later than 180 days after the enactment of this Act, the Inspector General of the Department of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the compliance of the Secretary of Defense with the requirements of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''National Security Personnel System'' means the human resources management system established under the authority of section 9902 of title 5, United States Code.

(2) The term ''inherently governmental function'' has the meaning given that term in section 5 of the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270; 112 Stat. 2384; 31 U.S.C. 501 note).

SEC. 853. COMPETITIVE SOURCING REPORTING REQUIREMENT.

Not later than February 1, 2005, the Inspector General of the Department of Defense shall submit to Congress a report addressing whether the Department of Defense—

(1) employs a sufficient number of adequately trained civilian employees—

(A) to conduct satisfactorily, taking into account equity, efficiency and expeditiousness, all of the public-private competitions that are scheduled to be undertaken by the Department of Defense during the next fiscal year (including a sufficient number of employees to formulate satisfactorily the performance work statements and most efficient organization plans for the purposes of such competitions); and

(B) to administer any resulting contracts; and

(2) has implemented a comprehensive and reliable system to track and assess the cost and quality of the performance of functions of the Department of Defense by service contractors.

Subtitle G—Other Matters

SEC. 861. INAPPLICABILITY OF CERTAIN FISCAL LAWS TO SETTLEMENTS UNDER SPECIAL TEMPORARY CONTRACT CLOSEOUT AUTHORITY.

Section 804(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1541) is amended—

(1) by inserting ''(1)'' after ''(a) AUTHORITY.—''; and

(2) by adding at the end the following new paragraph:

''(2) Under regulations which the Secretary of Defense may prescribe, a settlement of a financial account for a contract for the procurement of property or services under paragraph (1) may be made without regard to—

''(A) section 1301 of title 31, United States Code; and

''(B) any other provision of law that would preclude the Secretary from charging payments under the contract—

''(i) to an unobligated balance in an appropriation available for funding that contract; or

''(ii) if and to the extent that the unobligated balance (if any) in such appropriation is insufficient for funding such payments, to any current appropriation that is available to the Department of Defense for funding contracts for the procurement of the same or similar property or services.''.

SEC. 862. DEMONSTRATION PROGRAM ON EXPANDED USE OF RESERVES TO PERFORM DEVELOPMENTAL TESTING, NEW EQUIPMENT TRAINING, AND RELATED ACTIVITIES.

(a) REQUIREMENT FOR PROGRAM.—The Secretary of the Army shall carry out a demonstration program on use of members of reserve components of the Armed Forces to perform test, evaluation, and related activities for an acquisition program. The Secretary shall design and carry out the demonstration program to achieve the purposes set forth in subsection (b).

(b) PURPOSES.—The purposes of the demonstration program are as follows:

(1) To determine whether cost savings and other benefits result from use of members of reserve components of the Armed Forces instead of contractor personnel to perform test and evaluation activities for an acquisition program and related acquisition, logistics, and new equipment training activities for the acquisition program.

(2) To evaluate the advisability of using appropriations available for multiyear research, development, test, and evaluation and appropriations available for multiyear procurements to reimburse reserve components for the pay, allowances, and other expenses paid to or for Reserves used for the acquisition program as described in paragraph (1).

(c) REIMBURSEMENT OF PERSONNEL ACCOUNTS OUT OF PROCUREMENT AND RDT&E ACCOUNTS.—(1) The Secretary of the Army may transfer from funds available to the Army for an acquisition program to a reserve component military personnel account the amount necessary to reimburse that account for costs charged to that account for military pay and allowances in connection with the use of reserve component personnel for such acquisition program under this section.

(2) Not more than $10,000,000 may be transferred under this subsection during any fiscal year of the demonstration program.

(3) Funds transferred to an account under this subsection shall be merged with other sums in the account and shall be available for the same period and purposes as the sums with which merged.

(4) The transfer authority under this subsection is in addition to any other transfer authority provided in this or any other Act.

(d) NONWAIVER OF PERSONNEL AND TRAINING POLICIES AND PROCEDURES.—Nothing in this section may be construed to authorize any deviation from established personnel or training policies or procedures that are applicable to the reserve components of the personnel used under the demonstration program.

(e) TERMINATION.—The demonstration program under this section shall terminate on September 30, 2009.

SEC. 863. APPLICABILITY OF COMPETITION EXCEPTIONS TO ELIGIBILITY OF NATIONAL GUARD FOR FINANCIAL ASSISTANCE FOR PERFORMANCE OF ADDITIONAL DUTIES.

Section 113(b)(1)(B) of title 32, United States Code, is amended by inserting before the period at the end the following: '', subject to the exceptions provided in section 2304(c) of title 10''.

SEC. 864. MANAGEMENT PLAN FOR CONTRACTOR SECURITY PERSONNEL.

(a) REQUIREMENT FOR PLAN.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a plan for the management and oversight of contractor security personnel by Federal Government personnel in areas where the Armed Forces are engaged in military operations. In the preparation of such plan, the Secretary shall coordinate, as appropriate, with the heads of other departments and agencies of the Federal Government that would be affected by the implementation of the plan.

(b) POLICIES AND PROCEDURES.—The plan under this section shall set forth policies and procedures applicable to contractor security personnel in potentially hazardous areas of military operations. The policies and procedures shall address the following matters:

(1) Warning contractor security personnel of potentially hazardous situations.

(2) Coordinating the movement of contractor security personnel, especially through areas of increased risk or planned or ongoing military operations.

(3) Rapidly identifying contractor security personnel by members of the Armed Forces.

(4) Sharing relevant threat information with contractor security personnel, and receiving information gathered by contractor security personnel for use by United States and coalition forces.

(5) Providing appropriate assistance to contractor security personnel who become engaged in hostile situations.

(6) Providing medical assistance for, and evacuation of, contractor personnel who become casualties as a result of enemy actions.

(7) Investigating background and qualifications of contractor security personnel and organizations.

(8) Establishing rules of engagement for armed contractor security personnel, and ensuring proper training and compliance with the rules of engagement.

(c) OPTIONS FOR ENHANCED AND COST-EFFECTIVE CONTRACTOR SECURITY.—The plan under subsection (a) shall include assessed options for enhancing contractor security and reducing contractor security costs in Iraq or in locations of armed conflict in the future. The options covered shall include the following:

(1) Temporary commissioning of contractor security personnel as reserve component officers in order to subject such personnel to the military chain of command.

(2) Requiring contractor security personnel to obtain security clearances to facilitate the communication of critical threat information.

(3) Establishing a contract schedule for companies furnishing contractor security personnel to provide a more orderly process for the selection, training, and compensation of such personnel.

(4) Establishing a contract schedule for companies to provide more cost-effective insurance for contractor security personnel.

(5) Providing for United States indemnification of contractors to reduce the costs of insuring contractor security personnel.

SEC. 865. REPORT ON CONTRACTOR PERFORMANCE OF SECURITY, INTELLIGENCE, LAW ENFORCEMENT, AND CRIMINAL JUSTICE FUNCTIONS IN IRAQ.

(a) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the procurement of services, by an agency of the United States Government or by the Coalition Provisional Authority, for the performance of security, intelligence, law enforcement, and criminal justice functions in Iraq.

(b) CONTENT.—The report under subsection (a) shall include, at a minimum, the following:

(1) Each security, intelligence, law enforcement, or criminal justice function performed by a contractor in Iraq.

(2) For each such function—

(A) a determination of whether such function is an inherently governmental function, together with a discussion of the factual basis and rationale for that determination;

(B) an explanation of the basis for the decision to rely on a contractor to perform such function, including a discussion of the extent to which the Armed Forces lacked the expertise or manpower to perform that function using Armed Forces personnel;

(C) a description of the chain of command for the contractor performing such function, together with a discussion of the manner in which the United States Government or the Coalition Provisional Authority supervises and directs the contractor's performance of that function; and

(D) what sanctions are available to impose on any contractor employee who—

(i) fails to comply with a requirement of law or regulation that applies to such employee in the performance of that function; or

(ii) engages in other misconduct in the performance of that function.

(3) An explanation of the legal status of contractor employees in the performance of such functions after the administration of the sovereign powers of Iraq is transferred from the Coalition Provisional Authority to a government of Iraq on June 30, 2004.

(c) COORDINATION.—In the preparation of the report under this section, the Secretary of Defense shall coordinate, as appropriate, with the heads of any departments and agencies of the Federal Government that are involved in the procurement of services for the performance of functions described in subsection (a).

(d) ADDITIONAL CONGRESSIONAL RECIPIENTS.—In addition to submitting the report

under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

SEC. 866. ACCREDITATION STUDY OF COMMERCIAL OFF-THE-SHELF PROCESSES FOR EVALUATING INFORMATION TECHNOLOGY PRODUCTS AND SERVICES.

(a) REQUIREMENT FOR STUDY.—The Secretary of Defense shall carry out a study of commercial off-the-shelf processes that are available for measuring the quality of information technology and related services through assessment of the production methods of the producers of the technology.

(b) PURPOSES.—The purposes of the study of commercial off-the-shelf processes under subsection (a) are as follows:

(1) To assess the value of such a process as a consistent methodology for identifying high quality information technology and the engineering sources capable of providing high quality information technology and related services.

(2) To determine whether to accredit such a process for use in procurements of information technology and related services throughout the Department of Defense.

(c) SAVINGS AND ENHANCEMENTS.—In carrying out the study under subsection (a), the Secretary shall determine the benefits that would result for the Department of Defense from use throughout the Department of Defense of a commercial off-the-shelf process described in that subsection to measure the quality of information technology products and services in procurements described in subsection (b)(2), including—

(1) projected annual savings in costs of development and maintenance of information technology; and

(2) quantified enhancements of productivity, schedule, performance, deficiency rates, and predictability.

(d) BASELINE DATA.—To define a baseline for measuring benefits under subsection (c), the Secretary shall use empirical data that is readily available to the Department of Defense and contractor sources.

(e) INFORMATION CONSIDERED.—The Secretary of Defense may consider projections of savings and quantifications of enhancements that are submitted by a contractor.

(f) INFORMATION TECHNOLOGY DEFINED.—In this section, the term ''information technology'' has the meaning given such term in section 11101(6) of title 40, United States Code.

SEC. 867. CONTRACTOR PERFORMANCE OF ACQUISITION FUNCTIONS CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL FUNCTIONS.

(a) LIMITATION.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2382 the following new section:

''§ 2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

''(a) LIMITATION.—The head of an agency may enter a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the Secretary determines that—

''(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

''(2) appropriate military or civilian personnel of the Department of Defense are—

''(A) to supervise contractor performance of the contract; and

''(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

''(3) the contractor does not have an organizational conflict of interest or the appearance of an organizational conflict of interest in the performance of the functions under the contract.

''(b) DEFINITIONS.—In this section:

''(1) The term 'head of an agency' has the meaning given such term in section 2302(1) of this title, except that such term does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

''(2) The term 'inherently governmental functions' has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

''(3) The term 'functions closely associated with inherently governmental functions' means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

''(4) The term 'organizational conflict of interest' has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2382 the following new item:

''2383. Contractor performance of acquisition functions closely associated with inherently governmental functions.''.

(b) EFFECTIVE DATE AND APPLICABILITY.—Section 2383 of title 10, United States Code (as added by subsection (a)), shall take effect on the date of enactment of this Act and shall apply to—

(1) contracts entered into on or after such date;

(2) any task or delivery order issued on or after such date under a contract entered into before, on, or after such date; and

(3) any decision on or after such date to exercise an option or otherwise extend a contract for program management or oversight of contracts for the reconstruction of Iraq, regardless of whether such program management or oversight contract was entered into before, on, or after the date of enactment of this Act.

SEC. 868. CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES.

(a) INAPPLICABILITY OF RANDOLPH-SHEPPARD ACT.—The Randolph-Sheppard Act does not apply to any contract described in subsection (b) for so long as the contract is in effect, including for any period for which the contract is extended pursuant to an option provided in the contract.

(b) JAVITS-WAGNER-O'DAY CONTRACTS.—Subsection (a) applies to any contract for the operation of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces that—

(1) was entered into before the date of the enactment of this Act with a nonprofit agency for the blind or an agency for other severely handicapped in compliance with section 3 of the Javits-Wagner-O'Day Act (41 U.S.C. 48); and

(2) either—

(A) is in effect on such date; or

(B) was in effect on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

(c) REPEAL OF SUPERSEDED LAW.—Section 852 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1556) is repealed.

SEC. 869. ENERGY SAVINGS PERFORMANCE CONTRACTS.

The Secretary of Defense shall, to the extent practicable, exercise existing statutory authority, including the authority provided by section 2865 of title 10, United States Code, and section 8256 of title 42, United States Code, to introduce life-cycle cost-effective upgrades to Federal assets through shared energy savings contracting, demand management programs, and utility incentive programs.

SEC. 870. AVAILABILITY OF FEDERAL SUPPLY SCHEDULE SUPPLIES AND SERVICES TO UNITED SERVICE ORGANIZATIONS, INCORPORATED.

Section 220107 of title 36, United States Code, is amended by inserting after ''Department of Defense'' the following: '', including access to General Services Administration supplies and services through the Federal Supply Schedule of the General Services Administration,''.

SEC. 871. ACQUISITION OF AERIAL REFUELING AIRCRAFT FOR THE AIR FORCE.

(a) COMPLIANCE WITH APPLICABLE REQUIREMENTS.—The Secretary of Defense shall ensure that the Secretary of the Air Force does not proceed with the acquisition of aerial refueling aircraft for the Air Force by lease or other contract, either with full and open competition or under section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1413) until the date that is 60 days after the date on which the Secretary Defense has—

(1) reviewed all documentation for the acquisition, including—

(A) the completed aerial refueling analysis of alternatives (AOA) required by section 134(b) of the National Defense Authorization Act for Fiscal Year 2004, pursuant to ''Analysis of Alternatives (AoA) Guidance of KC–135 Recapitalization'', dated February 24, 2004;

(B) the completed aerial refueling portion of the Mobility Capabilities Study;

(C) a new validated capabilities document in accordance with the applicable Chairman of Joint Chiefs of Staff Instruction; and

(D) the approval of a Defense Acquisition Board in accordance with Department of Defense regulations; and

(2) submitted to the congressional defense committees a determination in writing that the acquisition is in compliance with all currently applicable laws, Office of Management and Budget circulars, and regulations.

(b) INDEPENDENT REVIEW.—Not later than 45 days after the Secretary of Defense makes the determination described in paragraph (2) of subsection (a), the Comptroller General and the Inspector General of the Department of Defense shall each review the documentation referred to in paragraph (1) of such subsection and submit to the congressional defense committees a report on the extent to which the acquisition is—

(1) in compliance with the requirements of this section and all currently applicable laws, Office of Management and Budget circulars, and regulations; and

(2) consistent with the analysis of alternatives referred to in subparagraph (A) of subsection (a)(1) and the other documentation referred to in such subsection.

(c) LIMITATION ON ACQUISITION BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The acquisition by lease or other contract of any aerial refueling aircraft for the Air Force beyond low-rate initial production shall be subject to, and for such acquisition the Secretary of the Air Force shall comply with, the requirements of sections 2366 and 2399 of title 10, United States Code.

(2) For the purposes of this subsection, the term ''low-rate initial production'', with respect to a lease, shall have the same meaning as applies in the administration of sections 2366 and 2399 of title 10, United States Code, with regard to any other form of acquisition.

(d) SOURCE SELECTION FOR INTEGRATED SUPPORT OF AERIAL REFUELING AIRCRAFT

FLEET.—For the selection of a provider of integrated support for the aerial refueling aircraft fleet in any acquisition by lease or other contract of aerial refueling aircraft for the Air Force, the Secretary of the Air Force shall—

(1) before selecting the provider, perform all analyses required by law of—

(A) the costs and benefits of—

(i) the alternative of using Federal Government personnel to provide such support; and

(ii) the alternative of using contractor personnel to provide such support;

(B) the core logistics requirements;

(C) use of performance-based logistics; and

(D) the length of contract period; and

(2) select the provider on the basis of fairly conducted full and open competition (as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))).

(e) PRICE INFORMATION.—Before the Secretary of the Air Force commits to acquiring by lease or other contract any aerial refueling aircraft for the Air Force, the Secretary shall require the manufacturer to provide, with respect to commercial items covered by the lease or contract, appropriate information on the prices at which the same or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the items.

(f) AUDIT SERVICES.—The Secretary of the Air Force shall contact the Office of the Inspector General for the Department of Defense for review and approval of any Air Force use of non-Federal audit services for any lease or other contract for the acquisition of aerial refueling aircraft.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Reserve Components

SEC. 901. MODIFICATION OF STATED PURPOSE OF THE RESERVE COMPONENTS.

Section 10102 of title 10, United States Code, is amended by striking '', during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization,''.

SEC. 902. COMMISSION ON THE NATIONAL GUARD AND RESERVES.

(a) ESTABLISHMENT.—There is established a commission to be known as the ''Commission on the National Guard and Reserves'' (hereafter in this section referred to as the ''Commission'').

(b) COMPOSITION.—(1) The Commission shall be composed of 13 members appointed as follows:

(A) Three members appointed by the chairman of the Committee on Armed Services of the Senate.

(B) Three members appointed by the chairman of the Committee on Armed Services of the House of Representatives.

(C) Two members appointed by the ranking minority member of the Committee on Armed Services of the Senate.

(D) Two members appointed by the ranking minority member of the Committee on Armed Service of the House of Representatives.

(E) Three members appointed by the Secretary of Defense.

(2) The members of the Commission shall be appointed from among persons who have knowledge and expertise in the following areas:

(A) National security.

(B) Roles and missions of any of the Armed Forces.

(C) The mission, operations, and organization of the National Guard of the United States.

(D) The mission, operations, and organization of the other reserve components of the Armed Forces.

(E) Military readiness of the Armed Forces.

(F) Personnel pay and other forms of compensation.

(G) Other personnel benefits, including health care.

(3) Members of the Commission shall be appointed for the life of the Commission. A vacancy in the membership of the Commission shall not affect the powers of the Commission, but shall be filled in the same manner as the original appointment.

(4) The Secretary of Defense shall designate a member of the Commission to be chairman of the Commission.

(c) DUTIES.—(1) The Commission shall carry out a study of the following matters:

(A) The roles and missions of the National Guard and the other reserve components of the Armed Forces.

(B) The compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States.

(2) In carrying out the study under paragraph (1), the Commission shall—

(A) assess the current roles and missions of the reserve components and identify appropriate potential future roles and missions for the reserve components;

(B) assess the capabilities of the reserve components and determine how the units and personnel of the reserve components may be best used to support the military operations of the Armed Forces and the achievement of national security objectives, including homeland defense, of the United States;

(C) assess—

(i) the current organization and structure of the National Guard and the other reserve components; and

(ii) the plans of the Department of Defense and the Armed Forces for future organization and structure of the National Guard and the other reserve components;

(D) assess the manner in which the National Guard and the other reserve components are currently organized and funded for training and identify an organizational and funding structure for training that best supports the achievement of training objectives and operational readiness;

(E) assess the effectiveness of the policies and programs of the National Guard and the other reserve components for achieving operational readiness and personnel readiness, including medical and personal readiness;

(F) assess—

(i) the adequacy and appropriateness of the compensation and benefits currently provided for the members of the National Guard and the other reserve components, including the availability of health care benefits and health insurance; and

(ii) the effects of proposed changes in compensation and benefits on military careers in both the regular and the reserve components of the Armed Forces;

(G) identify various feasible options for improving the compensation and other benefits available to the members of the National Guard and the members of the other reserve components and assess—

(i) the cost-effectiveness of such options; and

(ii) the foreseeable effects of such options on readiness, recruitment, and retention of personnel for careers in the regular and reserve components the Armed Forces;

(H) assess the traditional military career paths for members of the National Guard and the other reserve components and identify alternative career paths that could enhance professional development; and

(I) assess the adequacy of the funding provided for the National Guard and the other reserve components for several previous fiscal years, including the funding provided for National Guard and reserve component equipment and the funding provided for National Guard and other reserve component personnel in active duty military personnel accounts and reserve military personnel accounts.

(d) FIRST MEETING.—The Commission shall hold its first meeting not later than 30 days after the date on which all members of the Commission have been appointed.

(e) ADMINISTRATIVE AND PROCEDURAL AUTHORITIES.—(1) Except as provided in paragraph (2), sections 955, 956, 957, 958, and 959 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1740; 10 U.S.C 111 note) shall apply to the Commission.

(2)(A) The daily rate of pay payable under section 957(a) of Public Law 103–160 shall be equal to the daily rate of basic pay prescribed for level IV of the Executive Schedule.

(B) Section 957(f) of Public Law 103–160 (relating to services of federally funded research and development centers) shall not apply to the Commission.

(3) The following provisions of law do not apply to the Commission:

(A) Section 3161 of title 5, United States Code.

(B) The Federal Advisory Committee Act (5 U.S.C. App.).

(f) REPORTS.—(1) Not later than March 31, 2005, the Commission shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth—

(A) a strategic plan for the work of the Commission;

(B) a discussion of the activities of the Commission; and

(C) any initial findings of the Commission.

(2) Not later than December 31, 2005, the Commission shall submit a final report to the Committees of Congress referred to in paragraph (1). The final report shall include any recommendations that the Commission determines appropriate, including any recommended legislation, policies, regulations, directives, and practices.

(g) TERMINATION.—The Commission shall terminate 90 days after the date on which the final report is submitted under subsection (f)(2).

(h) ANNUAL REVIEW BOARD.—(1)(A) Chapter 7 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 186. Reserve components: annual review

''(a) INDEPENDENT REVIEW BOARD.—The Secretary of Defense shall appoint a board to review the reserve components of the armed forces.

''(b) COMPOSITION OF BOARD.—(1) The Secretary shall appoint the members of the board from among persons who have knowledge and expertise in the following areas:

''(A) National security.

''(B) Roles and missions of any of the armed forces.

''(C) The mission, operations, and organization of any of the reserve components.

''(D) Military readiness of the armed forces.

''(E) Personnel pay and other forms of compensation.

''(F) Other personnel benefits, including health care.

''(2) The Secretary of Defense shall designate a member of the board to be chairman of the board.

''(c) DUTIES.—The board shall, on an annual basis—

''(1) review—

''(A) the roles and missions of the reserve components; and

''(B) the compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States; and

''(2) submit to the Secretary of Defense a report on the review, which shall include the findings of the board regarding the matters reviewed and any recommendations that the board considers appropriate regarding those matters.

''(d) REPORT TO CONGRESS.—Promptly after receiving the report under subsection (c)(2), the Secretary shall transmit the report, together with any comments and recommendations that the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

''(e) ADMINISTRATIVE PROVISIONS.—Section 180(d) of this title shall apply to the members of the review board appointed under this section.''.

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''186. Reserve components: annual review.''.

(2) The first review board under section 186 of title 10, United States Code (as added by paragraph (1)), shall be appointed during fiscal year 2006.

SEC. 903. CHAIN OF SUCCESSION FOR THE CHIEF OF THE NATIONAL GUARD BUREAU.

(a) SENIOR OFFICER.—(1) Section 10502 of title 10, United States Code, is amended by adding at the end the following new subsection:

''(e) SUCCESSION.—Unless otherwise directed by the President or the Secretary of Defense, the most senior officer among the officers of the Army National Guard of the United States and the officers of the Air National Guard of the United States performing the duties of positions in the National Guard Bureau shall act as the Chief of the National Guard Bureau during any period that—

''(1) there is a vacancy in the position of Chief of the National Guard Bureau; or

''(2) the Chief is unable to perform the duties of that position.''.

(2)(A) The heading of such section is amended by adding at the end the following: ''**; succession**''.

(B) The item relating to such section in the table of sections at the beginning of chapter 1011 of such title is amended to read as follows:

''10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession.''.

(b) CONFORMING AMENDMENT.—Section 10505 of such title is amended by striking subsections (d) and (e).

SEC. 904. REDESIGNATION OF VICE CHIEF OF THE NATIONAL GUARD BUREAU AS DIRECTOR OF THE JOINT STAFF OF THE NATIONAL GUARD BUREAU.

(a) REDESIGNATION OF POSITION.—Subsection (a)(1) of section 10505 of title 10, United States Code, is amended by striking ''Vice Chief of the National Guard Bureau'' and inserting ''Director of the Joint Staff of the National Guard Bureau''.

(b) CONFORMING AMENDMENTS.—(1) Subsections (a)(3)(A), (a)(3)(B), (b), (c), and (d) of section 10505 of title 10, United States Code, are amended by striking ''Vice Chief of the National Guard Bureau'' and inserting ''Director of the Joint Staff of the National Guard Bureau''.

(2) Subsection (a)(3)(B) of such section, as amended by paragraph (1), is further amended by striking ''as the Vice Chief'' and inserting ''as the Director''.

(3) Paragraphs (2) and (4) of subsection (a) of such section are amended by striking ''Chief and Vice Chief of the National Guard Bureau'' and inserting ''Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau''.

(4)(A) Subsection (e) of such section is amended—

(i) by striking ''Chief and Vice Chief of the National Guard Bureau or in the absence or disability of both the Chief and Vice Chief of the National Guard Bureau'' and inserting ''Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau or in the absence or disability of both the Chief and the Director''; and

(ii) by striking ''Chief or Vice Chief'' both places it appears and inserting ''Chief or Director''.

(B) The heading for such subsection is amended by striking ''VICE CHIEF.—'' and inserting ''DIRECTOR OF THE JOINT STAFF.—''.

(5) Section 10506(a)(1) of title 10, United States Code, is amended by striking ''Chief and Vice Chief of the National Guard Bureau'' and inserting ''Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau''.

(c) CLERICAL AMENDMENTS.—(1) The heading for section 10505 of title 10, United States Code, is amended to read as follows:

''§ 10505. Director of the Joint Staff of the National Guard Bureau''.

(2) The item relating to such section in the table of sections at the beginning of chapter 1011 of such title is amended to read as follows:

''10505. Director of the Joint Staff of the National Guard Bureau.''.

(d) OTHER REFERENCES.—Any reference that is made in any law, regulation, document, paper, or other record of the United States to the Vice Chief of the National Guard Bureau shall be deemed to be a reference to the Director of the Joint Staff of the National Guard Bureau.

SEC. 905. AUTHORITY TO REDESIGNATE THE NAVAL RESERVE.

(a) AUTHORITY OF SECRETARY OF THE NAVY.—The Secretary of the Navy may, with the approval of the President, redesignate the Naval Reserve as the ''Navy Reserve'' effective on the date that is 180 days after the date on which the Secretary submits recommended legislation under subsection (b).

(b) RECOMMENDED LEGISLATION.—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives recommended legislation that identifies each specific provision of law that refers to the Naval Reserve and sets forth an amendment to that specific provision of law to conform the reference to the new designation.

(c) EFFECT OF REDESIGNATION.—On and after the effective date of a redesignation of the Naval Reserve under subsection (a), any reference in any law, map, regulation, document, paper, or other record of the United States to the Naval Reserve shall be deemed to be a reference to the Navy Reserve.

SEC. 906. HOMELAND SECURITY ACTIVITIES OF THE NATIONAL GUARD.

(a) AUTHORITY.—Chapter 1 of title 32, United States Code, is amended by adding at the end the following new section:

''§ 116. Homeland security activities

''(a) USE OF PERSONNEL PERFORMING FULL-TIME NATIONAL GUARD DUTY.—The Governor of a State may, upon the request by the head of a Federal agency and with the concurrence of the Secretary of Defense, order any personnel of the National Guard of the State to perform full-time National Guard duty under section 502(f) of this title for the purpose of carrying out homeland security activities, as described in subsection (b).

''(b) PURPOSE AND DURATION.—(1) The purpose for the use of personnel of the National Guard of a State under this section is to temporarily provide trained and disciplined personnel to a Federal agency to assist that agency in carrying out homeland security activities.

''(2) The duration of the use of the National Guard of a State under this section shall be limited to a period of 180 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

''(c) RELATIONSHIP TO REQUIRED TRAINING.— A member of the National Guard serving on full-time National Guard duty under orders authorized under subsection (a) shall participate in the training required under section 502(a) of this title in addition to the duty performed for the purpose authorized under that subsection. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing duty for the purpose of carrying out homeland security activities. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

''(d) READINESS.—To ensure that the use of units and personnel of the National Guard of a State for homeland security activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland security activities that units and personnel of the National Guard of a State may perform:

''(1) The performance of the activities may not adversely affect the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

''(2) National Guard personnel will not degrade their military skills as a result of performing the activities.

''(3) The performance of the activities will not result in a significant increase in the cost of training.

''(4) In the case of homeland security performed by a unit organized to serve as a unit, the activities will support valid unit training requirements.

''(e) PAYMENT OF COSTS.—(1) The Secretary of Defense shall provide funds to the Governor of a State to pay costs of the use of personnel of the National Guard of the State for the performance of homeland security activities under this section. Such funds shall be used for the following costs:

''(A) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses (including all associated training expenses, as determined by the Secretary), as authorized by State law, of personnel of the National Guard of that State used, while not in Federal service, for the purpose of homeland security activities.

''(B) The operation and maintenance of the equipment and facilities of the National Guard of that State used for the purpose of homeland security activities.

''(2) The Secretary of Defense shall require the head of an agency receiving support from the National Guard of a State in the performance of homeland security activities under this section to reimburse the Department of Defense for the payments made to the State for such support under paragraph (1).

''(f) MEMORANDUM OF AGREEMENT.—The Secretary of Defense and the Governor of a State shall enter into a memorandum of agreement with the head of each Federal agency to which the personnel of the National Guard of that State are to provide support in the performance of homeland security activities under this section. The memorandum of agreement shall—

''(1) specify how personnel of the National Guard are to be used in homeland security activities;

''(2) include a certification by the Adjutant General of the State that those activities are to be performed at a time when the personnel are not in Federal service;

''(3) include a certification by the Adjutant General of the State that—

''(A) participation by National Guard personnel in those activities is service in addition to training required under section 502 of this title; and

''(B) the requirements of subsection (d) of this section will be satisfied;

''(4) include a certification by the Attorney General of the State (or, in the case of a State with no position of Attorney General, a civilian official of the State equivalent to a State attorney general), that the use of the National Guard of the State for the activities provided for under the memorandum of agreement is authorized by, and is consistent with, State law;

''(5) include a certification by the Governor of the State or a civilian official of the State designated by the Governor that the activities provided for under the memorandum of agreement serve a State security purpose; and

''(6) include a certification by the head of the Federal agency that the agency will have a plan to ensure that the agency's requirement for National Guard support ends not later than 179 days after the commencement of the support.

''(g) EXCLUSION FROM END-STRENGTH COMPUTATION.—Notwithstanding any other provision of law, members of the National Guard on active duty or full-time National Guard duty for the purposes of administering (or during fiscal year 2003 otherwise implementing) this section shall not be counted toward the annual end strength authorized for Reserves on active duty in support of the reserve components of the armed forces or toward the strengths authorized in sections 12011 and 12012 of title 10.

''(h) ANNUAL REPORT.—The Secretary of Defense shall submit to Congress an annual report regarding any assistance provided and activities carried out under this section during the preceding fiscal year. The report shall include the following:

''(1) The number of members of the National Guard excluded under subsection (g) from the computation of end strengths.

''(2) A description of the homeland security activities conducted with funds provided under this section.

''(3) An accounting of the amount of funds provided to each State.

''(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform homeland security activities under this section.

''(i) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform functions authorized to be performed by the National Guard by the laws of the State concerned.

''(j) DEFINITIONS.—For purposes of this section:

''(1) The term 'Governor of a State' means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

''(2) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such section is amended by adding at the end the following new item:

''116. Homeland security activities.''.

Subtitle B—Other Matters

SEC. 911. STUDY OF ROLES AND AUTHORITIES OF THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

(a) STUDY REQUIRED.—The Secretary of Defense shall carry out a study of the roles and authorities of the Director of Defense Research and Engineering.

(b) CONTENT OF STUDY.—The study under this section shall include the following:

(1) An examination of the past and current roles and authorities of the Director of Defense Research and Engineering.

(2) An analysis to determine appropriate future roles and authorities for the Director, including an analysis of the following matters:

(A) The relationship of the Director to other senior science and technology and acquisition officials of the military departments and the Defense Agencies

(B) The relationship of the Director to the performance of the following functions:

(i) The planning, programming, and budgeting of the science and technology programs of the Department of Defense, including those of the military departments and the Defense Agencies.

(ii) The management of Department of Defense laboratories and technical centers, including the management of the Federal Government scientific and technical workforce for such laboratories and centers.

(iii) The promotion of the rapid transition of technologies to acquisition programs within the Department of Defense.

(iv) The promotion of the transfer of technologies into and from the commercial sector.

(v) The coordination of Department of Defense science and technology activities with organizations outside the Department of Defense, including other Federal Government agencies, international research organizations, industry, and academia.

(vi) The technical review of Department of Defense acquisition programs and policies.

(vii) The training and educational activities for the national scientific and technical workforce.

(viii) The development of science and technology policies and programs relating to the maintenance of the national technology and industrial base.

(3) An examination of the duties of the Director as the Chief Technology Officer of the Department of Defense, especially in comparison to the duties of similar positions in the Federal Government and industry.

(4) An examination of any other matters that the Secretary considers appropriate for the study.

(c) REPORT.—(1) Not later than February 1, 2006, the Secretary shall submit a report on the results of the study under this section to the congressional defense committees.

(2) The report shall include recommendations regarding the appropriate roles, authorities, and resources that should be assigned to the Director of Defense Research and Engineering in order to enable the Director to serve effectively as the Chief Technology Officer of the Department of Defense and to support the transformation of the Armed Forces.

(d) ROLE OF DEFENSE SCIENCE BOARD IN STUDY AND REPORT.—The Secretary shall act through the Defense Science Board in carrying out the study under this section and preparing the report under subsection (c).

SEC. 912. DIRECTORS OF SMALL BUSINESS PROGRAMS.

(a) REDESIGNATION OF EXISTING POSITIONS AND OFFICES.—(1) Each of the following positions within the Department of Defense is redesignated as the Director of Small Business Programs:

(A) The Director of Small and Disadvantaged Business Utilization of the Department of Defense.

(B) The Director of Small and Disadvantaged Business Utilization of the Department of the Army.

(C) The Director of Small and Disadvantaged Business Utilization of the Department of the Navy.

(D) The Director of Small and Disadvantaged Business Utilization of the Department of the Air Force.

(2) Each of the following offices within the Department of Defense is redesignated as the Office of Small Business Programs:

(A) The Office of Small and Disadvantaged Business Utilization of the Department of Defense.

(B) The Office of Small and Disadvantaged Business Utilization of the Department of the Army.

(C) The Office of Small and Disadvantaged Business Utilization of the Department of the Navy.

(D) The Office of Small and Disadvantaged Business Utilization of the Department of the Air Force.

(3) Any reference that is made in any law, regulation, document, paper, or other record of the United States to a position or office redesignated by paragraph (1) or (2) shall be deemed to be a reference to the position or office as so redesignated.

(b) DEPARTMENT OF DEFENSE POSITION AND OFFICE.—(1) Chapter 4 of title 10, United States Code, is amended by inserting after section 133b the following new section:

''§ 133c. Director of Small Business Programs

''(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of Defense. The Director is appointed by the Secretary of Defense.

''(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of Defense is the office that is established within the Office of the Secretary of Defense under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

''(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of Defense, and shall exercise such powers regarding those programs, as the Secretary of Defense may prescribe.

''(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 133b the following new item:

''133c. Director of Small Business Programs.''.

(c) DEPARTMENT OF THE ARMY POSITION AND OFFICE.—(1) Chapter 303 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 3024. Director of Small Business Programs

''(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of the Army. The Director is appointed by the Secretary of the Army.

''(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of the Army is the office that is established within the Department of the Army under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

''(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of the Army, and shall exercise such powers regarding those programs, as the Secretary of the Army may prescribe.

''(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''3024. Director of Small Business Programs.''.

(d) DEPARTMENT OF THE NAVY POSITION AND OFFICE.—(1) Chapter 503 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 5028. Director of Small Business Programs

''(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of the Navy. The Director is appointed by the Secretary of the Navy.

''(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of the Navy is the office that is established within the Department of the Navy under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

''(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of the Navy, and shall exercise such powers regarding those programs, as the Secretary of the Navy may prescribe.

''(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''5028. Director of Small Business Programs.''.

(d) DEPARTMENT OF THE AIR FORCE POSITION AND OFFICE.—(1) Chapter 803 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 8024. Director of Small Business Programs

''(a) DIRECTOR.—There is a Director of Small Business Programs in the Department of the Air Force. The Director is appointed by the Secretary of the Air Force.

''(b) OFFICE OF SMALL BUSINESS PROGRAMS.—The Office of Small Business Programs of the Department of the Air Force is the office that is established within the Department of the Air Force under section 15(k) of the Small Business Act (15 U.S.C. 644(k)). The Director of Small Business Programs is the head of such office.

''(c) DUTIES AND POWERS.—(1) The Director of Small Business Programs shall, subject to paragraph (2), perform such duties regarding small business programs of the Department of the Air Force, and shall exercise such powers regarding those programs, as the Secretary of the Air Force may prescribe.

''(2) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)), except for the designations of the Director and the Office, applies to the Director of Small Business Programs.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''8024. Director of Small Business Programs.''.

SEC. 913. LEADERSHIP POSITIONS FOR THE NAVAL POSTGRADUATE SCHOOL.

(a) DESIGNATION OF PRESIDENT.—(1) The position of Superintendent of the Naval Postgraduate School is redesignated as President of the Naval Postgraduate School.

(2) Any reference to the Superintendent of the Naval Postgraduate School in any law, rule, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the President of the Naval Postgraduate School.

(3) Sections 7042, 7044, 7048(a), and 7049(e) of title 10, United States Code, are amended by striking ''Superintendent'' each place it appears and inserting ''President''.

(4) The heading of section 7042 of such title is amended by striking ''**Superintendent;**'' in the section heading and inserting ''**President;**''.

(b) PROVOST AND ACADEMIC DEAN.—(1) The position of Academic Dean of the Naval Postgraduate School is redesignated as Provost and Academic Dean of the Naval Postgraduate School.

(2) Any reference to the Academic Dean of the Naval Postgraduate School in any law, rule, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the Provost and Academic Dean of the Naval Postgraduate School.

(3)(A) Subsection (a) of section 7043 of title 10, United States Code, is amended to read as follows:

''(a) There is at the Naval Postgraduate School the single civilian position of Provost and Academic Dean. The Provost and Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy. Before making an appointment to the position of Provost and Academic Dean, the Secretary shall consult with the Board of Advisors for the Naval Postgraduate School and consider any recommendation of the leadership and faculty of the Naval Postgraduate School regarding an appointment to the position.''.

(B) The heading of such section is amended to read as follows:

''§ 7043. Provost and Academic Dean''.

(4) Sections 7043(b) and 7081(a) of title 10, United States Code, are amended by striking ''Academic Dean'' and inserting ''Provost and Academic Dean''.

(5) Section 5102(c)(10) of title 5, United States Code, is amended by striking ''Academic Dean of the Postgraduate School of the Naval Academy'' and inserting ''Provost and Academic Dean of the Naval Postgraduate School''.

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 605 of such title 10, United States Code, is amended by striking the items related to sections 7042 and 7043 and inserting the following new items:

''7042. President: assistants.
''7043. Provost and Academic Dean.''.

SEC. 914. UNITED STATES MILITARY CANCER INSTITUTE.

(a) ESTABLISHMENT.—Chapter 104 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2117. United States Military Cancer Institute

''(a) ESTABLISHMENT.—(1) There is a United States Military Cancer Institute in the University. The Director of the United States Military Cancer Institute is the head of the Institute.

''(2) The Institute is composed of clinical and basic scientists in the Department of Defense who have an expertise in research, patient care, and education relating to oncology and who meet applicable criteria for participation in the Institute.

''(3) The components of the Institute include military treatment and research facilities that meet applicable criteria and are designated as affiliates of the Institute.

''(b) RESEARCH.—(1) The Director of the United States Military Cancer Institute shall carry out research studies on the following:

''(A) The epidemiological features of cancer, including assessments of the carcinogenic effect of genetic and environmental factors, and of disparities in health, inherent or common among populations of various ethnic origins.

''(B) The prevention and early detection of cancer.

''(C) Basic, translational, and clinical investigation matters relating to the matters described in subparagraphs (A) and (B).

''(2) The research studies under paragraph (1) shall include complementary research on oncologic nursing.

''(c) COLLABORATIVE RESEARCH.—The Director of the United States Military Cancer Institute shall carry out the research studies under subsection (b) in collaboration with other cancer research organizations and entities selected by the Institute for purposes of the research studies.

''(d) ANNUAL REPORT.—(1) Promptly after the end of each fiscal year, the Director of the United States Military Cancer Institute shall submit to the President of the University a report on the results of the research studies carried out under subsection (b).

''(2) Not later than 60 days after receiving the annual report under paragraph (1), the President of the University shall transmit such report to the Secretary of Defense and to Congress.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2117. United States Military Cancer Institute.''.

SEC. 915. AUTHORITIES OF THE JUDGE ADVOCATES GENERAL.

(a) DEPARTMENT OF THE ARMY.—(1) Section 3019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 3037 of this title, the General Counsel''.

(2)(A) Section 3037 of such title is amended to read as follows:

''§ 3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties

''(a) POSITION OF JUDGE ADVOCATE GENERAL.—There is a Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Judge Advocate General's Corps. The term of office is four years, but may be sooner terminated or extended by the President. The Judge Advocate General, while so serving, has the grade of lieutenant general.

''(b) APPOINTMENT.—The Judge Advocate General of the Army shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

''(c) DUTIES.—The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Army, the Chief of Staff of the Army, and the Army Staff, and of all offices and agencies of the Department of the Army;

''(2) shall direct and supervise the members of the Judge Advocate General's Corps and civilian attorneys employed by the Department of the Army (other than those assigned

or detailed to the Office of the General Counsel of the Army) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Army;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Army.

''(d) POSITION OF ASSISTANT JUDGE ADVOCATE GENERAL.—There is an Assistant Judge Advocate General in the Army, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Army who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Assistant Judge Advocate General is four years, but may be sooner terminated or extended by the President. An officer appointed as Assistant Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

''(e) APPOINTMENTS RECOMMENDED BY SELECTION BOARDS.—Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Assistant Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.''.

(B) The item relating to such section in the table of sections at the beginning of chapter 305 of such title is amended to read as follows:

''3037. Judge Advocate General, Assistant Judge Advocate General: appointment; duties.''.

(b) DEPARTMENT OF THE NAVY.—(1) Section 5019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 5148 of this title, the General Counsel''.

(2) Section 5148 of such title is amended—

(A) in subsection (b), by striking the fourth sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of vice admiral or lieutenant general, as appropriate.''; and

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

''(d) The Judge Advocate General, in addition to other duties prescribed by law—

''(1) is the legal adviser of the Secretary of the Navy, the Chief of Naval Operations, and all offices, bureaus, and agencies of the Department of the Navy;

''(2) shall direct and supervise the judge advocates of the Navy and the Marine Corps and civilian attorneys employed by the Department of the Navy (other than those assigned or detailed to the Office of the General Counsel of the Navy) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Navy or Marine Corps;

''(4) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

''(5) shall perform such other legal duties as may be directed by the Secretary of the Navy.''.

(c) DEPARTMENT OF THE AIR FORCE.—(1) Section 8019(b) of title 10, United States Code, is amended by striking ''The General Counsel'' and inserting ''Subject to sections 806 and 8037 of this title, the General Counsel''.

(2) Section 8037 of such title is amended—

(A) in subsection (a), by striking the third sentence and inserting the following: ''The Judge Advocate General, while so serving, has the grade of lieutenant general.''; and

(B) in subsection (c)—

(i) by striking ''General shall,'' in the matter preceding paragraph (1) and inserting ''General,'';

(ii) by redesignating paragraphs (1) and (2) as paragraphs (4) and (5), respectively, and, in each such paragraph, by inserting ''shall'' before the first word; and

(iii) by inserting after paragraph (1) the following new paragraphs:

''(1) is the legal adviser of the Secretary of the Air Force, the Chief of Staff of the Air Force, and the Air Staff, and of all offices and agencies of the Department of the Air Force;

''(2) shall direct and supervise the members of the Air Force designated as judge advocates and civilian attorneys employed by the Department of the Air Force (other than those assigned or detailed to the Office of the General Counsel of the Air Force) in the performance of their duties;

''(3) shall direct and supervise the performance of duties under chapter 47 of this title (the Uniform Code of Military Justice) by any member of the Air Force;''.

(d) EXCLUSION FROM LIMITATION ON GENERAL AND FLAG OFFICER DISTRIBUTION.—Section 525(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

''(9) An officer while serving as the Judge Advocate General of the Army, the Judge Advocate General of the Navy, or the Judge Advocate General of the Air Force is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral under paragraph (1) or (2), as the case may be.''.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

SEC. 1001. TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2005 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed $3,000,000,000.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

SEC. 1002. UNITED STATES CONTRIBUTION TO NATO COMMON-FUNDED BUDGETS IN FISCAL YEAR 2005.

(a) FISCAL YEAR 2005 LIMITATION.—The total amount contributed by the Secretary of Defense in fiscal year 2005 for the common-funded budgets of NATO may be any amount up to, but not in excess of, the amount specified in subsection (b) (rather than the maximum amount that would otherwise be applicable to those contributions under the fiscal year 1998 baseline limitation).

(b) TOTAL AMOUNT.—The amount of the limitation applicable under subsection (a) is the sum of the following:

(1) The amounts of unexpended balances, as of the end of fiscal year 2004, of funds appropriated for fiscal years before fiscal year 2005 for payments for those budgets.

(2) The amount specified in subsection (c)(1).

(3) The amount specified in subsection (c)(2).

(4) The total amount of the contributions authorized to be made under section 2501.

(c) AUTHORIZED AMOUNTS.—Amounts authorized to be appropriated by titles II and III of this Act are available for contributions for the common-funded budgets of NATO as follows:

(1) Of the amount provided in section 201(1), $756,000 for the Civil Budget.

(2) Of the amount provided in section 301(1), $222,492,000 for the Military Budget.

(d) DEFINITIONS.—For purposes of this section:

(1) COMMON-FUNDED BUDGETS OF NATO.—The term ''common-funded budgets of NATO'' means the Military Budget, the Security Investment Program, and the Civil Budget of the North Atlantic Treaty Organization (and any successor or additional account or program of NATO).

(2) FISCAL YEAR 1998 BASELINE LIMITATION.—The term ''fiscal year 1998 baseline limitation'' means the maximum annual amount of Department of Defense contributions for common-funded budgets of NATO that is set forth as the annual limitation in section 3(2)(C)(ii) of the resolution of the Senate giving the advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic (as defined in section 4(7) of that resolution), approved by the Senate on April 30, 1998.

SEC. 1003. REDUCTION IN OVERALL AUTHORIZATION DUE TO INFLATION SAVINGS.

(a) REDUCTION.—The total amount authorized to be appropriated by titles I, II, and III is the amount equal to the sum of the individual authorizations in those titles reduced by $1,670,000,000.

(b) SOURCE OF SAVINGS.—Reductions required in order to comply with subsection (a) shall be derived from savings resulting from lower-than-expected inflation as a result of the annual review of the budget conducted by the Office of Management and Budget.

(c) ALLOCATION OF REDUCTION.—The Secretary of Defense shall allocate the reduction required by subsection (a) among the accounts in titles I, II, and III to reflect the extent to which net inflation savings are available in those accounts.

SEC. 1004. DEFENSE BUSINESS SYSTEMS INVESTMENT MANAGEMENT.

(a) REQUIREMENT FOR DEFENSE BUSINESS ENTERPRISE ARCHITECTURE AND TRANSITION PLAN.—(1) Not later than September 30, 2005, the Secretary of Defense shall develop—

(A) a defense business enterprise architecture covering all defense business systems of the Department of Defense and the functions and activities supported by such systems that—

(i) is sufficiently defined to effectively guide, constrain, and permit implementation

of interoperable business system solutions; and

(ii) is consistent with the applicable policies and procedures prescribed by the Director of the Office of Management and Budget; and

(B) a transition plan for implementing the defense business enterprise architecture.

(2) In carrying out paragraph (1), the Secretary shall act through the Defense Business Systems Management Committee established under subsection (h).

(b) COMPOSITION OF ENTERPRISE ARCHITECTURE.—The defense business enterprise architecture developed under subsection (a)(1)(A) shall include the following:

(1) An information infrastructure that, at a minimum, would enable the Department of Defense to—

(A) comply with all Federal accounting, financial management, and reporting requirements;

(B) routinely produce timely, accurate, and reliable financial information for management purposes;

(C) integrate budget, accounting, and program information and systems; and

(D) provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

(2) Policies, procedures, data standards, and system interface requirements that are to apply uniformly throughout the Department of Defense.

(c) COMPOSITION OF TRANSITION PLAN.—(1) The transition plan developed under subsection (a)(1)(B) shall include the following:

(A) The acquisition strategy for new systems that are expected to be needed to complete the defense business enterprise architecture.

(B) A listing of the defense business systems as of December 2, 2002 (known as ''legacy systems''), that will not be part of the objective defense business enterprise architecture, together with the schedule for terminating those legacy systems that provides for reducing the use of those legacy systems in phases.

(C) A listing of the legacy systems (referred to in subparagraph (B)) that will be a part of the objective defense business system, together with a strategy for making the modifications to those systems that will be needed to ensure that such systems comply with the defense business enterprise architecture.

(2) Each of the strategies under paragraph (1) shall include specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

(d) CONDITIONS FOR USE OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.—(1) After September 30, 2005, an officer or employee of the United States may not obligate or expend an amount in excess of $1,000,000 for a defense business system modernization unless the Secretary of Defense or the official delegated authority for the system covered by such modernization under subsection (e) has determined in writing that such defense business system modernization—

(A) is consistent with the defense business enterprise architecture and transition plan developed under subsection (a); or

(B) is necessary to—

(i) achieve a critical national security capability or address a critical requirement in an area such as safety or security; or

(ii) prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration the alternative solutions for preventing such adverse effect.

(2) A violation of paragraph (1) is a violation of section 1341(a)(1)(A) of title 31, United States Code.

(e) ACCOUNTABILITY FOR DEFENSE BUSINESS SYSTEMS.—The Secretary of Defense shall delegate authority for the planning, design, acquisition, development, deployment, operation, maintenance, modernization, and oversight of defense business systems as follows:

(1) To the Under Secretary of Defense for Acquisition, Technology, and Logistics, for—

(A) defense business systems the primary purpose of which is to support acquisition activities in the Department of Defense;

(B) defense business systems the primary purpose of which is to support logistics activities in the Department of Defense; and

(C) defense business systems the primary purpose of which is to support installations and environment activities in the Department of Defense.

(2) To the Under Secretary of Defense (Comptroller) and Chief Financial Officer, for—

(A) defense business systems the primary purpose of which is to support financial management activities in the Department of Defense; and

(B) defense business systems the primary purpose of which is to support strategic planning and budgeting activities in the Department of Defense.

(3) To the Under Secretary of Defense for Personnel and Readiness, for defense business systems the primary purpose of which is to support human resource management activities in the Department of Defense.

(4) To the Assistant Secretary of Defense (Networks and Information Integration) and Chief Information Officer, for defense business systems the primary purpose of which is to support information technology infrastructure and information assurance activities of the Department of Defense.

(5) To the Deputy Secretary of Defense or an Under Secretary of Defense, as designated by the Secretary of Defense, for defense business systems the primary purpose of which is to support any activity of the Department of Defense not described in another paragraph of this subsection.

(f) DEFENSE BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Secretary of Defense shall require each official to whom authority is delegated under subsection (e) to establish an investment review process to review the planning, design, acquisition, development, deployment, operation, maintenance, and modernization of all defense business systems covered by the authority so delegated to that official, and to analyze project cost benefits and risks of such systems.

(2) Each investment review process established under paragraph (1) shall be consistent with the requirements of section 11312 of title 40, United States Code, and shall include the following features:

(A) An investment review board composed of appropriate officials from among the Armed Forces, combatant commands, the Joint Staff, and Defense Agencies.

(B) Review and approval, by the investment review board, of each defense business system as an investment before the obligation or expenditure of funds on such system.

(C) Periodic review of each defense business system investment not less often than annually.

(D) Use of threshold criteria to ensure that each defense business system investment, and that accountability for each defense business system investment, is reviewed at a level of review within the Department of Defense that is appropriate for the scope, complexity, and cost of the investment.

(E) Procedures for making determinations in accordance with the requirements of subsection (d).

(g) DEFENSE BUSINESS SYSTEMS BUDGET EXHIBIT.—For each budget for a fiscal year after fiscal year 2005 that the President submits to Congress under section 1105(a) of title 31, United States Code, the Secretary of Defense shall include in the documentation on major functional category 050 (National Defense) that the Secretary submits to the congressional defense committees in support of such budget a defense business systems budget exhibit that includes the following information:

(1) Identification of each defense business system for which funding is proposed in that budget.

(2) Identification of all funds, by appropriation, proposed in that budget for each such system, including—

(A) funds for current services (to operate and maintain the system); and

(B) funds for business systems modernization, identified for each specific appropriation.

(3) For each such system, identification of the official to whom authority for such system is delegated under subsection (e).

(4) For each such system, a description of each determination made under subsection (d) with regard to such system.

(h) DEFENSE BUSINESS SYSTEM MANAGEMENT COMMITTEE.—(1) The Secretary of Defense shall establish a Defense Business Systems Management Executive Committee. The Committee shall be composed of the following members:

(A) The Deputy Secretary of Defense, who shall be the chairman of the Committee.

(B) The Under Secretary of Defense for Acquisition, Logistics, and Technology.

(C) The Under Secretary of Defense for Personnel and Readiness.

(D) The Under Secretary of Defense (Comptroller) and Chief Financial Officer.

(E) The Assistant Secretary of Defense (Networks and Information Integration) and Chief Information Officer.

(F) The Secretaries of the military departments.

(G) The heads of the Defense Agencies.

(H) Any personnel assigned to the Joint Staff, personnel assigned to combatant commands, or other Department of Defense personnel that the Secretary of Defense designates to serve on the Committee.

(2) In addition to any other duties assigned to the Committee by the Secretary of Defense, the Committee shall have the following duties:

(A) To submit to the Secretary recommended policies and procedures that the Committee considers necessary to effectively integrate compliance with the requirements of this section into all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the Department of Defense.

(B) To review and approve defense business systems modernization plans, including review and approval of any major update of the defense business enterprise architecture.

(C) To coordinate defense business system modernization initiatives to maximize benefits and minimize costs for the Department of Defense.

(D) To ensure that funds are not obligated for the modernization of any defense business system in violation of subsection (d)(1).

(E) To periodically report to the Secretary on the status of defense business system modernization efforts.

(i) DEFINITIONS.—In this section:

(1) The term ''defense business system'' means any information system (except a national security system, as defined in section 2315 of title 10, United States Code) that is

operated by, for, or on behalf of the Department of Defense to support business activities such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

(2) The term ''enterprise architecture'' has the meaning given that term in section 3601(4) of title 44, United States Code.

(3) The terms ''information system'' and ''information technology'' have the meanings given those terms in section 11101 of title 40, United States Code.

(4) The term ''modernization'', with respect to a defense business system, means the acquisition or development of a new defense business system or any significant modification or enhancement of an existing defense business system (other than as necessary to maintain current services).

(j) ANNUAL REPORT.—Not later than March 15 of 2005 and each year thereafter through 2009, the Secretary of Defense shall submit to the congressional defense committees a report on the progress made by the Department of Defense in implementing the defense business enterprise architecture and transition plan required by this section. Each report shall include, at a minimum, the following information:

(1) A description of the specific actions taken and planned to be taken to implement the defense business enterprise architecture and the transition plan.

(2) Specific milestones, performance measures, and resource commitments for such actions.

(k) COMPTROLLER GENERAL ASSESSMENT.—Not later than 60 days after the date on which the Secretary of Defense approves the defense business enterprise architecture and transition plan developed under subsection (a), and again each year not later than 60 days after the submission of the annual report under subsection (j), the Comptroller General shall submit to the congressional defense committees an assessment of the extent to which the actions taken by the Department comply with the requirements of this section.

(l) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to modify or affect the applicability of the restrictions and requirements provided in section 8088 of the Department of Defense Appropriations Act, 2003 (Public Law 107–248; 116 Stat. 1556).

(m) REPEAL OF SUPERSEDED LAW.—Section 1004 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2629; 10 U.S.C. 113 note) is repealed.

SEC. 1005. UNIFORM FUNDING AND MANAGEMENT OF SERVICE ACADEMY ATHLETIC AND RECREATIONAL EXTRACURRICULAR PROGRAMS.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 4359. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''4359. Athletic and recreational extracurricular programs: uniform funding.''.

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 6978. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Naval Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''6978. Athletic and recreational extracurricular programs: uniform funding.''.

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 9358. Athletic and recreational extracurricular programs: uniform funding

''The authority and conditions provided in section 2494 of this title shall also apply to any athletic or recreational extracurricular program of the Academy that—

''(1) is not considered a morale, welfare, or recreation program referred to in such section;

''(2) is funded out of appropriated funds;

''(3) is supported by a supplemental mission nonappropriated fund instrumentality; and

''(4) is not operated as a private organization.''.

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

''9358. Athletic and recreational extracurricular programs: uniform funding.''.

(d) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect on October 1, 2004, and shall apply with respect to funds appropriated for fiscal years beginning on or after such date.

SEC. 1006. AUTHORIZATION OF APPROPRIATIONS FOR A CONTINGENT EMERGENCY RESERVE FUND FOR OPERATIONS IN IRAQ AND AFGHANISTAN.

(a) AUTHORIZATION OF SUPPLEMENTAL APPROPRIATIONS.—In addition to any other amounts authorized to be appropriated by this Act, there is hereby authorized to be appropriated for the Department of Defense for fiscal year 2005, subject to subsections (b) and (c), $25,000,000,000, to be available only for activities in support of operations in Iraq and Afghanistan.

(b) SPECIFIC AMOUNTS.—Of the amount authorized to be appropriated under subsection (a), funds are authorized to be appropriated in amounts for purposes as follows:

(1) For the Army for operation and maintenance, $14,500,000,000.

(2) For the Navy for operation and maintenance, $1,000,000,000.

(3) For the Marine Corps for operation and maintenance, $2,000,000,000.

(4) For the Air Force for operation and maintenance, $1,000,000,000.

(5) For operation and maintenance, Defense-wide activities, $2,000,000,000.

(6) For military personnel, $2,000,000,000.

(7) An additional amount of $2,500,000,000 to be available for transfer to—

(A) operation and maintenance accounts;

(B) military personnel accounts;

(C) research, development, test, and evaluation accounts;

(D) procurement accounts;

(E) classified programs; and

(F) Coast Guard operating expenses.

(c) AUTHORIZATION CONTINGENT ON BUDGET REQUEST.—The authorization of appropriations in subsection (a) shall be effective only to the extent that a budget request for all or part of the amount authorized to be appropriated under such subsection for the purposes set forth in such subsection is transmitted by the President to Congress after the date of the enactment of this Act and includes a designation of the requested amount as an emergency and essential to support activities in Iraq and Afghanistan.

(d) TRANSFER AUTHORITY.—(1) Of the amount authorized to be appropriated under subsection (b)(7) for transfer, no transfer may be made until the Secretary of Defense consults with the Chairmen and Ranking Members of the congressional defense committees and then notifies such committees in writing not later than five days before the transfer is made.

(2) The transfer authority provided under this section is in addition to any other transfer authority available to the Department of Defense.

(e) MONTHLY REPORT.—The Secretary of Defense shall submit to the congressional defense committees each month a report on the use of funds authorized to be appropriated under this section. The report for a month shall include in a separate display for each of Iraq and Afghanistan, the activity for which the funds were used, the purpose for which the funds were used, the source of the funds used to carry out that activity, and the account to which those expenditures were charged.

Subtitle B—Naval Vessels and Shipyards

SEC. 1011. EXCHANGE AND SALE OF OBSOLETE NAVY SERVICE CRAFT AND BOATS.

(a) IN GENERAL.—Chapter 633 of title 10, United States Code, is amended by inserting after section 7309 the following new section:

''§ 7309a. Service craft and boats: exchange or sale

''(a) IN GENERAL.—The Secretary of the Navy may, in acquiring personal property under section 503 of title 40, exchange or sell obsolete Navy service craft or boats that are similar to such personal property and apply the exchange allowance or proceeds of sale in whole or part payment for such personal property.

''(b) USE OF PROCEEDS FOR COST OF PREPARATION OF SALE.—In selling a service craft or boat under subsection (a), the Secretary shall obtain, to the extent practicable, amounts necessary to recover the full costs, whether direct or indirect, incurred by the Navy in preparing the service craft or boat for sale, including costs of towing, storage, defueling, removal and disposal of hazardous wastes, environmental surveys to determine the presence of regulated materials containing polychlorinated biphenyl (PCB), removal and disposal of such materials, and other related costs.

''(c) TREATMENT OF ADDITIONAL PROCEEDS.—(1) Any proceeds of sale of a service craft or boat under subsection (a) that are in addition to amounts necessary to recover the costs of the preparation of sale of the service craft or boat under subsection (b) shall be deposited in an account in the Treasury established for purposes of this section.

''(2) Amounts in the account under paragraph (1) shall be available to the Secretary

for the payment of costs associated with the preparation of obsolete Navy service craft or boats for sale or exchange under this section. Amounts in the account shall be available for that purpose without fiscal year limitation.

''(3) The Secretary shall, on a periodic basis, deposit amounts in the account under paragraph (1) that are in excess of the amounts otherwise utilized under paragraph (2) in the general Treasury as miscellaneous receipts, or in another account in the Treasury as otherwise provided by law.

''(d) INAPPLICABILITY OF CERTAIN PROCUREMENT REQUIREMENTS.—Notwithstanding section 503(b)(3) of title 40, section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to the exchange or sale of service craft or boats under this section.

''(e) REGULATIONS.—The Secretary may prescribe regulations relating to the exercise of authority under this section.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7309 the following new item:

''7309a. Service craft and boats: exchange or sale.''.

SEC. 1012. LIMITATION ON DISPOSAL OF OBSOLETE NAVAL VESSEL.

The Secretary of the Navy may not dispose of the decommissioned destroyer ex-Edson (DD–946) before October 1, 2007, to an entity that is not a nonprofit organization unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under section 7306(a)(3) of title 10, United States Code.

SEC. 1013. AWARD OF CONTRACTS FOR SHIP DISMANTLING ON NET COST BASIS.

(a) IN GENERAL.—Chapter 633 of title 10, United States Code, is amended by inserting after section 7305 the following new section:

''§ 7305a. Contracts for ship dismantling: award on net cost basis

''(a) AUTHORITY.—Notwithstanding any other provision of law, the Secretary of the Navy may use net cost as a criterion in the selection of an offeror for award of a contract for the dismantling of one or more ships stricken from the Naval Vessel Register and may accord that criterion such weight in the offer evaluation process as the Secretary considers appropriate and specifies in the solicitation of offers for that contract.

''(b) COMPETITION.—In exercising the authority under this section, the Secretary shall to the maximum extent practicable use the competitive procedure or combination of competitive procedures that is best suited under the circumstances.

''(c) RETENTION OF PROCEEDS.—When the Secretary of the Navy awards a ship dismantling contract on a net cost basis, the contractor may retain the proceeds from the sale of scrap and reusable items from the vessel being dismantled.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'net cost', with respect to a contract for the dismantling of a ship, means the amount equal to the excess of—

''(A) the amount of the contractor's gross cost of performance of the contract, over

''(B) the estimated value of scrap and reusable items that the contractor removes from the ship during performance of the contract, as stated in the contractor's offer for such contract.

''(2) The term 'scrap' means personal property that has no value except for its basic material content.

''(3) The term 'reusable item', with respect to a ship, means any demilitarized component or removable portion of the ship or the ship's equipment that the Navy has identified as excess to its needs but which has potential resale value on the open market.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7305 the following new item:

''7305a. Contracts for ship dismantling: award on net cost basis.''.

SEC. 1014. AUTHORITY TO TRANSFER NAVAL VESSELS TO CERTAIN FOREIGN COUNTRIES.

(a) AUTHORITY TO TRANSFER BY GRANT.—The Secretary of the Navy is authorized to transfer vessels to foreign countries on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) as follows:

(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer O'BANNON (DD 987).

(2) PORTUGAL.—To the Government of Portugal, the OLIVER HAZARD PERRY class guided missile frigate GEORGE PHILIP (FFG 12) and the OLIVER HAZARD PERRY class guided missile frigate USS SIDES (FFG 14).

(b) AUTHORITY TO TRANSFER BY SALE.—The Secretary of the Navy is authorized to transfer vessels to foreign countries on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761) as follows:

(1) TAIWAN.—To the Taipei Economic and Cultural Representative Office in the United States (which is the Taiwan instrumentality designated pursuant to section 10(a) of the Taiwan Relations Act), the ANCHORAGE class dock landing ship ANCHORAGE (LSD 36).

(2) CHILE.—To the Government of Chile, the SPRUANCE class destroyer FLETCHER (DD 992).

(c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE ARTICLES.—The value of a vessel transferred to another country on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) pursuant to authority provided by subsection (a) shall not be counted for the purposes of subsection (g) of that section in the aggregate value of excess defense articles transferred to countries under that section in any fiscal year.

(d) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection with a transfer authorized by this section shall be charged to the recipient (notwithstanding section 516(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(e)(1)).

(e) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the country to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of that country, performed at a shipyard located in the United States, including a United States Navy shipyard.

(f) EXPIRATION OF AUTHORITY.— The authority to transfer a vessel under this section shall expire at the end of the two-year period beginning on the date of the enactment of this Act.

Subtitle C—Reports

SEC. 1021. REPORT ON CONTRACTOR SECURITY IN IRAQ.

(a) REPORT REQUIRED.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit a report on contractor security in Iraq to the congressional defense committees. The report shall include, at a minimum—

(A) information on the security of contractor employees in Iraq, as described in subsection (b);

(B) information on contract security personnel in Iraq, as described in subsection (c); and

(C) any recommended actions that the Secretary considers appropriate to enhance contractor security in Iraq.

(2) The information included in the report shall be current as of September 30, 2004.

(b) SECURITY OF CONTRACTOR EMPLOYEES IN IRAQ.—The report under subsection (a) shall include information on contractor employees in Iraq, as follows:

(1) The number of contractor employees in each of the following categories of nationals:

(A) Nationals of the United States.

(B) Nationals of Iraq.

(C) Nationals of states other than the United States and Iraq.

(2) For each of the categories of nationals listed in paragraph (1), the number of casualties among contractor employees on and after May 1, 2003.

(c) CONTRACT SECURITY PERSONNEL.—The report required by subsection (a) shall include information on contract security personnel of a contractor in Iraq, as follows:

(1) The number of contract security personnel engaged in providing security services to personnel or facilities in each of the following categories:

(A) Personnel or facilities of the United States Government or the Coalition Provisional Authority.

(B) Personnel or facilities of the Iraqi Government.

(C) Personnel or facilities of a contractor or subcontractor.

(2) For each of the categories of nationals listed in subsection (b)(1), the following information:

(A) The number of contract security personnel.

(B) The range of annual rates of pay of the contract security personnel.

(C) The number of casualties among the contract security personnel on and after May 1, 2003.

(3) The number, types, and sources of weapons that contract security personnel are authorized to possess in each of the following categories:

(A) Weapons provided by coalition forces.

(B) Weapons supplied by the contractor.

(C) Weapons supplied by other sources.

(4) The extent to which contract security personnel are equipped with other critical equipment, such as body armor, armored vehicles, secure communications, and friend-foe identification.

(5) An assessment of the extent to which contract security personnel have been engaged by hostile fire on and after May 1, 2003.

(d) COORDINATION.—In the preparation of the report under this section, the Secretary of Defense shall coordinate with the heads of any other departments and agencies of the Federal Government that are affected by the performance of Federal Government contracts by contractor personnel in Iraq.

(e) ADDITIONAL CONGRESSIONAL RECIPIENTS.—In addition to submitting the report on contractor security under this section to the congressional defense committees, the Secretary of Defense shall also submit the report to any other committees of Congress that the Secretary determines appropriate to receive such report taking into consideration the requirements of the Federal Government that contractor personnel in Iraq are engaged in satisfying.

(f) FORMS OF REPORT.—The report required by this section shall be submitted in classified and unclassified forms.

(g) DEFINITIONS.—In this section:

(1) The term ''contract security personnel'' includes employees of a contractor or subcontractor who, under a covered contract, provide security services in Iraq to—

(A) personnel or facilities of the United States Government or the Coalition Provisional Authority;

(B) personnel or facilities of the Iraqi Government; or

(C) personnel or facilities of a contractor.

(2) The term ''covered contract''—

(A) means a contract entered into by an agency of the United States Government or by the Coalition Provisional Authority for the procurement of products or services to be provided in Iraq, regardless of the source of the funding for such procurement; and

(B) includes a subcontract under such a contract, regardless of the source of the funding for such procurement.

(3) The term ''national of the United States'' has the meaning given such term in section 101(22) of the Immigration and Nationality Act (8 U.S.C. 1101(22)).

(4) The term ''national'', except as provided in paragraph (3), has the meaning given such term in section 101(21) of such Act.

SEC. 1022. TECHNICAL CORRECTION TO REFERENCE TO CERTAIN ANNUAL REPORTS.

Section 2474(f)(2) of title 10, United States Code, is amended by striking ''section 2466(e)'' and inserting ''section 2466(d)''.

SEC. 1023. STUDY OF ESTABLISHMENT OF MOBILIZATION STATION AT CAMP RIPLEY NATIONAL GUARD TRAINING CENTER, LITTLE FALLS, MINNESOTA.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall carry out and complete a study on the feasibility of the use of Camp Ripley National Guard Training Center, Little Falls, Minnesota, as a mobilization station for reserve components ordered to active duty under provisions of law referred to in section 101(a)(13)(B) of title 10, United States Code. The study shall include consideration of the actions necessary to establish such center as a mobilization station.

SEC. 1024. REPORT ON TRAINING PROVIDED TO MEMBERS OF THE ARMED FORCES TO PREPARE FOR POST-CONFLICT OPERATIONS.

(a) STUDY ON TRAINING.—The Secretary of Defense shall conduct a study to determine the extent to which members of the Armed Forces assigned to duty in support of contingency operations receive training in preparation for post-conflict operations and to evaluate the quality of such training.

(b) MATTERS TO BE INCLUDED IN STUDY.—As part of the study under subsection (a), the Secretary shall specifically evaluate the following:

(1) The doctrine, training, and leader-development system necessary to enable members of the Armed Forces to successfully operate in post-conflict operations.

(2) The adequacy of the curricula at military educational facilities to ensure that the Armed Forces has a cadre of members skilled in post-conflict duties, including a familiarity with applicable foreign languages and foreign cultures.

(3) The training time and resources available to members and units of the Armed Forces to develop cultural awareness about ethnic backgrounds and religious beliefs of the people living in areas in which post-conflict operations are likely to occur.

(4) The adequacy of training transformation to emphasize post-conflict operations, including interagency coordination in support of combatant commanders.

(c) REPORT ON STUDY.—Not later than May 1, 2005, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the result of the study conducted under this section.

SEC. 1025. REPORT ON AVAILABILITY OF POTENTIAL OVERLAND BALLISTIC MISSILE DEFENSE TEST RANGES.

The Secretary of Defense shall submit to Congress a report assessing the availability to the Department of Defense of potential ballistic missile defense test ranges for overland intercept flight tests of defenses against ballistic missile systems with a range of 750 to 1,500 kilometers.

SEC. 1026. OPERATION OF THE FEDERAL VOTING ASSISTANCE PROGRAM AND THE MILITARY POSTAL SYSTEM.

(a) REQUIREMENT FOR REPORTS.—(1) The Secretary of Defense shall submit to Congress two reports on the actions that the Secretary has taken to ensure that—

(A) the Federal Voting Assistance Program functions effectively to support absentee voting by members of the Armed Forces deployed outside the United States in support of Operation Iraqi Freedom, Operation Enduring Freedom, and all other contingency operations; and

(B) the military postal system functions effectively to support the morale of the personnel described in subparagraph (A) and absentee voting by such members.

(2)(A) The first report under paragraph (1) shall be submitted not later than 60 days after the date of the enactment of this Act.

(B) The second report under paragraph (1) shall be submitted not later than 60 days after the date on which the first report is submitted under that paragraph.

(3) In this subsection, the term ''Federal Voting Assistance Program'' means the program referred to in section 1566(b)(1) of title 10, United States Code.

(b) IMPLEMENTATION OF RECOMMENDED POSTAL SYSTEM IMPROVEMENTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report setting forth—

(1) the actions taken to implement the recommendations of the Military Postal Service Agency Task Force, dated 28 August 2000; and

(2) in the case of each such recommendation not implemented or not fully implemented as of the date of report, the reasons for not implementing or not fully implementing such recommendation, as the case may be.

SEC. 1027. REPORT ON ESTABLISHING NATIONAL CENTERS OF EXCELLENCE FOR UNMANNED AERIAL AND GROUND VEHICLES.

(a) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on the need for one or more national centers of excellence for unmanned aerial and ground vehicles.

(b) GOAL OF CENTERS.—The goal of the centers covered by the report is to promote interservice cooperation and coordination in the following areas:

(1) Development of joint doctrine for the organization, training, and use of unmanned aerial and ground vehicles.

(2) Joint research, development, test, and evaluation, and joint procurement of unmanned aerial and ground vehicles.

(3) Identification and coordination, in conjunction with the private sector and academia, of the future development of unmanned aerial and ground vehicles.

(4) Monitoring of the development and utilization of unmanned aerial and ground vehicles in other nations for both military and non-military purposes.

(5) The providing of joint training and professional development opportunities in the use and operation of unmanned aerial and ground vehicles to military personnel of all ranks and levels of responsibility.

(c) REPORT REQUIREMENTS.—The report shall include, at a minimum, the following:

(1) A list of facilities where the Defense Department currently conducts or plans to conduct research, development, and testing activities on unmanned aerial and ground vehicles.

(2) A list of facilities where the Department of Defense currently deploys or has committed to deploying unmanned aerial or ground vehicles.

(3) The extent to which existing facilities described in paragraphs (1) and (2) have sufficient unused capacity and expertise to research, develop, test, and deploy the current and next generations of unmanned aerial and ground vehicles and to provide for the development of doctrine on the use and training of operators of such vehicles.

(4) The extent to which efficiencies on research, development, testing, and deployment of existing or future unmanned aerial and ground vehicles can be achieved through consolidation at one or more national centers of excellence for unmanned aerial and ground vehicles.

(5) A list of potential locations for national centers of excellence.

(d) CONSIDERATIONS.—In determining the potential locations for the national centers of excellence under this section, the Secretary of Defense shall take into consideration existing Air Force facilities that have—

(1) a workforce of skilled personnel;

(2) existing capacity of runways and other facilities to accommodate the research, testing, and deployment of current and future unmanned aerial vehicles; and

(3) minimal restrictions on the research, development, and testing of unmanned aerial vehicles resulting from proximity to large population centers or airspace heavily utilized by commercial flights.

SEC. 1028. REPORT ON POST-MAJOR COMBAT OPERATIONS PHASE OF OPERATION IRAQI FREEDOM.

(a) REPORT REQUIRED.—(1) Not later than March 31, 2005, the Secretary of Defense shall submit to the congressional defense committees a report on the conduct of military operations during the post-major combat operations phase of Operation Iraqi Freedom.

(2) The report shall be prepared in consultation with the Chairman of the Joint Chiefs of Staff, the Commander of the United States Central Command, and such other officials as the Secretary considers appropriate.

(b) CONTENT.—(1) The report shall include a discussion of the matters described in paragraph (2), with a particular emphasis on accomplishments and shortcomings and on near-term and long-term corrective actions to address such shortcomings.

(2) The matters to be discussed in the report are as follows:

(A) The military and political objectives of the international coalition conducting the post-major combat operations phase of Operation Iraqi Freedom, and the military strategy selected to achieve such objectives, together with an assessment of the execution of the military strategy.

(B) The mobilization process for the reserve components of the Armed Forces, including the timeliness of notification, training and certification, and subsequent demobilization.

(C) The use and performance of major items of United States military equipment, weapon systems, and munitions (including non-lethal weapons and munitions, items classified under special access procedures, and items drawn from prepositioned stocks) and any expected effects of the experience with the use and performance of such items on the doctrinal and tactical employment of

such items and on plans for continuing the acquisition of such items.

(D) Any additional requirements for military equipment, weapon systems, munitions, force structure, or other capability identified during the post-major combat operations phase of Operation Iraqi Freedom, including changes in type or quantity for future operations.

(E) The effectiveness of joint air operations, together with an assessment of the effectiveness of—

(i) the employment of close air support; and

(ii) attack helicopter operations.

(F) The use of special operations forces, including operational and intelligence uses.

(G) The scope of logistics support, including support to and from other nations and from international organizations and organizations and individuals from the private sector in Iraq.

(H) The incidents of accidental fratricide, including a discussion of the effectiveness of the tracking of friendly forces and the use of the combat identification systems in mitigating friendly fire incidents.

(I) The adequacy of spectrum and bandwidth to transmit information to operational forces and assets, including unmanned aerial vehicles, ground vehicles, and individual soldiers.

(J) The effectiveness of strategic, operational, and tactical information operations, including psychological operations and assets, organization, and doctrine related to civil affairs, in achieving established objectives, together with a description of technological and other restrictions on the use of information operations capabilities.

(K) The readiness of the reserve component forces used in the post-major combat operations phase of Operation Iraqi Freedom, including an assessment of the success of the reserve component forces in accomplishing their missions.

(L) The adequacy of intelligence support during the post-major combat operations phase of Operation Iraqi Freedom, including the adequacy of such support in searches for weapons of mass destruction.

(M) The rapid insertion and integration, if any, of developmental but mission-essential equipment, organizations, or procedures during the post-major combat operations phase of Operation Iraqi Freedom.

(N) A description of the coordination, communication, and unity of effort between the Armed Forces, the Coalition Provisional Authority, other United States government agencies and organizations, nongovernmental organizations, and political, security, and nongovernmental organizations of Iraq, including an assessment of the effectiveness of such efforts.

(O) The adequacy of training for military units once deployed to the United States Central Command, including training for changes in unit mission and continuation training for high-intensity conflict missions.

(P) An estimate of the funding required to return or replace equipment used to date in Operation Iraqi Freedom, including equipment in prepositioned stocks, to mission-ready condition.

(Q) A description of military civil affairs and reconstruction efforts, including through the Commanders Emergency Response Program, and an assessment of the effectiveness of such efforts and programs.

(R) The adequacy of the requirements determination and acquisition processes, acquisition, and distribution of force protection equipment, including personal gear, vehicles, helicopters, and defense devices.

(S) The most critical lessons learned that could lead to long-term doctrinal, organizational, and technological changes, and the probable effects that an implementation of those changes would have on current visions, goals, and plans for transformation of the Armed Forces or the Department of Defense.

(T) The planning for and implementation of morale, welfare, and recreation programs for deployed forces and support to dependents, including rest and recuperation programs and personal communication benefits such as telephone, mail, and email services, including an assessment of the effectiveness of such programs.

(U) An analysis of force rotation plans, including individual personnel and unit rotations, differing deployment lengths, and intheater equipment repair and leave behinds.

(c) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

(d) POST-MAJOR COMBAT OPERATIONS PHASE OF OPERATION IRAQI FREEDOM DEFINED.—In this section, the term ''post-major combat operations phase of Operation Iraqi Freedom'' means the period of Operation Iraqi Freedom beginning on May 2, 2003, and ending on December 31, 2004.

SEC. 1029. COMPTROLLER GENERAL ANALYSIS OF USE OF TRANSITIONAL BENEFIT CORPORATIONS IN CONNECTION WITH COMPETITIVE SOURCING OF PERFORMANCE OF DEPARTMENT OF DEFENSE ACTIVITIES AND FUNCTIONS.

(a) REQUIREMENT FOR ANALYSIS.—Not later than February 1, 2005, the Comptroller General shall submit to Congress an analysis of the potential for use of transitional benefit corporations in connection with competitive sourcing of the performance of activities and functions of the Department of Defense.

(b) SPECIFIC ISSUES.—The analysis under this section shall—

(1) address the capabilities of transitional benefit corporations—

(A) to preserve human capital and surge capability;

(B) to promote economic development and job creation;

(C) to generate cost savings; and

(D) to generate efficiencies that are comparable to or exceed the efficiencies that result from competitive sourcing carried out by the Department of Defense under the procedures applicable to competitive sourcing by the Department of Defense; and

(2) identify areas within the Department of Defense in which transitional benefit corporations could be used to add value, reduce costs, and provide opportunities for beneficial use of employees and other resources that are displaced by competitive sourcing of the performance of activities and functions of the Department of Defense.

(d) TRANSITIONAL BENEFIT CORPORATION DEFINED.—In this section, the term ''transitional benefit corporation'' means a corporation that facilitates the transfer of designated (usually underutilized) real estate, equipment, intellectual property, or other assets of the United States to the private sector in a process that enables employees of the United States in positions associated with the use of such assets to retain eligibility for Federal employee benefits and to continue to accrue those benefits.

SEC. 1029A. COMPTROLLER GENERAL STUDY OF PROGRAMS OF TRANSITION ASSISTANCE FOR PERSONNEL SEPARATING FROM THE ARMED FORCES.

(a) REQUIREMENT FOR STUDY.—The Comptroller General shall carry out a study of the programs of the Department of Defense and other departments and agencies of the Federal Government under which transition assistance is provided to personnel who are separating from active duty service in the Armed Forces.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit a report on the results of the study to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(1) Regarding the transition assistance programs under section 1142 and 1144 of title 10, United States Code—

(A) an analysis of the extent to which such programs are meeting the current needs of members of the Armed Forces as such personnel are discharged or released from active duty, including—

(i) a discussion of the original purposes of the programs;

(ii) a discussion of how the programs are currently being administered in relationship to those purposes; and

(iii) an assessment of whether the programs are adequate to meet the current needs of members of the reserve components, including the National Guard; and

(B) any recommendations that the Comptroller General considers appropriate for improving such programs, including any recommendation regarding whether participation by members of the Armed Forces in such programs should be required.

(2) An analysis of the differences, if any, among the Armed Forces and among the commands of military installations of the Armed Forces regarding how transition assistance is being provided under the transition assistance programs, together with any recommendations that the Comptroller General considers appropriate—

(A) to achieve uniformity in the provision of assistance under such programs; and

(B) to ensure that the transition assistance is provided under such programs to members of the Armed Forces who are being separated at medical facilities of the uniformed services or Department of Veterans Affairs medical centers and to Armed Forces personnel on a temporary disability retired list under section 1202 or 1205 of title 10, United States Code.

(3) An analysis of the relationship of Department of Defense transition assistance programs to the transition assistance programs of the Department of Veterans Affairs and the Department of Labor, including the relationship of the benefits delivery at discharge program carried out jointly by the Department of Defense and the Department of Veterans Affairs to the other transition assistance programs.

(4) The rates of participation of Armed Forces personnel in the transition assistance programs, together with any recommendations that the Comptroller General considers appropriate to increase such participation rates, including any revisions of such programs that could result in increased participation.

(5) An assessment of whether the transition assistance information provided to Armed Forces personnel omits transition information that would be beneficial to such personnel, including an assessment of the extent to which information is provided under the transition assistance programs regarding participation in Federal Government procurement opportunities available at prime contract and subcontract levels to veterans with service-connected disabilities and other veterans, together with any recommendations that the Comptroller General considers appropriate regarding additional information that should be provided and any other recommendations that the Comptroller General considers appropriate for enhancing the provision of counseling on such procurement opportunities.

(6) An assessment of the extent to which representatives of military service organizations and veterans' service organizations are afforded opportunities to participate, and do

participate, in preseparation briefings under transition assistance programs, together with any recommendations that the Comptroller General considers appropriate regarding how representatives of such organizations could better be used to disseminate transition assistance information and provide preseparation counseling to Armed Forces personnel, including personnel of the reserve components who are being released from active duty for continuation of service in the reserve components.

(7) An analysis of the use of post-deployment and predischarge health screenings, together with any recommendations that the Comptroller General considers appropriate regarding whether and how to integrate the health screening process and the transition assistance programs into a single, coordinated preseparation program for Armed Forces personnel being discharged or released from active duty.

(8) An analysis of the processes of the Armed Forces for conducting physical examinations of members of the Armed Forces in connection with discharge and release from active duty, including—

(A) how post-deployment questionnaires are used;

(B) the extent to which Armed Forces personnel waive the physical examinations; and

(C) how, and the extent to which, Armed Forces personnel are referred for followup health care.

(9) A discussion of the current process by which mental health screenings are conducted, followup mental health care is provided for, and services are provided in cases of post-traumatic stress disorder and related conditions for members of the Armed Forces in connection with discharge and release from active duty, together with—

(A) for each of the Armed Forces, the programs that are in place to identify and treat cases of post-traumatic stress disorder and related conditions; and

(B) for persons returning from deployments in connection with Operation Enduring Freedom and Operation Iraqi Freedom—

(i) the number of persons treated as a result of such screenings; and

(ii) the types of interventions.

(c) ACQUISITION OF SUPPORTING INFORMATION.—In carrying out the study under this section, the Comptroller General shall seek to obtain views from the following persons:

(1) The Secretary of Defense and the Secretaries of the military departments.

(2) The Secretary of Veterans Affairs.

(3) The Secretary of Labor.

(4) Armed Forces personnel who have received transition assistance under the programs covered by the study and Armed Forces personnel who have declined to accept transition assistance offered under such programs.

(5) Representatives of military service organizations and representatives of veterans' service organizations.

(6) Persons having expertise in health care (including mental health care) provided under the Defense Health Program, including Department of Defense personnel, Department of Veterans Affairs personnel, and persons in the private sector.

SEC. 1029B. STUDY ON COORDINATION OF JOB TRAINING AND CERTIFICATION STANDARDS.

(a) REQUIREMENT FOR STUDY.—The Secretary of Defense and the Secretary of Labor shall jointly carry out a study to determine ways to coordinate the standards applied by the Armed Forces for the training and certification of members of the Armed Forces in military occupational specialties with the standards that are applied to corresponding civilian occupations by occupational licensing or certification agencies of governments and occupational certification agencies in the private sector.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall submit a joint report on the results of the study under subsection (a) to Congress.

SEC. 1029C. CONTENT OF PRESEPARATION COUNSELING FOR PERSONNEL SEPARATING FROM ACTIVE DUTY SERVICE.

Section 1142 of title 10, United States Code, is amended—

(1) by adding at the end of subsection (b) the following new paragraph:

''(11) Information on participation in Federal Government procurement opportunities that are available at the prime contract level and at subcontract levels to veterans with service-connected disabilities and other veterans.''; and

(2) by adding at the end the following new subsection:

''(d) REQUIREMENTS RELATING TO COUNSELING ON PROCUREMENT OPPORTUNITIES.—(1) For the counseling under subsection (b)(11), the Secretary concerned may provide for participation of representatives of the Secretary of Veterans Affairs, representatives of the Administrator of the Small Business Administration, representatives of other appropriate executive agencies, and representatives of Veterans' Business Outreach Centers and Small Business Development Centers.

''(2) The Secretary concerned may provide for the counseling under paragraph (11) of subsection (b) to be offered at medical centers of the Department of Veterans Affairs as well as the medical care facilities of the uniformed services and other facilities at which the counseling on the other matters required under such subsection is offered. The access of representatives described in paragraph (1) to a member of the armed forces to provide such counseling shall be subject to the consent of that member.''.

SEC. 1029D. PERIODIC DETAILED ACCOUNTING FOR OPERATIONS OF THE GLOBAL WAR ON TERRORISM.

(a) QUARTERLY ACCOUNTING.—Not later than 45 days after the end of each quarter of a year, the Secretary of Defense shall submit to the congressional defense committees, for such quarter for each operation described in subsection (b), a full accounting of all costs incurred for such operation during such quarter and all amounts expended during such quarter for such operation, and the purposes for which such costs were incurred and such amounts were expended.

(b) OPERATIONS COVERED.—The operations referred to in subsection (a) are as follows:

(1) Operation Iraqi Freedom.

(2) Operation Enduring Freedom.

(3) Operation Noble Eagle.

(4) Any other operation that the President designates as being an operation of the Global War on Terrorism.

(c) REQUIREMENT FOR COMPREHENSIVENESS.—For the purpose of providing a full and complete accounting of the costs and expenditures under subsection (a) for operations described in subsection (b), the Secretary shall account in the quarterly submission under subsection (a) for all costs and expenditures that are reasonably attributable to such operations, including personnel costs.

SEC. 1029E. REPORT ON THE STABILIZATION OF IRAQ.

Not later than 120 days after the date of the enactment of this Act, the President shall submit to the congressional defense committees an unclassified report (with classified annex, if necessary) on the strategy of the United States and coalition forces for stabilizing Iraq. The report shall contain a detailed explanation of the strategy, together with the following information:

(1) A description of the efforts of the President to work with the United Nations to provide support for, and assistance to, the transitional government in Iraq, and, in particular, the efforts of the President to negotiate and secure adoption by the United Nations Security Council of Resolution 1546.

(2) A description of the efforts of the President to continue to work with North Atlantic Treaty Organization (NATO) member states and non-NATO member states to provide support for and augment coalition forces, including efforts, as determined by the United States combatant commander, in consultation with coalition forces, to evaluate the—

(A) the current military forces of the NATO and non-NATO member countries deployed to Iraq;

(B) the current police forces of NATO and non-NATO member countries deployed to Iraq; and

(C) the current financial resources of NATO and non-NATO member countries provided for the stabilization and reconstruction of Iraq.

(3) As a result of the efforts described in paragraph (2)—

(A) a list of the NATO and non-NATO member countries that have deployed and will have agreed to deploy military and police forces; and

(B) with respect to each such country, the schedule and level of such deployments.

(4) A description of the efforts of the United States and coalition forces to develop the domestic security forces of Iraq for the internal security and external defense of Iraq, including a description of United States plans to recruit, train, equip, and deploy domestic security forces of Iraq.

(5) As a result of the efforts described in paragraph (4)—

(A) the number of members of the security forces of Iraq that have been recruited;

(B) the number of members of the security forces of Iraq that have been trained; and

(C) the number of members of the security forces of Iraq that have been deployed.

(6) A description of the efforts of the United States and coalition forces to assist in the reconstruction of essential infrastructure of Iraq, including the oil industry, electricity generation, roads, schools, and hospitals.

(7) A description of the efforts of the United States, coalition partners, and relevant international agencies to assist in the development of political institutions and prepare for democratic elections in Iraq.

(8) A description of the obstacles, including financial, technical, logistic, personnel, political, and other obstacles, faced by NATO in generating and deploying military forces out of theater to locations such as Iraq.

SEC. 1029F. REPORTS ON MATTERS RELATING TO DETAINMENT OF PRISONERS BY THE DEPARTMENT OF DEFENSE.

(a) REPORTS REQUIRED.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the population of persons held by the Department of Defense for more than 45 days and on the facilities in which such persons are held.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall include the following:

(1) General information on the foreign national detainees in the custody of the Department on the date of such report, including the following:

(A) The best estimate of the Department of the number of the total number of detainees in the custody of the Department as of the date of such report.

(B) The countries in which such detainees were detained, and the number of detainees detained in each such country.

(C) The best estimate of the Department of the total number of detainees released from the custody of the Department during the one-year period ending on the date of such report.

(2) For each foreign national detained and registered with the National Detainee Reporting Center by the Department on the date of such report the following:

(A) The Internment Serial Number or other appropriate identification number.

(B) The nationality, if available.

(C) The place at which taken into custody, if available.

(D) The circumstances of being taken into custody, if available.

(E) The place of detention.

(F) The current length of detention.

(G) A categorization as a civilian detainee, enemy prisoner of war/prisoner of war, or enemy combatant.

(H) Information as to transfer to the jurisdiction of another country, including the identity of such country.

(3) Information on the detention facilities and practices of the Department for the one-year period ending on the date of such report, including for each facility of the Department at which detainees were detained by the Department during such period the following:

(A) The name of such facility.

(B) The location of such facility.

(C) The number of detainees detained at such facility as of the end of such period.

(D) The capacity of such facility.

(E) The number of military personnel assigned to such facility as of the end of such period.

(F) The number of other employees of the United States Government assigned to such facility as of the end of such period.

(G) The number of contractor personnel assigned to such facility as of the end of such period.

(c) FORM OF REPORT.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

Subtitle D—Matters Relating to Space

SEC. 1031. SPACE POSTURE REVIEW.

(a) REQUIREMENT FOR COMPREHENSIVE REVIEW.—In order to clarify the national security space policy and strategy of the United States for the near term, the Secretary of Defense shall conduct a comprehensive review of the space posture of the United States over the posture review period.

(b) ELEMENTS OF REVIEW.—The review conducted under subsection (a) shall include, for the posture review period, the following:

(1) The role of space in United States military and national security strategy, planning, and programming.

(2) The policy, requirements, and objectives for space situational awareness.

(3) The policy, requirements, and objectives for space control.

(4) The policy, requirements, and objectives for space superiority, including defensive and offensive counterspace.

(5) The policy, requirements, and objectives for space exploitation, including force enhancement and force application.

(6) The policy, requirements, and objectives for intelligence surveillance and reconnaissance from space.

(7) Current and planned space programs, including how each such program will address the policy, requirements, and objectives described in paragraphs (1) through (6).

(8) The relationship among United States military space policy and national security space policy, space objectives, and arms control policy.

(9) The type of systems, including space systems, that are necessary to implement United States military and national security space policies.

(10) The effect of United States national security space policy on weapons proliferation.

(c) REPORTS.—(1) Not later than March 15, 2005, the Secretary of Defense shall submit to the congressional defense committees an interim report on the review conducted under subsection (a).

(2) Not later than December 31, 2005, the Secretary shall submit to the congressional defense committees a final report on the review.

(3) Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(4) The reports under this subsection shall also be submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) JOINT UNDERTAKING WITH THE DIRECTOR OF CENTRAL INTELLIGENCE.—The Secretary of Defense shall conduct the review under this section, and submit the reports under subsection (c), jointly with the Director of Central Intelligence.

(e) POSTURE REVIEW PERIOD DEFINED.—In this section, the term ''posture review period'' means the period beginning one year after the date of the enactment of this Act and ending ten years after that date.

SEC. 1032. PANEL ON THE FUTURE OF MILITARY SPACE LAUNCH.

(a) IN GENERAL.—(1) The Secretary of Defense shall enter into a contract with a federally funded research and development center to establish a panel on the future military space launch requirements of the United States, including means of meeting such requirements.

(2) The Secretary shall enter into the contract not later than 60 days after the date of the enactment of this Act.

(b) MEMBERSHIP AND ADMINISTRATION OF PANEL.—(1) The panel shall consist of individuals selected by the federally funded research and development center from among private citizens of the United States with knowledge and expertise in one or more of the following areas:

(A) Space launch operations.

(B) Space launch technologies.

(C) Satellite and satellite payloads.

(D) State and national launch complexes.

(E) Space launch economics.

(2) The federally funded research and development center shall establish appropriate procedures for the administration of the panel, including designation of the chairman of the panel from among its members.

(3) All panel members shall hold security clearances appropriate for the work of the panel.

(4) The panel shall convene its first meeting not later than 30 days after the date on which all members of the panel have been selected.

(c) DUTIES.—(1) The panel shall conduct a review and assessment of the future military space launch requirements of the United States, including the means of meeting such requirements.

(2) The review and assessment shall take into account matters as follows:

(A) Launch economics.

(B) Operational concepts and architectures.

(C) Launch technologies, including—

(i) reusable launch vehicles;

(ii) expendable launch vehicles;

(iii) low cost options; and

(iv) revolutionary approaches.

(D) Payloads, including their implications for launch requirements.

(E) Launch infrastructure.

(F) Launch industrial base.

(G) Relationships among military, civilian, and commercial launch requirements.

(3) The review and assessment shall address military space launch requirements over each of the 5-year, 10-year, and 15-year periods beginning with 2005.

(d) COOPERATION OF FEDERAL AGENCIES.—(1) The panel may secure directly from the Department of Defense or any other department or agency of the Federal Government any information that the panel considers necessary to carry out its duties.

(2) The Secretary of Defense shall designate at least one senior civilian employee of the Department of Defense and at least one general or flag officer of an Armed Force to serve as liaison between the Department, the Armed Forces, and the panel.

(e) REPORT.—Not later than one year after the date of the first meeting of the panel under subsection (b)(4), the panel shall submit to the Secretary of Defense, the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on the results of the review and assessment under subsection (c). The report shall include—

(1) the findings and conclusions of the panel on the future military space launch requirements of the United States, including means of meeting such requirements;

(2) the assessment of panel, and any recommendations of the panel, on—

(A) launch operational concepts and architectures;

(B) launch technologies;

(C) launch enabling technologies; and

(D) priorities for funding; and

(3) the assessment of the panel as to the best means of meeting the future military space launch requirements of the United States.

(f) TERMINATION.—The panel shall terminate 16 months after the date on which the chairman of the panel is designated pursuant to subsection (b)(2).

(g) FUNDING.—Amounts authorized to be appropriated to the Department of Defense shall be available to the Secretary of Defense for purposes of the contract required by subsection (a).

SEC. 1033. OPERATIONALLY RESPONSIVE NATIONAL SECURITY PAYLOADS FOR SPACE SATELLITES.

(a) PLANNING, PROGRAMMING, AND MANAGEMENT.—(1) Chapter 135 of title 10, United States Code, is amended by inserting after section 2273 the following new section:

''§ 2273a. Operationally responsive national security payloads

''(a) REQUIREMENT FOR PROGRAM ELEMENT.—The Secretary of Defense shall ensure that operationally responsive national security payloads of the Department of Defense for space satellites are planned, programmed, and budgeted for as a separate, dedicated program element.

''(b) MANAGEMENT AUTHORITY.—The Secretary of Defense shall assign management authority for the program element required under subsection (a) to the Director of the Office of Force Transformation.

''(c) DEFINITION OF OPERATIONALLY RESPONSIVE.—In this section, the term 'operationally responsive', with respect to a national

security payload for a space satellite, means an experimental or operational payload not in excess of 5,000 pounds that—

''(1) can be developed and acquired within 18 months after authority to proceed with development is granted; and

''(2) is responsive to requirements for capabilities at the operational and tactical levels of warfare.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2273 the following new item:

''2273a. Operationally responsive national security payloads.''.

(b) TIME FOR IMPLEMENTATION.—Section 2273a(a) of title 10, United States Code, shall apply with respect to fiscal years beginning after September 30, 2005.

(c) FUNDING.—Of the amount authorized to be appropriated under section 201(4), $25,000,000 shall be available for research, development, test, and evaluation of operationally responsive national security payloads for space satellites.

SEC. 1034. NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS.

(a) DISCLOSURE PROHIBITED.—Land remote sensing information may not be disclosed under section 552 of title 5, United States Code.

(b) LAND REMOTE SENSING INFORMATION DEFINED.—In this section, the term ''land remote sensing information''—

(1) means any data that—

(A) are collected by land remote sensing; and

(B) are prohibited from sale to customers other than the United States Government and its affiliated users under the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 et seq.); and

(2) includes any imagery and other product that is derived from such data.

(c) STATE OR LOCAL GOVERNMENT DISCLOSURES.—Land remote sensing information provided by the head of a department or agency of the United States to a State or local government may not be made available to the general public under any State or local law relating to the disclosure of information or records.

(d) SAFEGUARDING INFORMATION.—The head of each department or agency of the United States having land remote sensing information within that department or agency or providing such information to a State or local government shall take such actions, commensurate with the sensitivity of that information, as are necessary to protect that information from disclosure prohibited under this section.

(e) OTHER DEFINITIONS.—In this section, the terms ''land remote sensing'' and ''United States Government and its affiliated users'' have the meanings given such terms in section 3 of such Act (15 U.S.C. 5602).

SEC. 1035. SENSE OF CONGRESS ON SPACE LAUNCH RANGES.

It is the sense of Congress that the Secretary of Defense should provide support for, and continue the development, certification, and deployment of range safety systems that are capable of—

(1) reducing costs related to national security space launches and launch infrastructure; and

(2) enhancing technical capabilities and operational safety at the Eastern, Western, and other United States space launch ranges.

Subtitle E—Defense Against Terrorism

SEC. 1041. TEMPORARY ACCEPTANCE OF COMMUNICATIONS EQUIPMENT PROVIDED BY LOCAL PUBLIC SAFETY AGENCIES.

(a) AUTHORITY.—Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2613. Emergency communications equipment: temporary acceptance from local public safety agencies

''(a) AUTHORITY FOR TEMPORARY ACCEPTANCE OF EQUIPMENT.—(1) Under regulations prescribed by the Secretary concerned, the commander of a military installation may include in a disaster response agreement with a local public safety agency a clause that provides for the commander to accept from the public safety agency for use during a natural or man-made disaster any communications equipment that is useful for communicating with such agency during a joint response by the commander and such agency to such disaster.

''(2) The authority under paragraph (1) includes authority to accept services related to the operation and maintenance of communications equipment accepted under that paragraph.

''(3) In the case of a military installation administered by an officer or employee of the United States, such officer or employee may exercise the authority of a commander under this section.

''(b) CONDITIONS.—Acceptance of communications equipment and services by a commander from a public safety agency under subsection (a) is subject to the following conditions:

''(1) Acceptance of equipment is authorized only to the extent that communications equipment under the control of the commander is inadequate to meet requirements for communicating with that public safety agency during a joint response to a disaster.

''(2) Acceptance of services for the operation or maintenance of communications equipment is authorized only to the extent that capabilities under the control of the commander are inadequate to operate or maintain such equipment.

''(c) LIABILITY.—(1) An emergency response agreement under this section shall include a clause that—

''(A) specifies the means for the commander to pay for use, loss, or damage of equipment, and for services, accepted under the agreement; or

''(B) ensures that the United States is not liable for costs incurred for the acceptance and use of the equipment or services nor for any loss or damage of such equipment.

''(2) No person providing services accepted under an emergency response agreement may be considered to be an officer, employee, or agent of the United States for any purpose.

''(d) GUIDANCE.—The Secretary of Defense shall prescribe guidance for the administration of the requirements and authority under this section.

''(e) DEFINITIONS.—In this section:

''(1) The term 'emergency response agreement' means a memorandum of agreement or memorandum of understanding that provides for mutual support by Department of Defense personnel and local public safety agency personnel in response to a natural or man-made disaster.

''(2) The term 'military installation' has the meaning given such term in section 2801(c) of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2613. Emergency communications equipment: temporary acceptance from local public safety agencies.''.

SEC. 1042. FULL-TIME DEDICATION OF AIRLIFT SUPPORT FOR HOMELAND DEFENSE OPERATIONS.

(a) DETERMINATION REQUIRED.—(1) The Secretary of Defense shall determine the feasibility and advisability of dedicating an airlift capability of the Armed Forces on a full-time basis to the support of homeland defense operations, including operations in support of contingent requirements for transporting Weapons of Mass Destruction Civil Support Teams, Air Force expeditionary medical teams, and Department of Energy emergency response teams in response to natural disasters and man-made disasters.

(2) In making the determination under paragraph (1), the Secretary shall take into consideration the results of the study required under subsection (b).

(b) REQUIREMENT FOR STUDY AND PLAN.—(1) The Secretary of Defense shall conduct a study of the existing plans and capabilities of the Department of Defense for meeting contingent requirements for transporting teams described in subsection (a)(1) in response to natural disasters and man-made disasters.

(2) The Secretary shall prepare a plan for resolving any deficiencies in the existing plans and capabilities for meeting the transportation requirements described in paragraph (1).

(3) The Secretary of Defense shall require the commander of the United States Northern Command and the commander of the United States Transportation Command to carry out jointly the study required under paragraph (1) and to prepare jointly the plan required under paragraph (2).

(c) REPORT.—Not later than April 1, 2005, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study under subsection (b). The report shall include the following matters:

(1) The Secretary's determination under subsection (a).

(2) An assessment and discussion of the adequacy of existing plans and capabilities of the Department of Defense for meeting the transportation requirements described in subsection (b)(1).

(3) The plan required under subsection (b)(2).

(d) DEFINITION.—In this section, the term ''Weapons of Mass Destruction Civil Support Team'' has the meaning given such term in section 305b(e) of title 37, United States Code.

SEC. 1043. SURVIVABILITY OF CRITICAL SYSTEMS EXPOSED TO CHEMICAL OR BIOLOGICAL CONTAMINATION.

(a) REQUIREMENT FOR IMPLEMENTATION PLAN.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a plan, for implementation by the Department of Defense, that sets forth a systematic approach for ensuring the survivability of defense critical systems upon contamination of such systems by chemical or biological agents.

(b) CONTENT.—At a minimum, the plan under subsection (a) shall include—

(1) policies for ensuring that the survivability of defense critical systems in the event of contamination by chemical or biological agents is adequately addressed throughout the Department of Defense;

(2) a systematic process for identifying which systems are defense critical systems;

(3) specific testing procedures to be used during the design and development of new defense critical systems; and

(4) a centralized database that—

(A) contains comprehensive information on the effects of chemical and biological agents and decontaminants on materials used in defense critical systems; and

(B) is easily accessible to personnel who have duties to ensure the survivability of defense critical systems upon contamination of

such systems by chemical and biological agents.

(c) DEFENSE CRITICAL SYSTEMS DEFINED.—In this section, the term ''defense critical system'' means a Department of Defense system that is critical to the national security of the United States.

Subtitle F—Matters Relating to Other Nations

SEC. 1051. HUMANITARIAN ASSISTANCE FOR THE DETECTION AND CLEARANCE OF LANDMINES AND EXPLOSIVE REMNANTS OF WAR.

(a) RESTATEMENT AND EXPANSION OF AUTHORITY.—(1) Chapter 20 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 406. Humanitarian assistance for the detection and clearance of landmines and explosive remnants of war

''(a) IN GENERAL.—Under regulations prescribed by the Secretary of Defense, members of the armed forces may provide humanitarian assistance for the detection and clearance of landmines or explosive remnants of war in a foreign country, including activities relating to the furnishing of education, training, and technical assistance, if the Secretary determines that the provision of such assistance will promote—

''(1) the security interests of both the United States and the country in which such assistance is to be provided; and

''(2) the specific operational readiness skills of the members of the armed forces who provide such assistance.

''(b) LIMITATIONS ON ACTIVITIES OF MEMBERS OF THE ARMED FORCES.—The Secretary shall ensure that no member of the armed forces, while providing assistance under this section—

''(1) engages in the physical detection, lifting or destroying of landmines or explosive remnants of war (unless the member does so for the concurrent purpose of supporting a United States military operation); or

''(2) provides such assistance as part of a military operation that does not involve the armed forces.

''(c) REQUIREMENT FOR APPROVAL OF SECRETARY OF STATE.—Humanitarian assistance for the detection and clearance of landmines and remnants of war may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance to such foreign country.

''(d) AVAILABILITY OF FUNDS FOR CERTAIN EXPENSES.—(1) To the extent provided in Acts authorizing appropriations for military activities of the Department of Defense, funds authorized to be appropriated to the Department for a fiscal year for humanitarian assistance shall be available for the purpose of providing assistance under this section.

''(2) Expenses incurred as a direct result of providing humanitarian assistance under this section to a foreign country shall be paid out of funds specifically appropriated for such purpose.

''(3) Expenses covered by paragraph (2) include the following:

''(A) Travel, transportation, and subsistence expenses of Department of Defense personnel providing humanitarian assistance under this section.

''(B) The cost of any equipment, services, or supplies acquired for the purpose of carrying out or supporting the provision of such assistance, including any nonlethal, individual, or small-team landmine or explosive remnant of war clearing equipment or supplies that are to be transferred or otherwise furnished to a foreign country in furtherance of the provision of assistance under this section.

''(4) The cost of equipment, services and supplies provided in any fiscal year to a foreign country under paragraph (3)(B) may not exceed $5,000,000.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''406. Humanitarian assistance for the detection and clearance of landmines and explosive remnants of war.''.

(b) REPEAL OF SUPERSEDED AUTHORITY.—Section 401 of such title is amended—

(1) in subsection (a), by striking paragraph (4);

(2) in subsection (b)—

(A) in paragraph (1), by striking ''(1)''; and

(B) by striking paragraph (2);

(3) in subsection (c)—

(A) by striking paragraphs (2) and (3); and

(B) by redesignating paragraph (4) as paragraph (2); and

(4) in subsection (e), by striking paragraph (5).

SEC. 1052. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

(a) AUTHORITY.—(1) In fiscal years 2005 and 2006, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC).

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8077 of the Department of Defense Appropriations Act, 2004 (Public Law 108–87; 117 Stat. 1090).

(c) NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia under subsection (a) in fiscal years 2005 and 2006 shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) RELATION TO OTHER AUTHORITY.—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State shall, in consultation with the Secretary of Defense and the Director of Central Intelligence, submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

SEC. 1053. ASSISTANCE TO IRAQ AND AFGHANISTAN MILITARY AND SECURITY FORCES.

(a) AUTHORITY.—Subject to the limitations in subsection (c), the Secretary of Defense may provide assistance in fiscal year 2005 to Iraq and Afghanistan military or security forces solely to enhance their ability to combat terrorism and support United States or coalition military operations in Iraq and Afghanistan, respectively.

(b) TYPE OF ASSISTANCE.—Assistance provided under subsection (a) may include equipment, supplies, services, and training.

(c) LIMITATIONS.—(1) The Secretary of Defense may provide assistance under this section only with the concurrence of the Secretary of State and, in any case in which section 104(e) of the National Security Act of 1947 (50 U.S.C. 403–4(e)) applies, the Director of Central Intelligence.

(2) The cost of assistance provided under this section may be paid only out of funds available to the Department of Defense for fiscal year 2005 for operation and maintenance and may not exceed $250,000,000.

(d) RELATIONSHIP TO OTHER AUTHORITY.—The authority to provide assistance under this section is in addition to any other authority to provide assistance to Iraq and Afghanistan.

(e) CONGRESSIONAL NOTIFICATION.—Not later than 15 days before providing assistance to a recipient under this section, the Secretary of Defense shall submit to the congressional defense committees a notification of the assistance proposed to be provided.

SEC. 1054. ASSIGNMENT OF NATO NAVAL PERSONNEL TO SUBMARINE SAFETY RESEARCH AND DEVELOPMENT PROGRAMS.

(a) AUTHORITY.—Chapter 631 of title 10, United States Code, is amended by inserting after the item relating to section 7205 the following new section:

''§ 7206. Submarine safety research and development: acceptance of services of NATO naval personnel

''(a) AUTHORITY.—The Secretary of the Navy may, subject to subsection (e), accept

the assignment of one or more members of the navy of another member country of the North Atlantic Treaty Organization to a command of the Navy for work on the development, standardization, or interoperability of submarine vessel safety and rescue systems and procedures if the Secretary determines that doing so would facilitate the development, standardization, and interoperability of submarine vessel safety and rescue systems and procedures for the Navy, the navy of that foreign country, and any other navy involved in that work.

''(b) RECIPROCITY NOT REQUIRED.—The authority under subsection (a) is not an exchange program. Reciprocal assignments of members of the Navy to a navy of a foreign country is not a condition for the exercise of such authority.

''(c) PAYMENT OF PERSONNEL COSTS.—(1) The acceptance of a member of a navy of a foreign country under this section is subject to the condition that the government of that country pay the salary, per diem allowance, subsistence costs, travel costs, cost of language or other training, and other costs for that member in accordance with the laws and regulations of such country.

''(2) Paragraph (1) does not apply to the following costs:

''(A) The cost of temporary duty directed by the Secretary of the Navy or an officer of the Navy authorized to do so.

''(B) The cost of a training program conducted to familiarize, orient, or certify foreign naval personnel regarding unique aspects of their assignments.

''(C) Any cost incident to the use of the facilities of the Navy in the performance of assigned duties.

''(d) RELATIONSHIP TO OTHER AUTHORITY.—The provisions of this section shall apply to any other authority that the Secretary of the Navy may exercise, subject to the concurrence of the Secretary of State, to enter into an agreement with the government of a foreign country to provide for the assignment of members of the navy of that foreign country to a Navy submarine safety program. The Secretary of the Navy may prescribe regulations for the application of this section in the exercise of such authority.

''(e) TERMINATION OF AUTHORITY.—The Secretary of the Navy may not accept the assignment of a member of the navy of a foreign country under this section after September 30, 2008.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7205 the following new item:

''7206. Submarine safety research and development: acceptance of services of NATO naval personnel.''.

SEC. 1055. COMPENSATION FOR FORMER PRISONERS OF WAR.

Any plan of the Secretary of Defense to provide compensation to an individual who was injured in a military prison under the control of the United States in Iraq shall include a provision to address the injuries suffered by the 17 citizens of the United States who were held as prisoners of war by the regime of Saddam Hussein during the First Gulf War.

SEC. 1056. DRUG ERADICATION EFFORTS IN AFGHANISTAN.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States engaged in military action against the Taliban-controlled Government of Afghanistan in 2001 in direct response to the Taliban's support and aid to Al Qaeda.

(2) The military action against the Taliban in Afghanistan was designed, in part, to disrupt the activities of, and financial support for, terrorists.

(3) A greater percentage of the world's opium supply is now produced in Afghanistan than before the Taliban banned the cultivation or trade of opium.

(4) In 2004, more than two years after the Taliban was forcefully removed from power, Afghanistan is supplying approximately 75 percent of the world's heroin.

(5) The estimated value of the opium harvested in Afghanistan in 2003 was $2,300,000,000.

(6) Some of the profits associated with opium harvested in Afghanistan continue to fund terrorists and terrorist organizations, including Al Qaeda, that seek to attack the United States and United States interests.

(7) The global war on terror is and should remain our Nation's highest national security priority.

(8) United States and Coalition counterdrug efforts in Afghanistan have not yet produced significant results.

(9) There are indications of strong, direct connections between terrorism and drug trafficking.

(10) The elimination of this funding source is critical to making significant progress in the global war on terror.

(11) The President of Afghanistan, Hamid Karzai, has stated that opium production poses a significant threat to the future of Afghanistan, and has established a plan of action to deal with this threat.

(12) The United Nations Office on Drugs and Crime has reported that Afghanistan is at risk of again becoming a failed state if strong actions are not taken against narcotics.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President should make the substantial reduction of drug trafficking in Afghanistan a priority in the war on terror;

(2) the Secretary of Defense should, in coordination with the Secretary of State, work to a greater extent in cooperation with the Government of Afghanistan and international organizations involved in counterdrug activities to assist in providing a secure environment for counterdrug personnel in Afghanistan; and

(3) because the trafficking of narcotics is known to support terrorist activities and contributes to the instability of the Government of Afghanistan, additional efforts should be made by the Armed Forces of the United States, in conjunction with and in support of coalition forces, to significantly reduce narcotics trafficking in Afghanistan and neighboring countries, with particular focus on those trafficking organizations with the closest links to known terrorist organizations.

(c) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report that describes—

(1) progress made towards substantially reducing the poppy cultivation and heroin production capabilities in Afghanistan; and

(2) the extent to which profits from illegal drug activity in Afghanistan fund terrorist organizations and support groups that seek to undermine the Government of Afghanistan.

SEC. 1057. HUMANE TREATMENT OF DETAINEES.

(a) FINDINGS.—Congress makes the following findings:

(1) After World War II, the United States and its allies created a new international legal order based on respect for human rights. One of its fundamental tenets was a universal prohibition on torture and ill treatment.

(2) On June 26, 2003, the International Day in Support of Victims of Torture, President George W. Bush stated, ''The United States is committed to the world-wide elimination of torture and we are leading this fight by example. I call on all governments to join with the United States and the community of law-abiding nations in prohibiting, investigating, and prosecuting all acts of torture and in undertaking to prevent other cruel and unusual punishment.''.

(3) The United States is a party to the Geneva Conventions, which prohibit torture, cruel treatment, or outrages upon personal dignity, in particular, humiliating and degrading treatment, during armed conflict.

(4) The United States is a party to 2 treaties that prohibit torture and cruel, inhuman, or degrading treatment or punishment, as follows:

(A) The International Covenant on Civil and Political Rights, done at New York December 16, 1966.

(B) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(5) The United States filed reservations to the treaties described in subparagraphs (A) and (B) of paragraph (4) stating that the United States considers itself bound to prevent ''cruel, inhuman or degrading treatment or punishment'' to the extent that phrase means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(6) Army Regulation 190-8 entitled ''Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees'' provides that ''Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ).... All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment.... All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind.... This list is not exclusive.''.

(7) The Field Manual on Intelligence Interrogation of the Department of the Army states that ''acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or an aid to interrogation'' are ''illegal''. Such Manual defines ''infliction of pain through... bondage (other than legitimate use of restraints to prevent escape)'', ''forcing an individual to stand, sit, or kneel in abnormal positions for prolonged periods of time'', ''food deprivation'', and ''any form of beating'' as ''physical torture'', defines ''abnormal sleep deprivation'' as ''mental torture'', and prohibits the use of such tactics under any circumstances.

(8) The Field Manual on Intelligence Interrogation of the Department of the Army states that ''Use of torture and other illegal methods is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the interrogator wants to hear. Revelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It may also place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors.''.

(b) PROHIBITION ON TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—(1) No person in the custody or

under the physical control of the United States shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

(2) Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

(c) RULES, REGULATIONS, AND GUIDELINES.—(1) Not later than 180 days after the date of enactment of this Act, the Secretary shall prescribe the rules, regulations, or guidelines necessary to ensure compliance with the prohibition in subsection (b)(1) by the members of the United States Armed Forces and by any person providing services to the Department of Defense on a contract basis.

(2) The Secretary shall submit to the congressional defense committees the rules, regulations, or guidelines prescribed under paragraph (1), and any modifications to such rules, regulations, or guidelines—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or modifications; and

(B) in a manner and form that will protect the national security interests of the United States.

(d) REPORT TO CONGRESS.—(1) The Secretary shall submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding any investigation of a possible violation of the prohibition in subsection (b)(1) by a member of the Armed Forces or by a person providing services to the Department of Defense on a contract basis.

(2) A report required under paragraph (1) shall be submitted in a manner and form that—

(A) will protect the national security interests of the United States; and

(B) will not prejudice any prosecution of an individual involved in, or responsible for, a violation of the prohibition in subsection (b)(1).

(e) DEFINITIONS.—In this section:

(1) The term ''cruel, inhuman, or degrading treatment or punishment'' means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(2) The term ''Geneva Conventions'' means—

(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(B) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(C) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(D) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(3) The term ''Secretary'' means the Secretary of Defense.

(4) The term ''torture'' has the meaning given that term in section 2340 of title 18, United States Code.

SEC. 1058. UNITED NATIONS OIL-FOR-FOOD PROGRAM.

(a) RESPONSIBILITY OF INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE FOR SECURITY OF DOCUMENTS.—(1) The Inspector General of the Department of Defense, in cooperation with the Director of the Defense Contract Audit Agency and the Director of the Defense Contract Management Agency, shall ensure, not later than June 30, 2004, the security of all documents relevant to the United Nations Oil-for-Food Program that are in the possession or control of the Coalition Provisional Authority.

(2) The Inspector General shall—

(A) maintain copies of all such documents in the United States at the Department of Defense; and

(B) not later than August 31, 2004, deliver a complete set of all such documents to the Comptroller General of the United States.

(b) COOPERATION IN INVESTIGATIONS.—Each head of an Executive agency, including the Department of State, the Department of Defense, the Department of the Treasury, and the Central Intelligence Agency, and the Administrator of the Coalition Provisional Authority shall, upon a request in connection with an investigation of the United Nations Oil-for-Food Program made by the chairman of the Committee on Foreign Relations, the Committee on Armed Services, the Committee on the Judiciary, the Committee on Governmental Affairs, the Select Committee on Intelligence, the Permanent Subcommittee on Investigations, or other committee of the Senate with relevant jurisdiction, promptly provide to such chairman—

(1) access to any information and documents described in subsections (a) or (c) that are under the control of such agency and responsive to the request; and

(2) assistance relating to access to and utilization of such information and documents.

(c) INFORMATION FROM THE UNITED NATIONS.—(1) The Secretary of State shall use the voice and vote of the United States in the United Nations to urge the Secretary-General of the United Nations to provide the United States copies of all audits and core documents related to the United Nations Oil-for-Food Program.

(2) It is the sense of Congress that, pursuant to section 941(b)(6) of the United Nations Reform Act of 1999 (title IX of division A of H.R. 3427 of the 106th Congress, as enacted into law by section 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A-480), the Comptroller General of the United States should have full and complete access to financial data relating to the United Nations, including information related to the financial transactions, organization, and activities of the United Nations Oil-for-Food Program.

(3) The Secretary of State shall facilitate the providing of access to the Comptroller General to the financial data described in paragraph (2).

(d) REVIEW OF OIL-FOR-FOOD PROGRAM BY COMPTROLLER GENERAL.—(1) The Comptroller General of the United States shall conduct a review of United States oversight of the United Nations Oil-for-Food Program. The review—

(A) in accordance with Generally Accepted Government Auditing Standards, should not interfere with any ongoing criminal investigations or inquiries related to the Oil-for-Food program; and

(B) may take into account the results of any investigations or inquiries related to the Oil-for-Food program.

(2) The head of each Executive agency shall fully cooperate with the review under this subsection.

(e) EXECUTIVE AGENCY DEFINED.—In this section, the term ''Executive agency'' has the meaning given that term in section 105 of title 5, United States Code.

SEC. 1059. SENSE OF CONGRESS ON THE GLOBAL PARTNERSHIP AGAINST THE SPREAD OF WEAPONS OF MASS DESTRUCTION.

It is the sense of Congress that the President should be commended for the steps taken at the G–8 summit at Sea Island, Georgia, on June 8–10, 2004, to demonstrate continued support for the Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction and to expand the Partnership by welcoming new members and using the Partnership to coordinate nonproliferation projects in Libya, Iraq, and other countries; and that the President should—

(1) expand the membership of donor nations to the Partnership;

(2) insure that Russia remains the primary partner of the Partnership while also seeking to fund through the Partnership efforts in other countries with potentially vulnerable weapons or materials;

(3) develop for the Partnership clear program goals;

(4) develop for the Partnership transparent project prioritization and planning;

(5) develop for the Partnership project implementation milestones under periodic review;

(6) develop under the Partnership agreements between partners for project implementation; and

(7) give high priority and senior-level attention to resolving disagreements on site access and worker liability under the Partnership.

SEC. 1059A. EXCEPTION TO BILATERAL AGREEMENT REQUIREMENTS FOR TRANSFERS OF DEFENSE ITEMS.

(a) FINDINGS.—Congress makes the following findings:

(1) Close defense cooperation between the United States and each of the United Kingdom and Australia requires interoperability among the armed forces of those countries.

(2) The need for interoperability must be balanced with the need for appropriate and effective regulation of trade in defense items.

(3) The Arms Export Control Act (22 U.S.C. 2751 et seq.) authorizes the executive branch to administer arms export policies enacted by Congress in the exercise of its constitutional power to regulate commerce with foreign nations.

(4) The executive branch has exercised its authority under the Arms Export Control Act, in part, through the International Traffic in Arms Regulations.

(5) Agreements to gain exemption from the International Traffic in Arms Regulations must be submitted to Congress for review.

(b) DEFINITIONS.—In this section:

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

(A) the Committee on Foreign Relations and the Committee on Armed Services of the Senate; and

(B) the Committee on International Relations and the Committee on Armed Services of the House of Representatives.

(2) DEFENSE ITEMS.—The term ''defense items'' has the meaning given the term in section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(3) INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.—The term ''International Traffic in Arms Regulations'' means the regulations maintained under parts 120 through 130 of title 22, Code of Federal Regulations, and any successor regulations.

(c) EXCEPTIONS FROM BILATERAL AGREEMENT REQUIREMENTS.—

(1) IN GENERAL.—Subsection (j) of section 38 of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(A) by redesignating paragraph (4) as paragraph (5); and

(B) by inserting after paragraph (3) the following new paragraph (4):

''(4) EXCEPTIONS FROM BILATERAL AGREEMENT REQUIREMENTS.—

''(A) AUSTRALIA.—Subject to section 1055 of the National Defense Authorization Act for Fiscal Year 2005, the requirements for a bilateral agreement described in paragraph

(2)(A) shall not apply to a bilateral agreement between the United States Government and the Government of Australia with respect to transfers or changes in end use of defense items within Australia that will remain subject to the licensing requirements of this Act after such agreement enters into force.

''(B) UNITED KINGDOM.—Subject to section 1055 of the National Defense Authorization Act for Fiscal Year 2005, the requirements for a bilateral agreement described in paragraphs (1)(A)(ii), (2)(A)(i), and (2)(A)(ii) shall not apply to a bilateral agreement between the United States Government and the Government of the United Kingdom for an exemption from the licensing requirements of this Act.''.

(2) CONFORMING AMENDMENT.—Paragraph (2) of such subsection is amended in the matter preceding subparagraph (A) by striking ''A bilateral agreement'' and inserting ''Except as provided in paragraph (4), a bilateral agreement''.

(d) CERTIFICATIONS.—Not later than 30 days before authorizing an exemption from the licensing requirements of the International Traffic in Arms Regulations in accordance with any bilateral agreement entered into with the United Kingdom or Australia under section 38(j) of the Arms Export Control Act (22 U.S.C. 2778(j)), as amended by subsection (c), the President shall certify to the appropriate congressional committees that such agreement—

(1) is in the national interest of the United States and will not in any way affect the goals and policy of the United States under section 1 of the Arms Export Control Act (22 U.S.C. 2751);

(2) does not adversely affect the efficacy of the International Traffic in Arms Regulations to provide consistent and adequate controls for licensed exports of United States defense items; and

(3) will not adversely affect the duties or requirements of the Secretary of State under the Arms Export Control Act.

(e) NOTIFICATION OF BILATERAL LICENSING EXEMPTIONS.—Not later than 30 days before authorizing an exemption from the licensing requirements of the International Traffic in Arms Regulations in accordance with any bilateral agreement entered into with the United Kingdom or Australia under section 38(j) of the Arms Export Control Act (22 U.S.C. 2778(j)), as amended by subsection (c), the President shall submit to the appropriate congressional committees the text of the regulations that authorize such a licensing exemption.

(f) REPORT ON CONSULTATION ISSUES.—Not later than one year after the date of the enactment of this Act and annually thereafter for each of the following 5 years, the President shall submit to the appropriate congressional committees a report on issues raised during the previous year in consultations conducted under the terms of any bilateral agreement entered into with Australia under section 38(j) of the Arms Export Control Act, or under the terms of any bilateral agreement entered into with the United Kingdom under such section, for exemption from the licensing requirements of the Arms Export Control Act (22 U.S.C. 2751 et seq.). Each report shall contain—

(1) information on any notifications or consultations between the United States and the United Kingdom under the terms of any agreement with the United Kingdom, or between the United States and Australia under the terms of any agreement with Australia, concerning the modification, deletion, or addition of defense items on the United States Munitions List, the United Kingdom Military List, or the Australian Defense and Strategic Goods List;

(2) a list of all United Kingdom or Australia persons and entities that have been designated as qualified persons eligible to receive United States origin defense items exempt from the licensing requirements of the Arms Export Control Act under the terms of such agreements, and listing any modification, deletion, or addition to such lists, pursuant to the requirements of any agreement with the United Kingdom or any agreement with Australia;

(3) information on consultations or steps taken pursuant to any agreement with the United Kingdom or any agreement with Australia concerning cooperation and consultation with either government on the effectiveness of the defense trade control systems of such government;

(4) information on provisions and procedures undertaken pursuant to—

(A) any agreement with the United Kingdom with respect to the handling of United States origin defense items exempt from the licensing requirements of the Arms Export Control Act by persons and entities qualified to receive such items in the United Kingdom; and

(B) any agreement with Australia with respect to the handling of United States origin defense items exempt from the licensing requirements of the Arms Export Control Act by persons and entities qualified to receive such items in Australia;

(5) information on any new understandings, including the text of such understandings, between the United States and the United Kingdom concerning retransfer of United States origin defense items made pursuant to any agreement with the United Kingdom to gain exemption from the licensing requirements of the Arms Export Control Act;

(6) information on consultations with the Government of the United Kingdom or the Government of Australia concerning the legal enforcement of any such agreements;

(7) information on United States origin defense items with respect to which the United States has provided an exception under the Memorandum of Understanding between the United States and the United Kingdom and any agreement between the United States and Australia from the requirement for United States Government re-export consent that was not provided for under United States laws and regulations in effect on the date of the enactment of this Act; and

(8) information on any significant concerns that have arisen between the Government of Australia or the Government of the United Kingdom and the United States Government concerning any aspect of any bilateral agreement between such country and the United States to gain exemption from the licensing requirements of the Arms Export Control Act.

(g) SPECIAL NOTIFICATIONS.—

(1) REQUIRED NOTIFICATIONS.—The Secretary of State shall notify the appropriate congressional committees not later than 90 days after receiving any credible information regarding an unauthorized end-use or diversion of United States exports of goods or services made pursuant to any agreement with a country to gain exemption from the licensing requirements of the Arms Export Control Act. The notification shall be made in a manner that is consistent with any ongoing efforts to investigate and commence civil actions or criminal investigations or prosecutions regarding such matters and may be made in classified or unclassified form.

(2) CONTENT.—The notification regarding an unauthorized end-use or diversion of goods or services under paragraph (1) shall include—

(A) a description of the goods or services;

(B) the United States origin of the good or service;

(C) the authorized recipient of the good or service;

(D) a detailed description of the unauthorized end-use or diversion, including any knowledge by the United States exporter of such unauthorized end-use or diversion;

(E) any enforcement action taken by the Government of the United States; and

(F) any enforcement action taken by the government of the recipient nation.

SEC. 1059B. REDESIGNATION AND MODIFICATION OF AUTHORITIES RELATING TO INSPECTOR GENERAL OF THE COALITION PROVISIONAL AUTHORITY.

(a) REDESIGNATION.—(1) Subsections (b) and (c)(1) of section 3001 of the Emergency Supplemental Appropriations Act for Defense and Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1234; 5 U.S.C. App. 3 section 8G note) are each amended by striking ''Office of the Inspector General of the Coalition Provisional Authority'' and inserting ''Office of the Special Inspector General for Iraq Reconstruction''.

(2) Subsection (c)(1) of such section is further amended by striking ''Inspector General of the Coalition Provisional Authority'' and inserting ''Special Inspector General for Iraq Reconstruction (in this section referred to as the 'Inspector General')''.

(3)(A) The heading of such section is amended to read as follows:

''SEC. 3001. SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION.''.

(B) The heading of title III of such Act is amended to read as follows:

''TITLE III—SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION''.

(b) CONTINUATION IN OFFICE.—The individual serving as the Inspector General of the Coalition Provisional Authority as of the date of the enactment of this Act may continue to serve in that position after that date without reappointment under paragraph (1) of section 3001(c) of the Emergency Supplemental Appropriations Act for Defense and Reconstruction of Iraq and Afghanistan, 2004, but remaining subject to removal as specified in paragraph (4) of that section.

(c) PURPOSES.—Subsection (a) of such section is amended—

(1) in paragraph (1), by striking ''of the Coalition Provisional Authority (CPA)'' and inserting ''funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund'';

(2) in paragraph (2)(B), by striking ''fraud'' and inserting ''waste, fraud,''; and

(3) in paragraph (3), by striking ''the head of the Coalition Provisional Authority'' and inserting ''the Secretary of State and the Secretary of Defense''.

(d) RESPONSIBILITIES OF ASSISTANT INSPECTOR GENERAL FOR AUDITING.—Subsection (d)(1) of such section is amended by striking ''of the Coalition Provisional Authority'' and inserting ''supported by the Iraq Relief and Reconstruction Fund''.

(e) SUPERVISION.—Such section is further amended—

(1) in subsection (e)(1), by striking ''the head of the Coalition Provisional Authority'' and inserting ''the Secretary of State and the Secretary of Defense'';

(2) in subsection (h)—

(A) in paragraphs (4)(B) and (5), by striking ''head of the Coalition Provisional Authority'' and inserting ''Secretary of State''; and

(B) in paragraph (5), by striking ''at the central and field locations of the Coalition Provisional Authority'' and inserting ''at appropriate locations of the Department of State in Iraq'';

(3) in subsection (j)—

(A) in paragraph (1), by striking ''the head of the Coalition Provisional Authority'' and

inserting ''the Secretary of State and the Secretary of Defense''; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking ''the head of the Coalition Provisional Authority'' the first place it appears and inserting ''the Secretary of State or the Secretary of Defense''; and

(II) by striking ''the head of the Coalition Provisional Authority considers'' the second place it appears and inserting ''the Secretary of State or the Secretary of Defense, as the case may be, consider''; and

(ii) in subparagraph (B), by striking ''the head of the Coalition Provisional Authority considers'' and inserting ''the Secretary of State or the Secretary of Defense, as the case may be, consider''; and

(4) in subsection (k), by striking ''the head of the Coalition Provisional Authority shall'' each place it appears and inserting ''the Secretary of State and the Secretary of Defense shall jointly''.

(f) DUTIES.—Subsection (f)(1) of such section is amended by striking ''appropriated funds by the Coalition Provisional Authority in Iraq'' and inserting ''amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund''.

(g) COORDINATION WITH INSPECTOR GENERAL OF DEPARTMENT OF STATE.—Subsection (f) of such section is further amended striking paragraphs (4) and (5) and inserting the following new paragraph (4):

''(4) In carrying out the duties, responsibilities, and authorities of the Inspector General under this section, the Inspector General shall coordinate with, and receive the cooperation of, each of the following:

''(A) The Inspector General of the Department of Defense.

''(B) The Inspector General of the United States Agency for International Development.

''(C) The Inspector General of the Department of State.''.

(h) POWERS AND AUTHORITIES.—Subsection (g) of such section is amended by inserting before the period the following: '', including the authorities under subsection (e) of such section''.

(i) REPORTS.—Subsection (i) of such section is amended—

(1) in paragraph (1)—

(A) in the first sentence, by striking ''and every calendar quarter thereafter,'' and all that follows through ''the Coalition Provisional Authority'' and inserting ''again on July 30, 2004, and every calendar quarter thereafter, the Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Inspector General and the programs and operations funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund'';

(B) in subparagraph (B), by striking ''the Coalition Provisional Authority'' and inserting ''the Department of Defense, the Department of State, and the United States Agency for International Development, as applicable,'';

(C) in subparagraph (E), by striking ''appropriated funds'' and inserting ''such amounts''; and

(D) in subparagraph (F), by striking ''the Coalition Provisional Authority'' and inserting ''the contracting department or agency'';

(2) in paragraph (2), by striking ''by the Coalition Provisional Authority'' and inserting ''by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund'';

(3) in paragraph (3), by striking ''June 30, 2004'' and inserting ''July 30, 2004''; and

(4) in paragraph (4), by striking ''the Coalition Provisional Authority'' and inserting ''the Department of State and of the Department of Defense''.

(j) TERMINATION.—Subsection (o) of such section is amended to read as follows:

''(o) TERMINATION.—The Office of the Inspector General shall terminate on the date that is 10 months after the date, as determined by the Secretary of State, on which 80 percent of the amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund by chapter 2 of title II of this Act have been obligated.''.

SEC. 1059C. TREATMENT OF FOREIGN PRISONERS.

(a) POLICY.—(1) It is the policy of the United States to treat all foreign persons captured, detained, interned or otherwise held in the custody of the United States (hereinafter ''prisoners'') humanely and in accordance with standards that the United States would consider legal if perpetrated by the enemy against an American prisoner.

(2) It is the policy of the United States that all officials of the United States are bound both in wartime and in peacetime by the legal prohibition against torture, cruel, inhuman or degrading treatment.

(3) If there is any doubt as to whether prisoners are entitled to the protections afforded by the Geneva Conventions, such prisoners shall enjoy the protections of the Geneva Conventions until such time as their status can be determined pursuant to the procedures authorized by Army Regulation 190–8, Section 1–6.

(4) It is the policy of the United States to expeditiously prosecute cases of terrorism or other criminal acts alleged to have been committed by prisoners in the custody of the United States Armed Forces at Guantanamo Bay, Cuba, in order to avoid the indefinite detention of prisoners, which is contrary to the legal principles and security interests of the United States.

(b) REPORTING.—The Department of Defense shall submit to the appropriate congressional committees:

(1) A quarterly report providing the number of prisoners who were denied Prisoner of War (POW) status under the Geneva Conventions and the basis for denying POW status to each such prisoner.

(2) A report setting forth—

(A) the proposed schedule for military commissions to be held at Guantanamo Bay, Cuba; and

(B) the number of individuals currently held at Guantanamo Bay, Cuba, the number of such individuals who are unlikely to face a military commission in the next six months, and the reason(s) for not bringing such individuals before a military commission.

(3) All International Committee of the Red Cross reports, completed prior to the enactment of this Act, concerning the treatment of prisoners in United States custody at Guantanamo Bay, Cuba, Iraq, and Afghanistan. Such ICRC reports should be provided, in classified form, not later than 15 days after enactment of this Act.

(4) A report setting forth all prisoner interrogation techniques approved by officials of the United States.

(c) ANNUAL TRAINING REQUIREMENT.—The Department of Defense shall certify that all Federal employees and civilian contractors engaged in the handling and/or interrogating of prisoners have fulfilled an annual training requirement on the laws of war, the Geneva Conventions and the obligations of the United States under international humanitarian law.

Subtitle G—Other Matters

SEC. 1061. TECHNICAL AMENDMENTS RELATING TO DEFINITIONS OF GENERAL APPLICABILITY IN TITLE 10, UNITED STATES CODE.

(a) CLARIFICATION OF DEFINITION OF ''OPERATIONAL RANGE''.—Section 101(e)(3) of title 10, United States Code, is amended by striking ''Secretary of Defense'' and inserting ''Secretary of a military department''.

(b) AMENDMENTS RELATING TO DEFINITION OF CONGRESSIONAL DEFENSE COMMITTEES.—(1) Section 2215 of title 10, United States Code, is amended—

(A) in subsection (a)—

(i) by striking ''(a) CERTIFICATION REQUIRED.—''; and

(ii) by striking ''congressional committees specified in subsection (b)'' and inserting ''congressional defense committees''; and

(B) by striking subsection (b).

(2) Section 2515(d) of such title is amended—

(A) by striking ''REPORT.—(1)'' and inserting ''REPORT.—'';

(B) by striking ''congressional committees specified in paragraph (2)'' and inserting ''congressional defense committees''; and

(C) by striking paragraph (2).

(3) Section 2676(d) of such title is amended by striking ''appropriate committees of Congress'' in the first sentence and inserting ''congressional defense committees''.

SEC. 1062. TWO-YEAR EXTENSION OF AUTHORITY OF SECRETARY OF DEFENSE TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES ABROAD.

Section 431(a) of title 10, United States Code, is amended by striking ''December 31, 2004'' and inserting ''December 31, 2006''.

SEC. 1063. LIABILITY PROTECTION FOR PERSONS VOLUNTARILY PROVIDING MARITIME-RELATED SERVICES ACCEPTED BY THE NAVY.

Section 1588(d)(1) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

''(F) In the case of a person aboard a sailing vessel of the Navy to engage in the training of Navy personnel or in a competition involving Navy personnel, the following provisions of law relating to claims in admiralty for damages or loss:

''(i) The Act entitled 'An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes', approved March 9, 1920 (commonly known as the 'Suits in Admiralty Act') (46 U.S.C. App. 741 et seq.).

''(ii) The Act entitled 'An Act authorizing suits against the United States in admiralty for damage caused by and salvage services rendered to public vessels belonging to the United States, and for other purposes', approved March 3, 1925 (commonly known as the 'Public Vessels Act') (46 U.S.C. App. 781 et seq.).''.

SEC. 1064. LICENSING OF INTELLECTUAL PROPERTY.

(a) AUTHORITY.—Subchapter II of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 2260. Licensing of intellectual property: retention of fees

''(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary concerned and may retain and expend fees received from such licensing in accordance with this section.

''(b) DESIGNATED MARKS.—The Secretary concerned shall designate the trademarks, service marks, certification marks, and collective marks as to which the Secretary exercises the authority to retain licensing fees under this section.

''(c) USE OF FEES.—The Secretary concerned shall use fees retained under this section for purposes as follows:

''(1) For payment of the following costs incurred by the Secretary:

''(A) Costs of securing trademark registrations.

''(B) Costs of operating the licensing program under this section.

''(2) For morale, welfare, and recreation activities under the jurisdiction of the Secretary, to the extent (if any) that the total amount of the licensing fees available under this section for a fiscal year exceed the total amount needed for such fiscal year under paragraph (1).

''(d) AVAILABILITY.—Fees received in a fiscal year and retained under this section shall be available for obligations in such fiscal year and the following two fiscal years.

''(e) DEFINITIONS.—In this section, the terms 'trademark', 'service mark', 'certification mark', and 'collective mark' have the meanings given such terms in section 45 of the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the 'Trademark Act of 1946') (15 U.S.C. 1127).''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

''2260. Licensing of intellectual property: retention of fees.''.

SEC. 1065. DELAY OF ELECTRONIC VOTING DEMONSTRATION PROJECT.

Section 1604(a) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1277; 42 U.S.C. 1973ff note) is amended—

(1) in paragraph (1), by striking ''2002'' and inserting ''2006''; and

(2) in paragraph (2)—

(A) by striking ''2002'' and inserting ''2006''; and

(B) by striking ''2004'' and inserting ''2008''.

SEC. 1066. WAR RISK INSURANCE FOR MERCHANT MARINE VESSELS.

(a) EXTENSION OF AUTHORITY.—Section 1214 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1294) is amended by striking ''June 30, 2005'' and inserting ''December 31, 2008''.

(b) INVESTMENT OF FUNDS EXCESS TO SHORT-TERM NEEDS.—Section 1208 of such Act (46 U.S.C. App. 1288) is amended—

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

(2) in subsection (a), by striking ''Upon the request of the Secretary of Transportation,'' and all that follows and inserting the following:

''(b)(1) The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the insurance fund under subsection (a) as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. The Secretary of the Treasury may make the requested investments.

''(2) Investments under paragraph (1) shall be made in public debt securities of the United States that—

''(A) mature at times suitable to the needs of the insurance fund; and

''(B) bear interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

''(3) The interest and benefits accruing from securities under this subsection shall be deposited to the credit of the insurance fund.''.

SEC. 1067. REPEAL OF QUARTERLY REPORTING REQUIREMENT CONCERNING PAYMENTS FOR DISTRICT OF COLUMBIA WATER AND SEWER SERVICES AND ESTABLISHMENT OF ANNUAL REPORT BY TREASURY.

(a) WATER AND WATER SERVICE SUPPLIED FOR THE USE OF THE GOVERNMENT OF THE UNITED STATES.—Section 106(b)(5) of the District of Columbia Public Works Act of 1954 (sec. 34–2401.25(b), D.C. Official Code), as amended by section 401 of the Miscellaneous Appropriations Act, 2001 (as enacted by reference in section 1(a)(4) of the Consolidated Appropriations Act, 2001), is amended to read as follows:

''(5) Not later than the 15th day of the month following the beginning of the fiscal year (beginning with fiscal year 2005), the Secretary of the Treasury with respect to each Federal department, establishment, or agency receiving water services from the District of Columbia shall submit a report to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and Senate analyzing the promptness of payment with respect to the services furnished to such department, establishment, or agency.''.

(b) SANITARY SEWER SERVICE CHARGES FOR UNITED STATES GOVERNMENT.—Section 212(b)(5) of the District of Columbia Public Works Act of 1954 (sec. 34–2112(b), D.C. Official Code), as amended by section 401 of the Miscellaneous Appropriations Act, 2001 (as enacted by reference in section 1(a)(4) of the Consolidated Appropriations Act, 2001), is amended to read as follows:

''(5) Not later than the 15th day of the month following the beginning of the fiscal year (beginning with fiscal year 2005), the Secretary of the Treasury with respect to each Federal department, establishment, or agency receiving sanitary sewer services from the District of Columbia shall submit a report to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committees on Appropriations of the House of Representatives and Senate analyzing the promptness of payment with respect to the services furnished to such department, establishment, or agency.''.

SEC. 1068. RECEIPT OF PAY BY RESERVES FROM CIVILIAN EMPLOYERS WHILE ON ACTIVE DUTY IN CONNECTION WITH A CONTINGENCY OPERATION.

Section 209 of title 18, United States Code, is amended by adding at the end the following new subsection:

''(h) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from any person that employed such member before the call or order to active duty any payment of any part of the salary or wages that such person would have paid the member if the member's employment had not been interrupted by such call or order to active duty.''.

SEC. 1069. PROTECTION OF ARMED FORCES PERSONNEL FROM RETALIATORY ACTIONS FOR COMMUNICATIONS MADE THROUGH THE CHAIN OF COMMAND.

(a) PROTECTED COMMUNICATIONS.—Section 1034(b)(1)(B) of title 10, United States Code, is amended—

(1) by striking ''or'' at the end of clause (iii)''; and

(2) by striking clause (iv) and inserting the following:

''(iv) any person or organization in the chain of command; or

''(v) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.''.

(b) EFFECTIVE DATE AND APPLICABILITY.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to any unfavorable personnel action taken or threatened, and any withholding of or threat to withhold a favorable personnel action, on or after that date.

SEC. 1070. MISSILE DEFENSE COOPERATION.

(a) DEPARTMENT OF STATE PROCEDURES FOR EXPEDITED REVIEW OF LICENSES FOR THE TRANSFER OF DEFENSE ITEMS RELATED TO MISSILE DEFENSE.—

(1) EXPEDITED PROCEDURES.—The Secretary of State shall, in consultation with the Secretary of Defense, establish procedures for considering technical assistance agreements and related amendments and munitions license applications for the export of defense items related to missile defense not later than 30 days after receiving such agreements, amendments, and munitions license applications, except in cases in which the Secretary of State determines that additional time is required to complete a review of a technical assistance agreement or related amendment or a munitions license application for foreign policy or national security reasons, including concerns regarding the proliferation of ballistic missile technology.

(2) STUDY ON COMPREHENSIVE AUTHORIZATIONS FOR MISSILE DEFENSE.—The Secretary of State shall, in consultation with the Secretary of Defense, examine the feasibility of providing major project authorizations for programs related to missile defense similar to the comprehensive export authorization specified in section 126.14 of the International Traffic in Arms Regulations (section 126.14 of title 22, Code of Federal Regulations).

(3) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall, in consultation with the Secretary of Defense, submit to the Committee on Foreign Relations and the Committee on Armed Services of the Senate and the Committee on International Relations and the Committee on Armed Services of the House of Representatives a report on—

(A) the implementation of the expedited procedures required under paragraph (1); and

(B) the feasibility of providing the major project authorization for projects related to missile defense described in paragraph (2).

(b) DEPARTMENT OF DEFENSE PROCEDURES FOR EXPEDITED REVIEW OF LICENSES FOR THE TRANSFER OF DEFENSE ITEMS RELATED TO MISSILE DEFENSE.—

(1) PROCEDURES.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, prescribe procedures to increase the efficiency and transparency of the practices used by the Department of Defense to review technical assistance agreements and related amendments and munitions license applications related to international cooperation on missile defense that are referred to the Department.

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Secretary of State, shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report—

(A) describing actions taken by the Secretary of Defense to coordinate with the Secretary of State the establishment of the expedited review process described in subsection (a)(1);

(B) identifying key defense items related to missile defense that are suitable for comprehensive licensing procedures; and

(C) describing the procedures prescribed pursuant to paragraph (1).

(c) DEFINITION OF DEFENSE ITEMS.—In this section, the term ''defense items'' has the meaning given that term in section 38(j)(4)(A) of the Arms Export Control Act (22 U.S.C. 2778(j)(4)(A)).

SEC. 1071. POLICY ON NONPROLIFERATION OF BALLISTIC MISSILES.

(a) POLICY.—It is the policy of the United States to develop, support, and strengthen international accords and other cooperative efforts to curtail the proliferation of ballistic missiles and related technologies which could threaten the territory of the United States, allies and friends of the United States, and deployed members of the Armed Forces of the United States with weapons of mass destruction.

(b) SENSE OF CONGRESS.—(1) Congress makes the following findings:

(A) Certain countries are seeking to acquire ballistic missiles and related technologies that could be used to attack the United States or place at risk United States interests, forward-deployed members of the Armed Forces, and allies and friends of the United States.

(B) Certain countries continue to actively transfer or sell ballistic missile technologies in contravention of standards of behavior established by the United States and allies and friends of the United States.

(C) The spread of ballistic missiles and related technologies worldwide has been slowed by a combination of national and international export controls, forward-looking diplomacy, and multilateral interdiction activities to restrict the development and transfer of such weapons and technologies.

(2) It is the sense of Congress that—

(A) the United States should vigorously pursue foreign policy initiatives aimed at eliminating, reducing, or retarding the proliferation of ballistic missiles and related technologies; and

(B) the United States and the international community should continue to support and strengthen established international accords and other cooperative efforts, including United Nations Security Council Resolution 1540 and the Missile Technology Control Regime, that are designed to eliminate, reduce, or retard the proliferation of ballistic missiles and related technologies.

SEC. 1072. REIMBURSEMENT FOR CERTAIN PROTECTIVE, SAFETY, OR HEALTH EQUIPMENT PURCHASED BY OR FOR MEMBERS OF THE ARMED FORCES FOR DEPLOYMENT IN OPERATIONS IN IRAQ AND CENTRAL ASIA.

(a) REIMBURSEMENT REQUIRED.—(1) Subject to subsections (c) and (d), the Secretary of Defense shall reimburse a member of the Armed Forces, or a person or entity referred to in paragraph (2), for the cost (including shipping cost) of any protective, safety, or health equipment that was purchased by such member, or such person or entity on behalf of such member, before or during the deployment of such member in Operation Noble Eagle, Operation Enduring Freedom, or Operation Iraqi Freedom for the use of such member in connection with such operation if the unit commander of such member certifies that such equipment was critical to the protection, safety, or health of such member.

(2) A person or entity referred to in this paragraph is a family member or relative of a member of the Armed Forces, a non-profit organization, or a community group.

(b) COVERED PROTECTIVE, SAFETY, AND HEALTH EQUIPMENT.—(1) Subject to paragraph (2), protective, safety, and health equipment for which reimbursement shall be made under subsection (a) shall include personal body armor, collective armor or protective equipment (including armor or protective equipment for high mobility multipurpose wheeled vehicles), and items provided through the Rapid Fielding Initiative of the Army such as the advanced (on-the-move) hydration system, the advanced combat helmet, the close combat optics system, a Global Positioning System (GPS) receiver, and a soldier intercommunication device.

(2) Non-military equipment may be treated as protective, safety, and health equipment for purposes of paragraph (1) only if such equipment provides protection, safety, or health benefits, as the case may be, such as would be provided by equipment meeting military specifications.

(c) LIMITATIONS REGARDING DATE OF PURCHASE OF EQUIPMENT.—(1) In the case of armor or protective equipment for high mobility multi-purpose wheeled vehicles (known as HUMVEEs), reimbursement shall be made under subsection (a) only for armor or equipment purchased during the period beginning on September 11, 2001, and ending on July 31, 2004 or any date thereafter as determined by the Secretary of Defense.

(2) In the case of any other protective, safety, and health equipment, reimbursement shall be made under subsection (a) only for equipment purchased during the period beginning on September 11, 2001, and ending on December 31, 2003 or any date thereafter as determined by the Secretary of Defense.

(d) LIMITATION REGARDING AMOUNT OF REIMBURSEMENT.—The aggregate amount of reimbursement provided under subsection (a) for any protective, safety, and health equipment purchased by or on behalf of any given member of the Armed Forces may not exceed the lesser of—

(1) the cost of such equipment (including shipping cost); or

(2) $1,100.

(e) OWNERSHIP OF EQUIPMENT.—The Secretary may provide, in regulations prescribed by the Secretary, that the United States shall assume title or ownership of any protective, safety, or health equipment for which reimbursement is provided under subsection (a).

(f) FUNDING.—Amounts for reimbursements under subsection (a) shall be derived from any amounts authorized to be appropriated by this Act.

SEC. 1073. PRESERVATION OF SEARCH AND RESCUE CAPABILITIES OF THE FEDERAL GOVERNMENT.

The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by—

(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities.

SEC. 1074. GRANT OF FEDERAL CHARTER TO KOREAN WAR VETERANS ASSOCIATION, INCORPORATED.

(a) GRANT OF CHARTER.—Part B of subtitle II of title 36, United States Code, is amended—

(1) by striking the following:

''CHAPTER 1201—[RESERVED]''; and

(2) by inserting the following:

''CHAPTER 1201—KOREAN WAR VETERANS ASSOCIATION, INCORPORATED

''Sec.

''§ 120101. Organization

''(a) FEDERAL CHARTER.—Korean War Veterans Association, Incorporated (in this chapter, the 'corporation'), incorporated in the State of New York, is a federally chartered corporation.

''(b) EXPIRATION OF CHARTER.—If the corporation does not comply with the provisions of this chapter, the charter granted by subsection (a) expires.

''§ 120102. Purposes

''The purposes of the corporation are as provided in its articles of incorporation and include—

''(1) organizing, promoting, and maintaining for benevolent and charitable purposes an association of persons who have seen honorable service in the Armed Forces during the Korean War, and of certain other persons;

''(2) providing a means of contact and communication among members of the corporation;

''(3) promoting the establishment of, and establishing, war and other memorials commemorative of persons who served in the Armed Forces during the Korean War; and

''(4) aiding needy members of the corporation, their wives and children, and the widows and children of persons who were members of the corporation at the time of their death.

''§ 120103. Membership

''Eligibility for membership in the corporation, and the rights and privileges of members of the corporation, are as provided in the bylaws of the corporation.

''§ 120104. Governing body

''(a) BOARD OF DIRECTORS.—The board of directors of the corporation, and the responsibilities of the board of directors, are as provided in the articles of incorporation of the corporation.

''(b) OFFICERS.—The officers of the corporation, and the election of the officers of the corporation, are as provided in the articles of incorporation.

''§ 120105. Powers

''The corporation has only the powers provided in its bylaws and articles of incorporation filed in each State in which it is incorporated.

''§ 120106. Restrictions

''(a) STOCK AND DIVIDENDS.—The corporation may not issue stock or declare or pay a dividend.

''(b) POLITICAL ACTIVITIES.—The corporation, or a director or officer of the corporation as such, may not contribute to, support,

or participate in any political activity or in any manner attempt to influence legislation.

''(c) LOAN.—The corporation may not make a loan to a director, officer, or employee of the corporation.

''(d) CLAIM OF GOVERNMENTAL APPROVAL OR AUTHORITY.—The corporation may not claim congressional approval, or the authority of the United States, for any of its activities.

''§ 120107. Duty to maintain corporate and tax-exempt status

''(a) CORPORATE STATUS.—The corporation shall maintain its status as a corporation incorporated under the laws of the State of New York.

''(b) TAX-EXEMPT STATUS.—The corporation shall maintain its status as an organization exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

''§ 120108. Records and inspection

''(a) RECORDS.—The corporation shall keep—

''(1) correct and complete records of account;

''(2) minutes of the proceedings of its members, board of directors, and committees having any of the authority of its board of directors; and

''(3) at its principal office, a record of the names and addresses of its members entitled to vote on matters relating to the corporation.

''(b) INSPECTION.—A member entitled to vote on matters relating to the corporation, or an agent or attorney of the member, may inspect the records of the corporation for any proper purpose, at any reasonable time.

''§ 120109. Service of process

''The corporation shall have a designated agent in the District of Columbia to receive service of process for the corporation. Notice to or service on the agent is notice to or service on the Corporation.

''§ 120110. Liability for acts of officers and agents

''The corporation is liable for the acts of its officers and agents acting within the scope of their authority.

''§ 120111. Annual report

''The corporation shall submit an annual report to Congress on the activities of the corporation during the preceding fiscal year. The report shall be submitted at the same time as the report of the audit required by section 10101 of this title. The report may not be printed as a public document.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by striking the item relating to chapter 1201 and inserting the following new item:

''1201. Korean War Veterans Association, Incorporated .....120101''.

SEC. 1075. COORDINATION OF USERRA WITH THE INTERNAL REVENUE CODE OF 1986.

(a) FINDINGS.—Congress makes the following findings:

(1) Employers of reservists called up for active duty are required to treat them as if they are on a leave of absence or furlough under the Uniformed Services Employment and Reemployment Rights Act of 1994 (in this section referred to as ''USERRA'').

(2) USERRA does not require employers to pay reservists who are on active duty, but many employers pay the reservists the difference between their military stipends and their regular salaries. Some employers provide this ''differential pay'' for up to 3 years.

(3) For employee convenience, many of these employers also allow deductions from the differential payments for contributions to employer-provided retirement savings plans.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Internal Revenue Service should, to the extent it is able within its authority, provide guidance consistent with the goal of promoting and ensuring the validity of voluntary differential pay arrangements, benefits payments, and contributions to retirement savings plans related thereto.

SEC. 1076. AERIAL FIREFIGHTING EQUIPMENT.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Interagency Fire Center does not possess an adequate number of aircraft for use in aerial firefighting and personnel at the Center rely on military aircraft to provide such firefighting services.

(2) It is in the national security interest of the United States for the National Interagency Fire Center to purchase aircraft for use in aerial firefighting so that military aircraft used for aerial firefighting may be available for use by the Armed Forces.

(b) AUTHORITY TO PURCHASE AERIAL FIREFIGHTING EQUIPMENT.—(1) The Secretary of Agriculture is authorized to purchase 10 aircraft, as described in paragraph (2), for the National Interagency Fire Center for use in aerial firefighting.

(2) The aircraft referred to in paragraph (1) shall be—

(A) aircraft that are specifically designed and built for aerial firefighting;

(B) certified by the Administrator of the Federal Aviation Administration for use in aerial firefighting; and

(C) manufactured in a manner that is consistent with the recommendations for aircraft used in aerial firefighting contained in—

(i) the Blue Ribbon Panel Report to the Chief of the Forest Service and the Director of the Bureau of Land Management dated December 2002; and

(ii) the Safety Recommendation of the Chairman of the National Transportation Safety Board related to aircraft used in aerial firefighting dated April 23, 2004.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture for fiscal year 2005 such funds as may be necessary to purchase the 10 aircraft described in subsection (b).

SEC. 1077. SENSE OF SENATE ON AMERICAN FORCES RADIO AND TELEVISION SERVICE.

(a) FINDINGS.—The Senate makes the following findings:

(1) It is the mission of the American Forces Radio and Television Service to provide United States military commanders overseas and at sea with a broadcast media resource to effectively communicate Department of Defense, Service-unique, theater, and local command information to personnel under their commands and to provide United States military members, Department of Defense civilians, and their families stationed outside the continental United States and at sea with the same type and quality of American radio and television news, information, sports, and entertainment that would be available to them if they were in the continental United States.

(2) Key principles of American Forces Radio and Television Service broadcasting policy, as outlined in Department of Defense Regulation 5120.20R, are to ensure political programming characterized by fairness and balance and to provide a free flow of political programming from United States commercial and public networks without manipulation or censorship of any news content to the men and women of the Armed Forces and their dependents.

(3) The stated policy of the American Forces Radio and Television Service is to select programming that represents a cross-section of popular American radio and television offerings and to emulate stateside scheduling and programming seen and heard in the United States.

(4) It is the policy of American Forces Radio and Television Service to select news and public affairs programs for airing that provide balance and diversity from available nationally recognized program sources, including broadcast and cable networks, Headquarters, American Forces Radio and Television Service, the military departments, and other government or public service agencies.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the mission statement and policies of the American Forces Radio and Television Service appropriately state the goal of maintaining equal opportunity balance with respect to political programming and that the Secretary of Defense should therefore ensure that these policies are fully being implemented by developing appropriate methods of oversight to ensure presentation of all sides of important public questions with the fairness and balance envisioned by the Department of Defense throughout the American Forces Radio and Television Service system.

SEC. 1078. SENSE OF CONGRESS ON AMERICA'S NATIONAL WORLD WAR I MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) The Liberty Memorial Museum in Kansas City, Missouri, was built in 1926 in honor of those individuals who served in World War I in defense of liberty and the Nation.

(2) The Liberty Memorial Association, a nonprofit organization which originally built the Liberty Memorial Museum, is responsible for the finances, operations, and collections management of the Liberty Memorial Museum.

(3) The Liberty Memorial Museum is the only public museum in the Nation that exists for the exclusive purpose of interpreting the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front.

(4) The Liberty Memorial Museum project began after the 1918 Armistice through the efforts of a large-scale, grass-roots civic and fundraising effort by the citizens and veterans of the Kansas City metropolitan area. After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was opened to the public in 1926.

(5) In 1994, the Liberty Memorial Museum closed for a massive restoration and expansion project. The restored museum reopened to the public on Memorial Day, 2002, during a gala rededication ceremony.

(6) Exhibits prepared for the original museum buildings presaged the dramatic, underground expansion of core exhibition gallery space, with over 30,000 square feet of new interpretive and educational exhibits currently in development. The new exhibits, along with an expanded research library and archives, will more fully utilize the many thousands of historical objects, books, maps, posters, photographs, diaries, letters, and reminiscences of World War I participants that are preserved for posterity in the Liberty Memorial Museum's collections. The new core exhibition is scheduled to open on Veterans Day, 2006.

(7) The City of Kansas City, the State of Missouri, and thousands of private donors and philanthropic foundations have contributed millions of dollars to build and later to restore this national treasure. The Liberty Memorial Museum continues to receive the strong support of residents from the States of Missouri and Kansas and across the Nation.

(8) Since the restoration and rededication of 2002, the Liberty Memorial Museum has attracted thousands of visitors from across the United States and many foreign countries.

(9) There remains a need to preserve in a museum setting evidence of the honor, courage, patriotism, and sacrifice of those Americans who offered their services and who gave their lives in defense of liberty during World War I, evidence of the roles of women and African Americans during World War I, and evidence of other relevant subjects.

(10) The Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the home front and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

(11) A great opportunity exists to use the invaluable resources of the Liberty Memorial Museum to teach the ''Lessons of Liberty'' to the Nation's schoolchildren through on-site visits, classroom curriculum development, distance learning, and other educational initiatives.

(12) The Liberty Memorial Museum should always be the Nation's museum of the national experience in the World War I years (1914–1918), where people go to learn about this critical period and where the Nation's history of this monumental struggle will be preserved so that generations of the 21st century may understand the role played by the United States in the preservation and advancement of democracy, freedom, and liberty in the early 20th century.

(13) This initiative to recognize and preserve the history of the Nation's sacrifices in World War I will take on added significance as the Nation approaches the centennial observance of this event.

(14) It is fitting and proper to refer to the Liberty Memorial Museum as ''America's National World War I Museum''.

(b) SENSE OF CONGRESS.—Congress—

(1) recognizes the Liberty Memorial Museum in Kansas City, Missouri, including the museum's future and expanded exhibits, collections, library, archives, and educational programs, as ''America's National World War I Museum'';

(2) recognizes that the continuing collection, preservation, and interpretation of the historical objects and other historical materials held by the Liberty Memorial Museum enhance the knowledge and understanding of the Nation's people of the American and allied experience during the World War I years (1914–1918), both on the battlefield and on the home front;

(3) commends the ongoing development and visibility of ''Lessons of Liberty'' educational outreach programs for teachers and students throughout the Nation; and

(4) encourages the need for present generations to understand the magnitude of World War I, how it shaped the Nation, other countries, and later world events, and how the sacrifices made then helped preserve liberty, democracy, and other founding principles for generations to come.

SEC. 1079. REDUCTION OF BARRIERS FOR HISPANIC-SERVING INSTITUTIONS IN DEFENSE CONTRACTS, DEFENSE RESEARCH PROGRAMS, AND OTHER MINORITY-RELATED DEFENSE PROGRAMS.

Section 502(a)(5)(C) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)(C)) is amended by inserting before the period the following: '', which assurances—

''(i) may employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and

''(ii) the Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements''.

SEC. 1080. EXTENSION OF SCOPE AND JURISDICTION FOR CURRENT FRAUD OFFENSES.

(a) STATEMENTS OR ENTRIES GENERALLY.—Section 1001 of title 18, United States Code, is amended by adding at the end the following:

''(d) JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(e) PROSECUTION.—A prosecution for an offense under this section may be brought—

''(1) in accordance with chapter 211 of this title; or

''(2) in any district where any act in furtherance of the offense took place.''.

(b) MAJOR FRAUD AGAINST THE UNITED STATES.—Section 1031 of title 18, United States Code, is amended by adding at the end the following:

''(i) JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section.

''(j) PROSECUTION.—A prosecution for an offense under this section may be brought—

''(1) in accordance with chapter 211 of this title;

''(2) in any district where any act in furtherance of the offense took place; or

''(3) in any district where any party to the contract or provider of goods or services is located.''.

SEC. 1081. CONTRACTOR ACCOUNTABILITY.

Section 3267(1)(A) of title 18, United States Code, is amended to read as follows:

''(A) employed as—

''(i) a civilian employee of—

''(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

''(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;

''(ii) a contractor (including a subcontractor at any tier) of—

''(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

''(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

''(iii) an employee of a contractor (or subcontractor at any tier) of—

''(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

''(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;''.

SEC. 1082. DEFINITION OF UNITED STATES.

Section 2340(3) of title 18, United States Code, is amended to read as follows:

''(3) 'United States' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.''.

SEC. 1083. MENTOR-PROTEGE PILOT PROGRAM.

Section 831(m)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is amended—

(1) in subparagraph (D), by striking ''or'' at the end;

(2) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(F) a small business concern owned and controlled by service–disabled veterans (as defined in section 8(d)(3) of the Small Business Act); and

''(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).''.

SEC. 1084. BROADCAST DECENCY ENFORCEMENT ACT OF 2004.

(a) SHORT TITLE.—This section may be cited as the ''Broadcast Decency Enforcement Act of 2004''.

(b) PURPOSE.—The purpose of this section is to increase the Federal Communications Commission's (FCC) authority to fine for indecent broadcasts and prevent further relaxation of the media ownership rules in order to stem the rise of indecent programming.

(c) FINDINGS.—The Congress makes the following findings:

(1) Since 1996 there has been significant consolidation in the media industry, including:

(A) RADIO.—Clear Channel Communications went from owning 43 radio stations prior to 1996 to over 1,200 as of January 2003; Cumulus Broadcasting, Inc. was established in 1997 and owned 266 stations as of December 2003, making it the second-largest radio ownership company in the country; and Infinity Broadcasting Corporation went from owning 43 radio stations prior to 1996 to over 185 stations as of June 2004;

(B) TELEVISION.—Viacom/CBS's national ownership of television stations increased from 31.53 percent of United States television households prior to 1996 to 38.9 percent in 2004; GE/NBC's national ownership of television stations increased from 24.65 percent prior to 1996 to 33.56 percent in 2004; News Corp./Fox's national ownership of television stations increased from 22.05 percent prior to 1996 to 37.7 percent in 2004;

(C) MEDIA MERGERS.—In 2000, Viacom merged with CBS and UPN; in 2002, GE/NBC merged with Telemundo Communications, Inc. and in 2004 with Vivendi Universal Entertainment; in 2003 News Corp./Fox acquired a controlling interest in DirecTV; in 2000, Time Warner, Inc. merged with America Online.

(2) Over the same period that there has been significant consolidation in the media industry, the number of indecency complaints also has increased dramatically. The largest owners of television and radio broadcast holdings have received the greatest number of indecency complaints and the largest fines, including:

(A) Over 80 percent of the fines proposed by the Federal Communications Commission for indecent broadcasts were against stations owned by two of the top three radio companies. The top radio company alone accounts for over two-thirds of the fines proposed by the FCC;

(B) Two of the largest fines proposed by the FCC were against two of the top three radio companies;

(C) In 2004, the FCC received over 500,000 indecency complaints in response to the Superbowl Halftime show aired on CBS and produced by MTV, both of which are owned by Viacom. This is the largest number of complaints ever received by the FCC for a single broadcast;

(D) The number of indecency complaints increased from 111 in 2000 to 240,350 in 2003;

(3) Media conglomerates do not consider or reflect local community standards.

(A) The FCC has no record of a television station owned by one of the big four networks (Viacom/CBS, Disney/ABC, News Corp./Fox or GE/NBC) pre-empting national programming for failing to meet community standards;

(B) FCC records show that non-network owned stations have often rejected national network programming found to be indecent and offensive to local community standards;

(C) A letter from an owned and operated station manager to a viewer stated that programming decisions are made by network headquarters and not the local owned and operated television station management;

(D) The Parents Television Council has found that the ''losers'' of network ownership ''are the local communities whose standards of decency are being ignored;''

(4) The Senate Commerce Committee has found that the current fines do not deter indecent broadcast because they are merely the cost of doing business for large media companies. Therefore, in order to prevent the continued rise of indecency violations, the FCC's authority for indecency fines should be increased and further media consolidation should be prevented.

(d) INCREASE IN PENALTIES FOR OBSCENE, INDECENT, AND PROFANE BROADCAST.—Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended.—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

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

''(C) Notwithstanding subparagraph (A), if the violator is—

''(i)(I) a broadcast station licensee or permittee; or

''(II) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission; and

''(ii) determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane language, the amount of any forfeiture penalty determined under this subsection shall not exceed $275,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $3,000,000 for any single act or failure to act.''; and

(3) in subparagraph (D), as redesignated by paragraph (1), by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (C)''.

(e) NEW BROADCAST MEDIA OWNERSHIP RULES SUSPENDED.—

(1) SUSPENSION.—Subject to the provisions of paragraphs(d)(2), the broadcast media ownership rules adopted by the Federal Communications Commission on June 2, 2003, pursuant to its proceeding on broadcast media ownership rules, Report and Order FCC–03–127, published at 68 FR 46286, August 5, 2003, shall be invalid and without legal effect.

(2) CLARIFICATION.—The provisions of paragraph (1) shall not supersede the amendments made by section 629 of the Miscellaneous Appropriations and Offsets Act, 2004 (Public Law 108–199).

(f) ADDITIONAL FACTORS IN INDECENCY PENALTIES; EXCEPTION.—Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)), is further amended by adding at the end the following:

''(F) In the case of a violation in which the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material, the Commission shall take into account, in addition to the matters described in subparagraph (E), the following factors with respect to the degree of culpability of the violator:

''(i) Whether the material uttered by the violator was live or recorded, scripted or unscripted.

''(ii) Whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming would contain obscene, indecent, or profane material.

''(iii) If the violator originated live or unscripted programming, whether a time delay blocking mechanism was implemented for the programming.

''(iv) The size of the viewing or listening audience of the programming.

''(v) Whether the obscene incident or profane language was within live programming not produced by the station licensee or permitee.

''(vi) The size of the market.

''(vii) Whether the violation occurred during a children's television program (as such term is used in the Children's Television Programming Policy referenced in section 73.4050(c) of the Commission's regulations (47 C.F.R. 73.4050(c)) or during a television program rated TVY, TVY7, TVY7FV, or TVG under the TV Parental Guidelines as such ratings were approved by the Commission in implementation of section 551 of the Telecommunications Act of 1996, Video Programming Ratings, Report and Order, CS Docket No. 97-55, 13 F.C.C. Rcd. 8232 (1998)), and, with respect to a radio broadcast station licensee, permittee, or applicant, whether the target audience was primarily comprised of, or should reasonably have been expected to be primarily comprised of, children.''

''(G) The Commission may double the amount of any forfeiture penalty (not to exceed $550,000 for the first violation, $750,000 for the second violation, and $1,000,000 for the third or any subsequent violation not to exceed up to $3,000,000 for all violations in a 24-hour time period notwithstanding section 503(b)(2)(C)) if the Commission determines additional factors are present which are aggravating in nature, including—

''(i) whether the material uttered by the violator was recorded or scripted;

''(ii) whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming would contain obscene, indecent, or profane material;

''(iii) whether the violator failed to block live or unscripted programming;

''(iv) whether the size of the viewing or listening audience of the programming was substantially larger than usual, such as a national or international championship sporting event or awards program; and

''(v) whether the violation occured during a children's television program (as defined in subparagraph (F) (vii)).''

SEC. 1085. CHILDREN'S PROTECTION FROM VIOLENT PROGRAMMING ACT.

(a) SHORT TITLE.—This section may be cited as the ''Children's Protection from Violent Programming Act''.

(b) FINDINGS.—The Congress makes the following findings:

(1) Television influences children's perception of the values and behavior that are common and acceptable in society.

(2) Broadcast television, cable television, and video programming are—

(A) uniquely pervasive presences in the lives of all American children; and

(B) readily accessible to all American children.

(3) Violent video programming influences children, as does indecent programming.

(4) There is empirical evidence that children exposed to violent video programming at a young age have a higher tendency to engage in violent and aggressive behavior later in life than those children not so exposed.

(5) There is empirical evidence that children exposed to violent video programming have a greater tendency to assume that acts of violence are acceptable behavior and therefore to imitate such behavior.

(6) There is empirical evidence that children exposed to violent video programming have an increased fear of becoming a victim of violence, resulting in increased self-protective behaviors and increased mistrust of others.

(7) There is a compelling governmental interest in limiting the negative influences of violent video programming on children.

(8) There is a compelling governmental interest in channeling programming with violent content to periods of the day when children are not likely to comprise a substantial portion of the television audience.

(9) A significant amount of violent programming that is readily accessible to minors remains unrated specifically for violence and therefore cannot be blocked solely on the basis of its violent content.

(10) Age-based ratings that do not include content rating for violence do not allow parents to block programming based solely on violent content thereby rendering ineffective any technology-based blocking mechanism designed to limit violent video programming.

(11) The most recent study of the television ratings system by the Kaiser Family Foundation concludes that 79 percent of violent programming is not specifically rated for violence.

(12) Technology-based solutions, such as the V-chip, may be helpful in protecting some children, but cannot achieve the compelling governmental interest in protecting all children from violent programming when parents are only able to block programming that has, in fact, been rated for violence.

(13) Restricting the hours when violent programming can be shown protects the interests of children whose parents are unavailable, unable to supervise their children's viewing behavior, do not have the benefit of technology-based solutions, are unable to afford the costs of technology-based solutions, or are unable to determine the content of those shows that are only subject to age-based ratings.

(14) After further study, pursuant to a rulemaking, the Federal Communications Commission may conclude that content-based ratings and blocking technology do not effectively protect children from the harm of violent video programming.

(15) If the Federal Communications Commission reaches the conclusion described in paragraph (14), the channeling of violent video programming will be the least restrictive means of limiting the exposure of children to the harmful influences of violent video programming.

SEC. 1086. ASSESSMENT OF EFFECTIVENESS OF CURRENT RATING SYSTEM FOR VIOLENCE AND EFFECTIVENESS OF V-CHIP IN BLOCKING VIOLENT PROGRAMMING.

(a) REPORT.—The Federal Communications Commission shall—

(1) assess the effectiveness of measures to require television broadcasters and multichannel video programming distributors (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)) to rate and encode programming that could be blocked by parents using the V-chip undertaken under section 715 of the Communications Act of 1934 (47 U.S.C. 715) and under subsections (w) and (x) of section 303 of that Act (47 U.S.C. 303(w) and (x)) in accomplishing the purposes for which they were enacted; and

(2) report its findings to the Committee on Commerce, Science, and Transportation of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives, within 12 months after the date of enactment of this Act, and annually thereafter.

(b) ACTION.—If the Commission finds at any time, as a result of its ongoing assessment under subsection (a), that the measures referred to in subsection (a)(1) are insufficiently effective, then the Commission shall complete a rulemaking within 270 days after the date on which the Commission makes that finding to prohibit the distribution of violent video programming during the hours when children are reasonably likely to comprise a substantial portion of the audience.

(c) DEFINITIONS.—Any term used in this section that is defined in section 715 of the Communications Act of 1934 (47 U.S.C. 715), or in regulations under that section, has the same meaning as when used in that section or in those regulations.

SEC. 1087. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING THAT IS NOT SPECIFICALLY RATED FOR VIOLENCE AND THEREFORE IS NOT BLOCKABLE.

Title VII of the Communications Act of 1934 (47 U.S.C. 701 et seq.) is amended by adding at the end the following:

''SEC. 715. UNLAWFUL DISTRIBUTION OF VIOLENT VIDEO PROGRAMMING NOT SPECIFICALLY BLOCKABLE BY ELECTRONIC MEANS.

''(a) UNLAWFUL DISTRIBUTION.—It shall be unlawful for any person to distribute to the public any violent video programming not blockable by electronic means specifically on the basis of its violent content during hours when children are reasonably likely to comprise a substantial portion of the audience.

''(b) RULEMAKING PROCEEDING.—The Commission shall conduct a rulemaking proceeding to implement the provisions of this section and shall promulgate final regulations pursuant to that proceeding not later than 9 months after the date of enactment of the Children's Protection from Violent Programming Act. As part of that proceeding, the Commission—

''(1) may exempt from the prohibition under subsection (a) programming (including news programs and sporting events) whose distribution does not conflict with the objective of protecting children from the negative influences of violent video programming, as that objective is reflected in the findings in section 551(a) of the Telecommunications Act of 1996;

''(2) shall exempt premium and pay-per-view cable programming and premium and pay-per-view direct-to-home satellite programming; and

''(3) shall define the term 'hours when children are reasonably likely to comprise a substantial portion of the audience' and the term 'violent video programming'.

''(c) ENFORCEMENT.—

''(1) FORFEITURE PENALTY.—The forfeiture penalties established by section 503(b) for violations of section 1464 of title 18, United States Code, shall apply to a violation of this section, or any regulation promulgated under it in the same manner as if a violation of this section, or such a regulation, were a violation of law subject to a forfeiture penalty under that section.

''(2) LICENSE REVOCATION.—If a person repeatedly violates this section or any regulation promulgated under this section, the Commission shall, after notice and opportunity for hearing, revoke any license issued to that person under this Act.

''(3) LICENSE RENEWALS.—The Commission shall consider, among the elements in its review of an application for renewal of a license under this Act, whether the licensee has complied with this section and the regulations promulgated under this section.

''(d) DEFINITIONS.—For purposes of this section—

''(1) BLOCKABLE BY ELECTRONIC MEANS.—The term 'blockable by electronic means' means blockable by the feature described in section 303(x).

''(2) DISTRIBUTE.—The term 'distribute' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, but it does not include the transmission, retransmission, or receipt of any voice, data, graphics, or video telecommunications accessed through an interactive computer service as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), which is not originated or transmitted in the ordinary course of business by a television broadcast station or multichannel video programming distributor as defined in section 602(13) of that Act (47 U.S.C. 522(13)).

''(3) VIOLENT VIDEO PROGRAMMING.—The term 'violent video programming' as defined by the Commission may include matter that is excessive or gratuitous violence within the meaning of the 1992 Broadcast Standards for the Depiction of Violence in Television Programs, December 1992.''.

SEC. 1088. SEPARABILITY.

If any provision of this title, or any provision of an amendment made by this title, or the application thereof to particular persons or circumstances, is found to be unconstitutional, the remainder of this title or that amendment, or the application thereof to other persons or circumstances shall not be affected.

SEC. 1089. EFFECTIVE DATE.

The prohibition contained in section 715 of the Communications Act of 1934 (as added by section 204 of this title) and the regulations promulgated thereunder shall take effect 1 year after the regulations are adopted by the Commission.

SEC. 1090. PILOT PROGRAM ON CRYPTOLOGIC SERVICE TRAINING.

(a) PROGRAM AUTHORIZED.—The Director of the National Security Agency may carry out a pilot program on cryptologic service training for the intelligence community.

(b) OBJECTIVE OF PROGRAM.—The objective of the pilot program is to increase the number of qualified entry-level language analysts and intelligence analysts available to the National Security Agency and the other elements of the intelligence community through the directed preparation and recruitment of qualified entry-level language analysts and intelligence analysts who commit to a period of service or a career in the intelligence community.

(c) PROGRAM SCOPE.—The pilot program shall be national in scope.

(d) PROGRAM PARTICIPANTS.—(1) Subject to the provisions of this subsection, the Director shall select the participants in the pilot program from among individuals qualified to participate in the pilot program utilizing such procedures as the Director considers appropriate for purposes of the pilot program.

(2) Each individual who receives financial assistance under the pilot program shall perform one year of obligated service with the National Security Agency, or another element of the intelligence community approved by the Director, for each academic year for which such individual receives such financial assistance upon such individual's completion of post-secondary education.

(3) Each individual selected to participate in the pilot program shall be qualified for a security clearance appropriate for the individual under the pilot program.

(4) The total number of participants in the pilot program at any one time may not exceed 400 individuals.

(e) PROGRAM MANAGEMENT.—In carrying out the pilot program, the Director shall—

(1) identify individuals interested in working in the intelligence community, and committed to taking college-level courses that will better prepare them for a career in the intelligence community as a language analysts or intelligence analyst;

(2) provide each individual selected for participation in the pilot program—

(A) financial assistance for the pursuit of courses at institutions of higher education selected by the Director in fields of study that will qualify such individual for employment by an element of the intelligence community as a language analyst or intelligence analyst; and

(B) educational counseling on the selection of courses to be so pursued; and

(3) provide each individual so selected information on the opportunities available for employment in the intelligence community.

(f) DURATION OF PROGRAM.—(1) The Director shall terminate the pilot program not later than six years after the date of the enactment of this Act.

(2) The termination of the pilot program under paragraph (1) shall not prevent the Director from continuing to provide assistance, counseling, and information under subsection (e) to individuals who are participating in the pilot program on the date of termination of the pilot program throughout the academic year in progress as of that date.

SEC. 1091. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) IN GENERAL.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is amended by striking ''2003'' and inserting ''2005''.

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting '', water, or wastewater treatment'' after ''payment of energy''.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

''(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

''(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

''(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

''(C) the increased efficient use of existing water sources in either interior or exterior applications.''.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

''(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.''.

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

''(4) The term 'energy or water conservation measure' means—

''(A) an energy conservation measure, as defined in section 551; or

''(B) a water conservation measure that improves the efficiency of water use, is lifecycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.''.

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

(g) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

SEC. 1092. CLARIFICATION OF FISCAL YEAR 2004 FUNDING LEVEL FOR A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACCOUNT.

For the purposes of applying sections 204 and 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199) to matters in title II of such Act under the heading ''NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY'' (118 Stat.69), in the account under the heading ''INDUSTRIAL TECHNOLOGY SERVICES'', the Secretary of Commerce shall make all determinations based on the Industrial Technology Services funding level of $218,782,000 for reprogramming and transferring of funds for the Manufacturing Extension Partnership program and shall submit such a reprogramming or transfer, as the case may be, to the appropriate committees within 30 days after the date of the enactment of this Act.

SEC. 1093. REPORT ON OFFSET REQUIREMENTS UNDER CERTAIN CONTRACTS.

Section 8138(b) of the Department of Defense Appropriations Act, 2004 (Public Law 108–87; 117 Stat. 1106; 10 U.S.C. 2532 note) is amended by adding at the end the following new paragraph:

''(4) The extent to which any foreign country imposes, whether by law or practice, offsets in excess of 100 percent on United States suppliers of goods or services, and the impact of such offsets with respect to employment in the United States, sales revenue relative to the value of such offsets, technology transfer of goods that are critical to the national security of the United States, and global market share of United States companies.''.

TITLE XI—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL POLICY

SEC. 1101. SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) DEFENSE SCHOLARSHIP PILOT PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—(1) The Secretary of Defense shall carry out a pilot program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

(2) The pilot program under this section shall be carried out for three years beginning on October 1, 2004.

(b) SCHOLARSHIPS.—(1) Under the pilot program, the Secretary of Defense may award a scholarship in accordance with this section to a person who—

(A) is a citizen of the United States;

(B) is pursuing an undergraduate or advanced degree in a critical skill or discipline described in subsection (a) at an institution of higher education; and

(C) enters into a service agreement with the Secretary of Defense as described in subsection (c).

(2) The amount of the financial assistance provided under a scholarship awarded to a person under this subsection shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, and expenses of room and board. The expenses paid, however, shall be limited to those educational expenses normally incurred by students at the institution of higher education involved.

(c) SERVICE AGREEMENT FOR RECIPIENTS OF ASSISTANCE.—(1) To receive financial assistance under this section—

(A) in the case of an employee of the Department of Defense, the employee shall enter into a written agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(B) in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of a scholarship under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for the financial assistance provided under the scholarship. In no event may the period of service required of a recipient be less than the total period of pursuit of a degree that is covered by the scholarship. The period of obligated service is in addition to any other period for which the recipient is obligated to serve in the civil service of the United States.

(3) An agreement entered into under this subsection by a person pursuing an academic degree shall include any terms and conditions that the Secretary of Defense determines necessary to protect the interests of the United States or otherwise appropriate for carrying out this section.

(d) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1) A person who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (c) shall refund to the United States an amount determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for financial assistance.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) A discharge in bankruptcy under title 11, United States Code, that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under this subsection.

(e) RELATIONSHIP TO OTHER PROGRAMS.—The pilot program under this section is in addition to the authorities provided in chapter 111 of title 10, United States Code. The Secretary of Defense shall coordinate the provision of financial assistance under the authority of this section with the provision of financial assistance under the authorities provided in such chapter in order to maximize the benefits derived by the Department of Defense from the exercise of all such authorities.

(f) RECOMMENDATION ON PILOT PROGRAM.—Not later than February 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives a plan for expanding and improving the national defense science and engineering workforce educational assistance pilot program carried out under this section as appropriate to improve recruitment and retention to meet the requirements of the Department of Defense for its science and engineering workforce on a short-term basis and on a long-term basis.

(g) CRITICAL HIRING NEED.—Section 3304(a)(3) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

''(B)(i) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need; or

''(ii) the candidate is a participant in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1101 of the National Defense Authorization Act for Fiscal Year 2005.''.

(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965 (21 U.S.C. 1001).

SEC. 1102. FOREIGN LANGUAGE PROFICIENCY PAY.

(a) ELIGIBILITY FOR SERVICE NOT RELATED TO CONTINGENCY OPERATIONS.—Section 1596a(a)(2) of title 10, United States Code, is amended by striking ''during a contingency operation supported by the armed forces''.

(b) EFFECTIVE DATE AND APPLICABILITY.—The amendment by this section shall take effect on October 1, 2004, and shall apply with respect to months beginning on or after such date.

SEC. 1103. PAY AND PERFORMANCE APPRAISAL PARITY FOR CIVILIAN INTELLIGENCE PERSONNEL.

(a) PAY RATES.—Section 1602(a) of title 10, United States Code, is amended by striking ''in relation to the rates of pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities'' and inserting ''in relation to the rates of pay provided for comparable positions in the Department of Defense, including Senior Executive Service positions (as defined in

section 3132 of title 5) or other senior level positions''.

(b) PERFORMANCE APPRAISAL SYSTEM.—Section 1606 of such title is amended by adding at the end the following new subsection:

''(d) PERFORMANCE APPRAISALS.—(1) The Defense Intelligence Senior Executive Service shall be subject to a performance appraisal system which, as designed and applied, is certified by the Secretary of Defense under section 5307 of title 5 as making meaningful distinctions based on relative performance.

''(2) The performance appraisal system applicable to the Defense Intelligence Senior Executive Service under paragraph (1) may be the same performance appraisal system that is established and implemented within the Department of Defense for members of the Senior Executive Service.''.

SEC. 1104. ACCUMULATION OF ANNUAL LEAVE BY INTELLIGENCE SENIOR LEVEL EMPLOYEES.

Section 6304(f)(1) of title 5, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by striking ''in a position'';

(2) in subparagraphs (A), (B), (C), (D), and (E), by inserting ''a position in'' before ''the'';

(3) by striking ''or'' at the end of subparagraph (D);

(4) by striking the period at the end of subparagraph (E) and inserting ''; or''; and

(5) by adding at the end the following new subparagraph:

''(F) a position designated as an Intelligence Senior Level position under section 1607(a) of title 10.''.

SEC. 1105. PAY PARITY FOR SENIOR EXECUTIVES IN DEFENSE NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) AUTHORITY.—Chapter 81 of title 10, United States Code, is amended by inserting after section 1587 the following new section:

''§ 1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels

''(a) AUTHORITY.—To achieve the objective stated in subsection (b), the Secretary of Defense may regulate the amount of total compensation that is provided for senior executives of nonappropriated fund instrumentalities who, for the fixing of pay by administrative action, are under the jurisdiction of the Secretary of Defense or the Secretary of a military department.

''(b) PAY PARITY.—The objective of an action taken with respect to the compensation of a senior executive under subsection (a) is to provide for parity between the total compensation provided for such senior executive and total compensation that is provided for Department of Defense employees in Senior Executive Service positions or other senior executive positions.

''(c) STANDARDS OF COMPARABILITY.—Subject to subsection (d), the Secretary of Defense shall prescribe the standards of comparison that are to apply in the making of the determinations necessary to achieve the objective stated in subsection (b).

''(d) ESTABLISHMENT OF PAY RATES.—The Secretary of Defense shall apply subsections (a) and (b) of section 5382 of title 5 in the regulation of compensation under this section.

''(e) RELATIONSHIP TO PAY LIMITATION.—The Secretary of Defense may exercise the authority provided in subsection (a) without regard to section 5373 of title 5.

''(f) DEFINITIONS.—In this section:

''(1) The term 'compensation' includes rate of basic pay.

''(2) The term 'Senior Executive Service position' has the meaning given such term in section 3132 of title 5.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1587 the following new item:

''1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels.''.

SEC. 1106. HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) ESTABLISHMENT.—(1) Chapter 81 of title 10, United States Code, as amended by section 1105(a), is further amended by inserting after section 1587a the following new section:

''§ 1587b. Employees of nonappropriated fund instrumentalities: health benefits program

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the United States.

''(b) EXEMPTION FROM STATE AND LOCAL LAWS, TAXES, AND OTHER REQUIREMENTS.—The exemption in section 8909(f) of title 5 shall apply to the program under subsection (a) and to a carrier, underwriting contractor, and plan administration contractor under such program in the same manner and to the same extent as such exemption applies under section 8909(f) of such title to an approved health benefits plan under chapter 89 of such title and a carrier, underwriting subcontractor, and plan administration subcontractor, respectively, of such a plan.''.

(2) The table of sections at the beginning of such chapter, as amended by section 1105(b), is further amended by inserting after the item relating to section 1587a the following new item:

''1587b. Employees of nonappropriated fund instrumentalities: health benefits program.''.

(b) REPEAL OF SUPERSEDED LAW.—Section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2727; 10 U.S.C. 1587 note) is repealed.

SEC. 1107. BID PROTESTS BY FEDERAL EMPLOYEES IN ACTIONS UNDER OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76.

(a) ELIGIBILITY TO PROTEST.—(1) Section 3551(2) of title 31, United States Code, is amended to read as follows:

''(2) The term 'interested party'—

''(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

''(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, includes—

''(i) any official who submitted the agency tender in such competition; and

''(ii) any one person who, for the purpose of representing them in a protest under this subchapter that relates to such competition, has been designated as their agent by a majority of the employees of such Federal agency who are engaged in the performance of such activity or function.''.

(2)(A) Subchapter V of chapter 35 of such title is amended by adding at the end the following new section:

''§ 3557. Expedited action in protests for public-private competitions

''For protests in cases of public-private competitions conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of Federal agencies, the Comptroller General shall administer the provisions of this subchapter in a manner best suited for expediting final resolution of such protests and final action in such competitions.''.

(B) The chapter analysis at the beginning of such chapter is amended by inserting after the item relating to section 3556 the following new item:

''3557. Expedited action in protests for public-private competitions.''.

(b) RIGHT TO INTERVENE IN CIVIL ACTION.—Section 1491(b) of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) If a private sector interested party commences an action described in paragraph (1) in the case of a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, then an official or person described in section 3551(2)(B) of title 31 shall be entitled to intervene in that action.''.

(c) APPLICABILITY.—Subparagraph (B) of section 3551(2) of title 31, United States Code (as added by subsection (a)), and paragraph (5) of section 1491(b) of title 28, United States Code (as added by subsection (b)), shall apply to—

(1) protests and civil actions that challenge final selections of sources of performance of an activity or function of a Federal agency that are made pursuant to studies initiated under Office of Management and Budget Circular A–76 on or after January 1, 2004; and

(2) any other protests and civil actions that relate to public-private competitions initiated under Office of Management and Budget Circular A–76 on or after the date of the enactment of this Act.

SEC. 1108. REPORT ON HOW TO RECRUIT AND RETAIN INDIVIDUALS WITH FOREIGN LANGUAGE SKILLS.

(a) FINDINGS.—Congress makes the following findings:

(1) The Federal Government has a requirement to ensure that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of this evolving international environment.

(2) According to a 2002 General Accounting Office report, Federal agencies have shortages in translators and interpreters and an overall shortfall in the language proficiency levels needed to carry out their missions which has adversely affected agency operations and hindered United States military, law enforcement, intelligence, counterterrorism, and diplomatic efforts.

(3) Foreign language skills and area expertise are integral to, or directly support, every foreign intelligence discipline and are essential factors in national security readiness, information superiority, and coalition peacekeeping or warfighting missions.

(4) Communicating in languages other than English and understanding and accepting cultural and societal differences are vital to the success of peacetime and wartime military and intelligence activities.

(5) Proficiency levels required for foreign language support to national security functions have been raised, and what was once considered proficiency is no longer the case. The ability to comprehend and articulate technical and complex information in foreign languages has become critical.

(6) According to the Joint Intelligence Committee Inquiry into the 9/11 Terrorist Attacks, the Intelligence Community had insufficient linguists prior to September 11, 2001, to handle the challenge it faced in translating the volumes of foreign language counterterrorism intelligence it collected. Agencies within the Intelligence Community experienced backlogs in material awaiting translation, a shortage of language specialists and language-qualified field officers, and

a readiness level of only 30 percent in the most critical terrorism-related languages that are used by terrorists.

(7) Because of this shortage, the Federal Government has had to enter into private contracts to procure linguist and translator services, including in some positions that would be more appropriately filled by permanent Federal employees or members of the United States Armed Forces.

(b) REPORT.—In its fiscal year 2006 budget request, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, a plan for expanding and improving the national security foreign language workforce of the Department of Defense as appropriate to improve recruitment and retention to meet the requirements of the Department for its foreign language workforce on a short-term basis and on a long-term basis.

SEC. 1109. PLAN ON IMPLEMENTATION AND UTILIZATION OF FLEXIBLE PERSONNEL MANAGEMENT AUTHORITIES IN DEPARTMENT OF DEFENSE LABORATORIES.

(a) PLAN REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Personnel and Readiness shall jointly develop a plan for the effective utilization of the personnel management authorities referred to in subsection (b) in order to increase the mission responsiveness, efficiency, and effectiveness of Department of Defense laboratories.

(b) COVERED AUTHORITIES.—The personnel management authorities referred to in this subsection are the personnel management authorities granted to the Secretary of Defense by the provisions of law as follows:

(1) Section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).

(2) Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 5 U.S.C. 3104 note).

(3) Such other provisions of law as the Under Secretaries jointly consider appropriate for purposes of this section.

(c) PLAN ELEMENTS.—The plan under subsection (a) shall—

(1) include such elements as the Under Secretaries jointly consider appropriate to provide for the effective utilization of the personnel management authorities referred to in subsection (b) as described in subsection (a), including the recommendations of the Under Secretaries for such additional authorities, including authorities for demonstration programs or projects, as are necessary to achieve the effective utilization of such personnel management authorities; and

(2) include procedures, including a schedule for review and decisions, on proposals to modify current demonstration programs or projects, or to initiate new demonstration programs or projects, on flexible personnel management at Department laboratories

(d) SUBMITTAL TO CONGRESS.—The Under Secretaries shall jointly submit to Congress the plan under subsection (a) not later than February 1, 2006.

SEC. 1110. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.

(a) SHORT TITLE.—This section may be cited as the ''Reservists Pay Security Act of 2004''.

(b) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

''§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard

''(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

''(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

''(2) the amount of pay and allowances which (as determined under subsection (d))—

''(A) is payable to such employee for that service; and

''(B) is allocable to such pay period.

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

''(c) Any amount payable under this section to an employee shall be paid—

''(1) by such employee's employing agency;

''(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

''(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

''(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

''(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

''(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

''(f) For purposes of this section—

''(1) the terms 'employee', 'Federal Government', and 'uniformed services' have the same respective meanings as given them in section 4303 of title 38;

''(2) the term 'employing agency', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

''(3) the term 'basic pay' includes any amount payable under section 5304.''.

(c) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

''5538. Nonreduction in pay while serving in the uniformed services or National Guard.''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act.

(2) CONDITIONAL RETROACTIVE APPLICATION.—

(A) IN GENERAL.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after October 11, 2002 through the date of enactment of this Act, subject to the availability of appropriations.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $100,000,000 for purposes of subparagraph (A).

TITLE XII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

SEC. 1201. SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2005 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term ''fiscal year 2005 Cooperative Threat Reduction funds'' means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1202. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the $409,200,000 authorized to be appropriated to the Department of Defense for fiscal year 2005 in section 301(19) for Cooperative Threat Reduction programs, the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, $58,522,000.

(2) For nuclear weapons storage security in Russia, $48,672,000.

(3) For nuclear weapons transportation security in Russia, $26,300,000.

(4) For weapons of mass destruction proliferation prevention in the states of the former Soviet Union, $40,030,000.

(5) For chemical weapons destruction in Russia, $158,400,000.

(6) For biological weapons proliferation prevention in the former Soviet Union, $54,959,000.

(7) For defense and military contacts, $8,000,000.

(8) For activities designated as Other Assessments/Administrative Support, $14,317,000.

(b) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2005 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (8) of subsection (a) until 30 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2005 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title or any other provision of law.

(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2005 for a purpose listed in any of the paragraphs in subsection (a) in excess of the specific amount authorized for that purpose.

(2) An obligation of funds for a purpose stated in any of the paragraphs in subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

(3) The Secretary may not, under the authority provided in paragraph (1), obligate amounts for a purpose stated in any of paragraphs (5) through (8) of subsection (a) in excess of 125 percent of the specific amount authorized for such purpose.

SEC. 1203. MODIFICATION AND WAIVER OF LIMITATION ON USE OF FUNDS FOR CHEMICAL WEAPONS DESTRUCTION FACILITIES IN RUSSIA.

(a) MODIFICATION OF LIMITATION.—Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (22 U.S.C. 5952 note) is amended by striking ''or expended''.

(b) WAIVER AUTHORITY.—The conditions described in section 1305 of the National Defense Authorization Act for Fiscal Year 2000, as amended by subsection (a), shall not apply to the obligation of funds during a fiscal year for the planning, design, or construction of a chemical weapons destruction facility in Russia if the President submits to Congress a written certification with respect to such fiscal year that includes—

(1) a statement as to why the waiver of the conditions during the fiscal year covered by such certification is consistent with the national security interests of the United States; and

(2) a plan to promote a full and accurate disclosure by Russia regarding the size, content, status, and location of its chemical weapons stockpile.

SEC. 1204. INCLUSION OF DESCRIPTIVE SUMMARIES IN ANNUAL COOPERATIVE THREAT REDUCTION REPORTS AND BUDGET JUSTIFICATION MATERIALS.

Section 1307 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2165; 22 U.S.C. 5952 note) is amended—

(1) in subsection (a), by striking ''as part of the Secretary's annual budget request to Congress'' in the matter preceding paragraph (1) and inserting ''in the materials and manner specified in subsection (c)''; and

(2) by adding at the end the following new subsection:

''(c) INCLUSION IN CERTAIN MATERIALS SUBMITTED TO CONGRESS.—The summary required to be submitted to Congress in a fiscal year under subsection (a) shall be set forth by project category, and by amounts specified in paragraphs (1) and (2) of that subsection in connection with such project category, in each of the following:

''(1) The annual report on activities and assistance under Cooperative Threat Reduction programs required in such fiscal year under section 1308 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398).

''(2) The budget justification materials submitted to Congress in support of the Department of Defense budget for the fiscal year succeeding such fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code).''.

TITLE XIII—MEDICAL READINESS TRACKING AND HEALTH SURVEILLANCE

SEC. 1301. ANNUAL MEDICAL READINESS PLAN AND JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall develop a comprehensive plan to improve medical readiness, and Department of Defense tracking of the health status, of members of the Armed Forces throughout their service in the Armed Forces, and to strengthen medical readiness and tracking before, during, and after deployment of the personnel overseas. The matters covered by the comprehensive plan shall include all elements that are described in this title and the amendments made by this title and shall comply with requirements in law.

(b) JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Medical Readiness Oversight Committee.

(2) COMPOSITION.—The members of the Committee are as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall chair the Committee.

(B) The Assistant Secretary of Defense for Health Affairs.

(C) The Assistant Secretary of Defense for Reserve Affairs.

(D) The Surgeons General of the Armed Forces.

(E) The Assistant Secretary of the Army for Manpower and Reserve Affairs.

(F) The Assistant Secretary of the Navy for Manpower and Reserve Affairs.

(G) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment.

(H) The Chief of the National Guard Bureau.

(I) The Chief of Army Reserve.

(J) The Chief of Naval Reserve.

(K) The Chief of Air Force Reserve.

(L) The Commander, Marine Corps Reserve.

(M) The Director of the Defense Manpower Data Center.

(N) A representative of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs.

(O) Representatives of veterans and military health advocacy organizations appointed to the Committee by the Secretary of Defense.

(P) An individual from civilian life who is recognized as an expert on military health care treatment, including research relating to such treatment.

(3) DUTIES.—The duties of the Committee are as follows:

(A) To advise the Secretary of Defense on the medical readiness and health status of the members of the active and reserve components of the Armed Forces.

(B) To advise the Secretary of Defense on the compliance of the Armed Forces with the medical readiness tracking and health surveillance policies of the Department of Defense.

(C) To oversee the development and implementation of the comprehensive plan required by subsection (a) and the actions required by this title and the amendments made by this title, including with respect to matters relating to—

(i) the health status of the members of the reserve components of the Armed Forces;

(ii) accountability for medical readiness;

(iii) medical tracking and health surveillance;

(iv) declassification of information on environmental hazards;

(v) postdeployment health care for members of the Armed Forces; and

(vi) compliance with Department of Defense and other applicable policies on blood serum repositories.

(D) To ensure unity and integration of efforts across functional and organizational lines within the Department of Defense with regard to medical readiness tracking and health status surveillance of members of the Armed Forces.

(E) To establish and monitor compliance with the medical readiness standards that are applicable to members and those that are applicable to units.

(F) To improve continuity of care in coordination with the Secretary of Veterans Affairs, for members of the Armed Forces separating from active service with service-connected medical conditions.

(G) To prepare and submit to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 1 of each year, a report on—

(i) the health status and medical readiness of the members of the Armed Forces, including the members of reserve components, based on the comprehensive plan required under subsection (a) and the actions required by this title and the amendments made by this title; and

(ii) compliance with Department of Defense policies on medical readiness tracking and health surveillance.

(4) FIRST MEETING.—The first meeting of the Committee shall be held not later than 90 days after the date of the enactment of this Act.

SEC. 1302. MEDICAL READINESS OF RESERVES.

(a) COMPTROLLER GENERAL STUDY OF HEALTH OF RESERVES ORDERED TO ACTIVE DUTY FOR OPERATIONS ENDURING FREEDOM AND IRAQI FREEDOM.—

(1) REQUIREMENT FOR STUDY.—The Comptroller General of the United States shall carry out a study of the health of the members of the reserve components of the Armed Forces who have been called or ordered to active duty for a period of more than 30 days in support of Operation Enduring Freedom and Operation Iraqi Freedom. The Comptroller General shall commence the study not later than 180 days after the date of the enactment of this Act.

(2) PURPOSES.—The purposes of the study under this subsection are as follows:

(A) To review the health status and medical fitness of the activated Reserves when they were called or ordered to active duty.

(B) To review the effects, if any, on logistics planning and the deployment schedules

for the operations referred to in paragraph (1) that resulted from deficiencies in the health or medical fitness of activated Reserves.

(C) To review compliance of military personnel with Department of Defense policies on medical and physical fitness examinations and assessments that are applicable to the reserve components of the Armed Forces.

(3) REPORT.—The Comptroller General shall, not later than one year after the date of the enactment of this Act, submit a report on the results of the study under this subsection to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(A) With respect to the matters reviewed under subparagraph (A) of paragraph (2)—

(i) the percentage of activated Reserves who were determined to be medically unfit for deployment, together with an analysis of the reasons why the member was unfit, including medical illnesses or conditions most commonly found among the activated Reserves that were grounds for determinations of medical unfitness for deployment; and

(ii) the percentage of the activated Reserves who, before being deployed, needed medical care for health conditions identified when called or ordered to active duty, together with an analysis of the types of care that were provided for such conditions and the reasons why such care was necessary.

(B) With respect to the matters reviewed under subparagraph (B) of paragraph (2)—

(i) the delays and other disruptions in deployment schedules that resulted from deficiencies in the health status or medical fitness of activated Reserves; and

(ii) an analysis of the extent to which it was necessary to merge units or otherwise alter the composition of units, and the extent to which it was necessary to merge or otherwise alter objectives, in order to compensate for limitations on the deployability of activated Reserves resulting from deficiencies in the health status or medical fitness of activated Reserves.

(C) With respect to the matters reviewed under subparagraph (C) of paragraph (2), an assessment of the extent of the compliance of reserve component personnel with Department of Defense policies on routine medical and physical fitness examinations that are applicable to the reserve components of the Armed Forces.

(D) An analysis of the extent to which the medical care, if any, provided to activated Reserves in each theater of operations referred to in paragraph (1) related to preexisting conditions that were not adequately addressed before the deployment of such personnel to the theater.

(4) DEFINITIONS.—In this subsection:

(A) The term ''activated Reserves'' means the members of the Armed Forces referred to in paragraph (1).

(B) The term ''active duty for a period of more than 30 days'' has the meaning given such term in section 101(d) of title 10, United States Code.

(C) The term ''health condition'' includes a mental health condition and a dental condition.

(D) The term ''reserve components of the Armed Forces'' means the reserve components listed in section 10101 of title 10, United States Code.

(b) ACCOUNTABILITY FOR INDIVIDUAL AND UNIT MEDICAL READINESS.—

(1) POLICY.—The Secretary of Defense shall issue a policy to ensure that individual members and commanders of reserve component units fulfill their responsibilities for medical and dental readiness of members of the units on the basis of—

(A) frequent periodic health assessment of members (not less frequently than once every two years) using the predeployment assessment procedure required under section 1074f of title 10, United States Code, as the minimum standard of medical readiness; and

(B) any other information on the health status of the members that is available to the commanders.

(2) REVIEW AND FOLLOWUP CARE.—The regulations under this subsection shall provide for review of the health assessments under paragraph (1) by a medical professional and for any followup care and treatment that is needed for medical or dental readiness.

(3) MODIFICATION OF PREDEPLOYMENT HEALTH ASSESSMENT SURVEY.—In meeting the policy under paragraph (1), the Secretary shall—

(A) to the extent practicable, modify the predeployment health assessment survey to bring such survey into conformity with the detailed postdeployment health assessment survey in use as of October 1, 2004; and

(B) ensure the use of the predeployment health assessment survey, as so modified, for predeployment health assessments after that date.

(c) UNIFORM POLICY ON DEFERRAL OF MEDICAL TREATMENT PENDING DEPLOYMENT TO THEATERS OF OPERATIONS.—

(1) REQUIREMENT FOR POLICY.—The Secretary of Defense shall prescribe, for uniform applicability throughout the Armed Forces, a policy on deferral of medical treatment of members pending deployment.

(2) CONTENT.—The policy prescribed under paragraph (1) shall specify the following matters:

(A) The circumstances under which treatment for medical conditions may be deferred to be provided within a theater of operations in order to prevent delay or other disruption of a deployment to that theater.

(B) The circumstances under which medical conditions are to be treated before deployment to that theater.

SEC. 1303. BASELINE HEALTH DATA COLLECTION PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—

(1) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1092 the following new section:

''§ 1092a. Persons entering the armed forces: baseline health data

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program—

''(1) to collect baseline health data from all persons entering the armed forces;

''(2) to provide for computerized compilation and maintenance of the baseline health data; and

''(3) to analyze the data.

''(b) PURPOSES.—The program under this section shall be designed to achieve the following purposes:

''(1) To facilitate understanding of how exposures related to service in the armed forces affect health.

''(2) To facilitate development of early intervention and prevention programs to protect health and readiness.''.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1092 the following new item:

''1092a. Persons entering the armed forces: baseline health data.''.

(3) TIME FOR IMPLEMENTATION.—The Secretary of Defense shall implement the program required under section 1092a of title 10, United States Code (as added by paragraph (1)), not later than two years after the date of the enactment of this Act.

(b) INTERIM STANDARDS FOR BLOOD SAMPLING.—The Secretary of Defense shall require under the medical tracking system administered under section 1074f of title 10, United States Code, that—

(1) the blood samples necessary for the predeployment medical examination of a member of the Armed Forces required under subsection (b) of such section be drawn not earlier than 60 days before the date of the deployment; and

(2) the blood samples necessary for the postdeployment medical examination of a member of the Armed Forces required under such subsection be drawn not later than 30 days after the date on which the deployment ends.

SEC. 1304. MEDICAL CARE AND TRACKING AND HEALTH SURVEILLANCE IN THE THEATER OF OPERATIONS.

(a) RECORDKEEPING POLICY.—The Secretary of Defense shall prescribe a policy that requires the records of all medical care provided to a member of the Armed Forces in a theater of operations to be maintained as part of a complete health record for the member.

(b) IN-THEATER MEDICAL TRACKING AND HEALTH SURVEILLANCE.—

(1) REQUIREMENT FOR EVALUATION.—The Secretary of Defense shall evaluate the system for the medical tracking and health surveillance of members of the Armed Forces in theaters of operations and take such actions as may be necessary to improve the medical tracking and health surveillance.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit a report on the actions taken under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(A) An analysis of the strengths and weaknesses of the medical tracking system administered under section 1074f of title 10, United States Code.

(B) An analysis of the efficacy of health surveillance systems as a means of detecting—

(i) any health problems (including mental health conditions) of members of the Armed Forces contemporaneous with the performance of the assessment under the system; and

(ii) exposures of the assessed members to environmental hazards that potentially lead to future health problems.

(C) An analysis of the strengths and weaknesses of such medical tracking and surveillance systems as a means for supporting future research on health issues.

(D) Recommended changes to such medical tracking and health surveillance systems.

(E) A summary of scientific literature on blood sampling procedures used for detecting and identifying exposures to environmental hazards.

(F) An assessment of whether there is a need for changes to regulations and standards for drawing blood samples for effective tracking and health surveillance of the medical conditions of personnel before deployment, upon the end of a deployment, and for a followup period of appropriate length.

(c) PLAN TO OBTAIN HEALTH CARE RECORDS FROM ALLIES.—The Secretary of Defense shall develop a plan for obtaining all records of medical treatment provided to members of the Armed Forces by allies of the United States in Operation Enduring Freedom and Operation Iraqi Freedom. The plan shall specify the actions that are to be taken to obtain all such records.

(d) POLICY ON IN-THEATER PERSONNEL LOCATOR DATA.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall prescribe a Department of Defense policy on the collection and dissemination of in-theater individual personnel location data.

SEC. 1305. DECLASSIFICATION OF INFORMATION ON EXPOSURES TO ENVIRONMENTAL HAZARDS.

(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall review and, as determined appropriate, revise the classification policies of the Department of Defense with a view to facilitating the declassification of data that is potentially useful for the monitoring and assessment of the health of members of the Armed Forces who have been exposed to environmental hazards during deployments overseas, including the following data:

(1) In-theater injury rates.

(2) Data derived from environmental surveillance.

(3) Health tracking and surveillance data.

(b) CONSULTATION WITH COMMANDERS OF THEATER COMBATANT COMMANDS.—The Secretary shall, to the extent that the Secretary considers appropriate, consult with the senior commanders of the in-theater forces of the combatant commands in carrying out the review and revising policies under subsection (a).

SEC. 1306. ENVIRONMENTAL HAZARDS.

(a) REPORT ON TRAINING OF FIELD MEDICAL PERSONNEL.—

(1) REQUIREMENT FOR REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the training on environmental hazards that is provided by the Armed Forces to medical personnel of the Armed Forces who are deployable to the field in direct support of combat personnel.

(2) CONTENT.—The report under paragraph (1) shall include the following:

(A) An assessment of the adequacy of the training regarding—

(i) the identification of common environmental hazards and exposures to such hazards; and

(ii) the prevention and treatment of adverse health effects of such exposures.

(B) A discussion of the actions taken and to be taken to improve such training.

(c) REPORT ON RESPONSES TO HEALTH CONCERNS OF MEMBERS.—

(1) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Assistant Secretary of Defense for Health Affairs shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report on Department of Defense responses to concerns expressed by members of the Armed Forces during post-deployment health assessments about possibilities that the members were exposed to environmental hazards deleterious to the members' health during a deployment overseas.

(2) CONTENT.—The report regarding health concerns submitted under paragraph (1) shall include the following:

(A) A discussion of the actions taken by Department of Defense officials to investigate the circumstances underlying such concerns in order to determine the validity of the concerns.

(B) A discussion of the actions taken by Department of Defense officials to evaluate or treat members and former members of the Armed Forces who are confirmed to have been exposed to environmental hazards deleterious to their health during deployments of the Armed Forces.

SEC. 1307. POST-DEPLOYMENT MEDICAL CARE RESPONSIBILITIES OF INSTALLATION COMMANDERS.

(a) REQUIREMENT FOR REGULATIONS.—The Secretary of Defense shall prescribe a policy that requires the commander of each military installation at which members of the Armed Forces are to be processed upon redeployment from an overseas deployment—

(1) to identify and analyze the anticipated health care needs of such members before the arrival of such members at that installation; and

(2) to report such needs to the Secretary.

(b) HEALTH CARE TO MEET NEEDS.—The policy under this section shall include procedures for the commander of each military installation described in subsection (a) to meet the anticipated health care needs that are identified by the commander in the performance of duties under the regulations, including the following:

(1) Arrangements for health care provided by the Secretary of Veterans Affairs.

(2) Procurement of services from local health care providers.

(3) Temporary employment of health care personnel to provide services at such installation.

SEC. 1308. FULL IMPLEMENTATION OF MEDICAL READINESS TRACKING AND HEALTH SURVEILLANCE PROGRAM AND FORCE HEALTH PROTECTION AND READINESS PROGRAM.

(a) IMPLEMENTATION AT ALL LEVELS.—The Secretary of Defense, in conjunction with the Secretaries of the military departments, shall take such actions as are necessary to ensure that the Army, Navy, Air Force, and Marine Corps fully implement at all levels—

(1) the Medical Readiness Tracking and Health Surveillance Program under this title and the amendments made by this title; and

(2) the Force Health Protection and Readiness Program of the Department of Defense (relating to the prevention of injury and illness and the reduction of disease and noncombat injury threats).

(b) ACTION OFFICIAL.—The Secretary of Defense may act through the Under Secretary of Defense for Personnel and Readiness in carrying out subsection (a).

SEC. 1309. OTHER MATTERS.

(a) ANNUAL REPORTS.—

(1) REQUIREMENT FOR REPORTS.—

(A) Chapter 55 of title 10, United States Code, is amended by inserting after section 1073a the following new section:

"§ 1073b. Recurring reports

''(a) ANNUAL REPORT ON HEALTH PROTECTION QUALITY.—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives each year a report on the Force Health Protection Quality Assurance Program of the Department of Defense. The report shall include the following matters:

''(A) The results of an audit of the extent to which the serum samples required to be obtained from members of the armed forces before and after a deployment are stored in the serum repository of the Department of Defense.

''(B) The results of an audit of the extent to which the health assessments required for members of the armed forces before and after a deployment are being maintained in the electronic database of the Defense Medical Surveillance System.

''(C) An analysis of the actions taken by the Department of Defense personnel to respond to health concerns expressed by members of the armed forces upon return from a deployment.

''(D) An analysis of the actions taken by the Secretary to evaluate or treat members and former members of the armed forces who are confirmed to have been exposed to occupational or environmental hazards deleterious to their health during a deployment.

''(2) The Secretary of Defense shall act through the Assistant Secretary of Defense for Health Affairs in carrying out this subsection.

''(b) ANNUAL REPORT ON RECORDING OF HEALTH ASSESSMENT DATA IN MILITARY PERSONNEL RECORDS.—The Secretary of Defense shall issue each year a report on the compliance by the military departments with applicable policies on the recording of health assessment data in military personnel records. The report shall include a discussion of the extent to which immunization status and predeployment and postdeployment health care data is being recorded in such records.''.

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1073a the following new item:

''1073b. Recurring reports.''.

(2) INITIAL REPORT.—The first report under section 1073b(a) of title 10, United States Code (as added by paragraph (1)), shall be completed not later than 180 days after the date of the enactment of this Act.

(b) INTERNET ACCESSIBILITY OF HEALTH ASSESSMENT INFORMATION FOR MEMBERS OF THE ARMED FORCES.—Not later than one year after the date of the enactment of this Act, the Chief Information Officer of each military department shall ensure that the online portal website of that military department includes the following information relating to health assessments:

(1) Information on the Department of Defense policies regarding predeployment and postdeployment health assessments, including policies on the following matters:

(A) Health surveys.

(B) Physical examinations.

(C) Collection of blood samples and other tissue samples.

(2) Procedural information on compliance with such policies, including the following information:

(A) Information for determining whether a member is in compliance.

(B) Information on how to comply.

(3) Health assessment surveys that are either—

(A) web-based; or

(B) accessible (with instructions) in printer-ready form by download.

SEC. 1310. USE OF CIVILIAN EXPERTS AS CONSULTANTS.

Nothing in this title or an amendment made by this title shall be construed to limit the authority of the Secretary of Defense to procure the services of experts outside the Federal Government for performing any function to comply with requirements for readiness tracking and health surveillance of members of the Armed Forces that are applicable to the Department of Defense.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the ''Military Construction Authorization Act for Fiscal Year 2005''.

TITLE XXI—ARMY

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or location	Amount
Alabama	Anniston Army Depot	$23,690,000
	Fort Rucker	$16,500,000
Alaska	Fort Richardson	$24,300,000
	Fort Wainwright	$92,459,000
Arizona	Fort Huachuca	$18,000,000
California	Fort Irwin	$38,100,000
	Sierra Army Depot	$13,600,000
Colorado	Fort Carson	$63,158,000
Georgia	Fort Benning	$71,777,000
	Fort Gillem	$5,800,000
	Fort McPherson	$4,900,000
	Fort Stewart/Hunter Army Air Field	$65,495,000
Hawaii	Helemano Military Reservation	$75,300,000
	Hickam Air Field	$11,200,000
	Pohakuloa Training Area	$40,000,000
	Schofield Barracks	$162,792,000
	Wheeler Army Air Field	$24,000,000
Kansas	Fort Riley	$59,550,000
Kentucky	Fort Campbell	$92,000,000
	Fort Knox	$75,750,000
Louisiana	Fort Polk	$70,953,000
Maryland	Aberdeen Proving Ground	$13,000,000
Missouri	Fort Leonard Wood	$28,150,000
New Mexico	White Sands Missile Range	$33,000,000
New York	Fort Drum	$7,950,000
	Fort Hamilton	$7,600,000
	Military Entrance Processing Station, Buffalo	$6,200,000
	United States Military Academy, West Point	$60,000,000
North Carolina	Fort Bragg	$101,687,000
Oklahoma	Fort Sill	$14,400,000
Pennsylvania	Letterkenny Depot	$11,400,000
Texas	Fort Bliss	$20,100,000
	Fort Hood	$78,088,000
	Fort Sam Houston	$11,400,000
Virginia	Fort A.P. Hill	$14,775,000
	Fort Myer	$49,526,000
Washington	Fort Lewis	$57,200,000
	Total	$1,563,800,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(2), the Secretary of the Army may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or location	Amount
Germany	Grafenwoehr	$77,200,000
Italy	Livorno	$26,000,000
Korea	Camp Humphreys	$12,000,000
	Total	$115,200,000

SEC. 2102. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Army: Family Housing

State or Country	Installation or location	Purpose	Amount
Alaska	Fort Richardson	92 Units	$42,000,000
	Fort Wainwright	246 Units	$124,000,000
Arizona	Fort Huachuca	205 Units	$41,000,000
	Yuma Proving Grounds	55 Units	$14,900,000
Kansas	Fort Riley	126 Units	$33,000,000
New Mexico	White Sands Missile Range	156 Units	$31,000,000
Oklahoma	Fort Sill	247 Units	$47,000,000
Virginia	Fort Lee	218 Units	$46,000,000
	Fort Monroe	68 Units	$16,000,000
		Total	$394,900,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed $29,209,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may improve existing military family housing units in an amount not to exceed $211,990,000.

SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $3,507,891,000, as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), $1,534,500,000.

(2) For military construction projects outside the United States authorized by section 2101(b), $115,200,000.

(3) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, $20,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $154,335,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $636,099,000.

(B) For support of military family housing (including the functions described in section 2833 of title 10, United States Code), $928,907,000.

(6) For the construction of phase 3 of a barracks complex renewal, Capron Road, Schofield Barracks, Hawaii, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), $48,000,000.

(7) For the construction of phase 3 of a maintenance complex at Fort Sill, Oklahoma, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), as amended by section 2106 of this Act, $13,100,000.

(8) For the construction of phase 2 of a barracks complex, 5th and 16th Street, at Fort Stewart/Hunter Army Air Field, Georgia, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), as amended by section 2105 of this Act, $32,950,000.

(9) For the construction of phase 2 of the Lewis and Clark instructional facility, at Fort Leavenworth, Kansas, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), $44,000,000.

(10) For the construction of phase 2 of a barracks complex at Wheeler Sack Army Air Field, Fort Drum, New York, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), as amended by section 2105 of this Act, $48,000,000.

(11) For the construction of phase 2 of a barracks complex, Bastogne Drive, at Fort Bragg, North Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), $48,000,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a);

(2) $41,000,000 (the balance of the amount authorized under section 2101(a) for an upgrade to Drum Road at the Helemano Military Reservation, Hawaii);

(3) $25,000,000 (the balance of the amount authorized under section 2101(a) to construct a vehicle maintenance facility at Schofield Barracks, Hawaii);

(4) $25,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, 42nd Street and Indiana Avenue, at Fort Campbell, Kentucky);

(5) $22,000,000 (the balance of the amount authorized under section 2101(a) for the construction of a basic combat training complex at Fort Knox, Kentucky);

(6) $31,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Blackjack Street, Fort Bragg, North Carolina); and

(7) $25,500,000 (the balance of the amount authorized under section 2101(a) for construction of a library and learning center at the United States Military Academy, New York).

SEC. 2105. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2004 PROJECTS.

The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697) is amended—

(1) in the item relating to Fort Stewart, Georgia, by striking ''$113,500,000'' in the amount column and inserting ''$114,450,000'';

(2) in the item relating to Fort Drum, New York, by striking ''$130,700,000'' in the amount column and inserting ''$135,700,000''; and

(3) by striking the amount identified as the total in the amount column and inserting ''$1,043,150,000''.

SEC. 2106. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2003 PROJECT.

The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), as amended by section 2105(a)(2) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1701), is further amended—

(1) in the item relating to Fort Sill, Oklahoma, by striking ''$39,652,000'' in the amount column and inserting ''$40,752,000''; and

(2) by striking the amount identified as the total in the amount column and inserting ''$1,157,267,000''.

TITLE XXII—NAVY

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(1), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Navy: Inside the United States

State	Installation or location	Amount
Arizona	Marine Corps Air Station, Yuma	$26,670,000
California	Marine Corps Base, Camp Pendleton	$38,455,000
	Naval Air Facility, El Centro	$54,331,000
	Recruit Depot, San Diego	$8,110,000
Connecticut	Naval Submarine Base, New London	$50,302,000
District of Columbia	Naval Observatory, Washington	$3,239,000
Florida	Eglin Air Force Base	$2,060,000
	Naval Station, Mayport	$6,200,000
Georgia	Strategic Weapons Facility Atlantic, Kings Bay	$16,000,000
Illinois	Naval Training Station, Great Lakes	$74,781,000
Maine	Naval Air Station, Brunswick	$4,690,000
	Portsmouth Naval Station	$7,860,000
Maryland	Naval Surface Warfare Center, Indian Head	$13,900,000
Mississippi	Naval Construction Battalion Center, Gulfport	$4,350,000
Nevada	Naval Air Station, Fallon	$4,980,000
North Carolina	Marine Corps Air Station, New River	$35,140,000
	Marine Corps Base, Camp Lejeune	$13,420,000
	Washington County	$136,900,000
Rhode Island	Naval Station Newport	$9,080,000
South Carolina	Naval Weapons Station, Charleston	$18,140,000
Virginia	Camp Elmore Marine Corps Detachment	$13,500,000
	Marine Corps Base, Quantico	$46,270,000
	Naval Air Station, Oceana	$2,770,000
	Naval Amphibious Base, Little Creek	$2,850,000
	Naval Station, Norfolk	$4,330,000
	Naval Weapons Station, Yorktown	$9,870,000
Washington	Naval Shipyard Puget Sound, Bremerton	$20,305,000
	Naval Station, Bremerton	$74,125,000
	Strategic Weapons Facility Pacific, Bangor	$131,090,000
	Total	$833,718,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(2), the Secretary of the Navy may acquire real property and carry out military construction projects for the locations outside the United States, and in the amounts, set forth in the following table:

Navy: Outside the United States

Country	Installation or location	Amount
Diego Garcia	Naval Support Facility, Diego Garcia	$17,500,000
Guam	Naval Station, Guam	$33,200,000
Italy	Sigonella	$22,550,000
	Total	$73,250,000

(c) UNSPECIFIED WORLDWIDE.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(3), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations, and in the amount, set forth in the following table:

Navy: Unspecified Worldwide

Location	Installation or location	Amount
Worldwide Unspecified	Unspecified Worldwide	$52,658,000
	Total	$52,658,000

SEC. 2202. FAMILY HOUSING.

Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(6)(A), the Secretary of the Navy may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Navy: Family Housing

State	Installation or Location	Purpose	Amount
North Carolina	Marine Corps Air Station, Cherry Point	198 Units	$27,002,000
		Total	$27,002,000

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(6)(A), the Secretary of the Navy may improve existing military family housing units in an amount not to exceed $112,105,000.

SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $1,843,716,000, as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), $694,338,000.

(2) For military construction projects outside the United States authorized by section 2201(b), $73,250,000.

(3) For military construction projects at unspecified worldwide locations authorized by section 2201(c), $18,560,000.

(4) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, $12,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $87,067,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $139,107,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $704,504,000.

(7) For the construction of phase 2 of the tertiary sewage treatment plant at Marine Corps Base, Camp Pendleton, California, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1703), $25,690,000.

(8) For the construction of phase 2 of the general purpose berthing pier at Naval Weapons Station, Earle, New Jersey, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004, $49,200,000.

(9) For the construction of phase 2 of pier 11 replacement at Naval Station, Norfolk, Virginia, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004, $40,000,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a);

(2) $21,000,000 (the balance of the amount authorized under section 2201(a) for the replacement of an aircraft parking apron and hangar at Naval Air Facility El Centro, California);

(3) $70,000,000 (the balance of the amount authorized under section 2201(a) to acquire land interests for an outlying landing field in Washington County, North Carolina);

(4) $95,320,000 (the balance of the amount authorized under section 2201(a) for construction of a limited area production and storage complex at the Strategic Weapons Facility Pacific, Bangor, Washington); and

(5) $40,000,000 (the balance of the amount authorized under section 2201(a) for the construction of a bachelor enlisted quarters at Naval Station Bremerton, Washington).

SEC. 2205. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2004 PROJECTS.

The table in section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1703) is amended—

(1) in the item relating to Various Locations, CONUS, by striking ''$56,360,000'' in the amount column and inserting ''$61,510,000''; and

(2) by striking the amount identified as the total in the amount column and inserting ''$1,341,022,000''.

TITLE XXIII—AIR FORCE

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(1), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or location	Amount
Alaska	Elmendorf Air Force Base	$54,057,000
Arizona	Davis-Monthan Air Force Base	$10,029,000
	Luke Air Force Base	$10,000,000
Arkansas	Little Rock Air Force Base	$5,031,000
California	Beale Air Force Base	$10,186,000
	Edwards Air Force Base	$9,965,000
	Travis Air Force Base	$15,244,000
Colorado	Buckley Air Force Base	$12,247,000
Delaware	Dover Air Force Base	$9,500,000
Florida	Patrick Air Force Base	$8,800,000
Georgia	Moody Air Force Base	$9,600,000
	Robins Air Force Base	$15,000,000
Hawaii	Hickam Air Force Base	$34,400,000
	Maui Site	$7,500,000
Louisiana	Barksdale Air Force Base	$13,800,000
Maryland	Andrews Air Force Base	$17,100,000
Mississippi	Columbus Air Force Base	$7,700,000
Montana	Malmstrom Air Force Base	$5,600,000
Nebraska	Offut Air Force Base	$6,721,000
New Mexico	Cannon Air Force Base	$9,500,000
North Carolina	Pope Air Force Base	$15,150,000
North Dakota	Minot Air Force Base	$9,900,000
Ohio	Wright-Patterson Air Force Base	$9,200,000
Oklahoma	Altus Air Force Base	$10,500,000
	Tinker Air Force Base	$8,000,000
South Carolina	Shaw Air Force Base	$3,300,000
South Dakota	Ellsworth Air Force Base	$11,800,000
Tennessee	Arnold Air Force Base	$22,000,000
Texas	Dyess Air Force Base	$11,000,000
	Lackland Air Force Base	$2,596,000
	Sheppard Air Force Base	$50,284,000
Utah	Hill Air Force Base	$20,813,000
Wyoming	F.E. Warren Air Force Base	$5,500,000
	Total	$452,023,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(2), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Air Force: Outside the United States

Country	Installation or location	Amount
Germany	Ramstein Air Base	$25,404,000
Greenland	Thule Air Base	$19,800,000
Guam	Andersen Air Base	$19,593,000
Italy	Aviano Air Base	$6,760,000
Korea	Kunsan Air Base	$37,100,000
	Osan Air Base	$18,600,000
Portugal	Lajes Field, Azores	$5,689,000
United Kingdom	Royal Air Force, Lakenheath	$5,500,000
	Total	$138,446,000

(c) UNSPECIFIED WORLDWIDE.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(3), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations and locations, and in the amounts, set forth in the following table:

Air Force: Unspecified Worldwide

Location	Installation or location	Amount
Worldwide Classified	Worldwide Unspecified Classified	$28,794,000
Worldwide Unspecified	Worldwide Unspecified	$26,121,000
	Total	$54,915,000

SEC. 2302. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(6)(A), the Secretary of the Air Force may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Air Force: Family Housing

State	Installation or location	Purpose	Amount
Arizona	Davis-Monthan Air Force Base	250 Units	$48,500,000
California	Edwards Air Force Base	218 Units	$41,202,000
	Vandenberg Air Force Base	120 Units	$30,906,000
Florida	MacDill Air Force Base	61 Units	$21,723,000
	MacDill Air Force Base	Housing Maintenance Facility.	$1,250,000

Air Force: Family Housing—Continued

State	Installation or location	Purpose	Amount
Idaho	Mountain Home Air Force Base	147 Units	$39,333,000
Mississippi	Columbus Air Force Base	Family Housing Management Facility.	$711,000
Missouri	Whiteman Air Force Base	160 Units	$37,087,000
Montana	Malmstrom Air Force Base	115 Units	$29,910,000
North Carolina	Seymour Johnson Air Force Base	167 Units	$32,693,000
North Dakota	Grand Forks Air Force Base	90 Units	$26,169,000
	Minot Air Force Base	142 Units	$37,087,000
South Carolina	Charleston Air Force Base	Fire Station	$1,976,000
South Dakota	Ellsworth Air Force Base	75 Units	$21,482,000
Texas	Dyess Air Force Base	127 Units	$28,664,000
	Goodfellow Air Force Base	127 Units	$20,604,000
Germany	Ramstein Air Base	144 Units	$57,691,000
Italy	Aviano Air Base	Family Housing Office.	$2,542,000
Korea	Osan Air Base	117 Units	$46,834,000
United Kingdom	Royal Air Force, Lakenheath	154 Units	$43,976,000
		Total	$570,340,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(6)(A), the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed $38,266,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, Unites States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(6)(A), the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed $238,353,000.

SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) AUTHORIZATION OF APPROPRIATION.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,485,542,000, as follows:

(1) For military construction projects inside the United States authorized by section 2301(a), $452,023,000.

(2) For military construction projects outside the United States authorized by section 2301(b), $138,446,000.

(3) For military construction projects at unspecified worldwide locations authorized by section 2301(c), $54,915,000.

(4) For unspecified minor construction projects authorized by section 2805 of title 10, United States Code, $13,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $124,085,000.

(6) For military housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $846,959,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $856,114,000.

(b) OFFSET FOR CERTAIN MILITARY CONSTRUCTION PROJECT.—The amount authorized to be appropriated by section 421 for military personnel is hereby reduced by $5,500,000, with the amount of the reduction to be derived from excess amounts authorized for military personnel of the Air Force.

TITLE XXIV—DEFENSE AGENCIES

SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(1), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations inside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Inside the United States

Agency	Installation or location	Amount
Defense Intelligence Agency	Bolling Air Force Base, District of Columbia	$6,000,000
Defense Logistics Agency	Defense Distribution Depot, New Cumberland, Pennsylvania	$22,300,000
	Defense Distribution Depot, Richmond, Virginia	$10,100,000
	Defense Fuel Support Point, Naval Air Station Oceana, Virginia	$3,589,000
	Marine Corps Air Station, Cherry Point, North Carolina	$22,700,000
	Naval Air Station, Kingsville, Texas	$3,900,000
	Naval Station, Pearl Harbor, Hawaii	$3,500,000
	Tinker Air Force Base, Oklahoma	$5,400,000
	Travis Air Force Base, California	$15,100,000
Missile Defense Agency	Huntsville, Alabama	$19,560,000
National Security Agency	Fort Meade, Maryland	$15,007,000
Special Operations Command	Corona, California	$13,600,000
	Fleet Combat Training Center, Dam Neck, Virginia	$5,700,000
	Fort A.P. Hill, Virginia	$1,500,000
	Fort Bragg, North Carolina	$42,888,000
	Fort Campbell, Kentucky	$3,500,000
	Fort Stewart/Hunter Army Air Field, Georgia	$17,600,000
	Naval Air Station, North Island, California	$1,000,000
	Naval Amphibious Base, Little Creek, Virginia	$33,200,000
	Stennis Center, Mississippi	$6,000,000
Tri-Care Management Activity	Buckley Air Force Base, Colorado	$2,100,000
	Fort Belvoir, Virginia	$100,000,000
	Fort Benning, Georgia	$7,100,000
	Jacksonville, Florida	$28,438,000
	Langley Air Force Base, Virginia	$50,800,000
	Marine Corps Recruit Depot, Parris Island, South Carolina	$25,000,000
	Total	$465,582,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(2), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations outside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Outside the United States

Agency	Installation or location	Amount
Defense Education Agency	Grafenwoehr, Germany	$36,247,000
	Vilseck, Germany	$9,011,000
	Naval Station, Guam	$26,964,000
Defense Logistics Agency	Defense Fuel Support Point, Lajes Field, Portugal	$19,113,000
Special Operations Command	Naval Station, Guam, Marianas Islands	$2,200,000
Tri-Care Management Activity	Diego Garcia	$3,800,000
	Grafenwoehr, Germany	$13,000,000
	Total	$110,335,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(3), the Secretary of Defense may acquire real property and carry out military construction projects for the installations and locations, and in the amounts, set forth in the following table:

Defense Agencies: Unspecified Worldwide

Location	Installation or location	Amount
Worldwide Classified	Worldwide Unspecified Classified	$7,400,000
Worldwide Unspecified	Worldwide Unspecified	$2,900,000
	Total	$10,300,000

SEC. 2402. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(9)(A), the Secretary of Defense may improve existing military family housing units in an amount not to exceed $49,000.

SEC. 2403. ENERGY CONSERVATION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(7), the Secretary of Defense may carry out energy conservation projects under section 2865 of title 10, United States Code, in the amount of $60,000,000.

SEC. 2404. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) in the total amount of $1,062,463,000, as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), $408,582,000.

(2) For military construction projects outside the United States authorized by section 2401(b), $110,335,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2401(c), $10,300,000.

(4) For unspecified minor military construction projects under section 2805 of title 10, United States Code, $20,938,000.

(5) For contingency construction projects of the Secretary of Defense under section 2804 of title 10, United States Code, $10,000,000.

(6) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $62,182,000.

(7) For energy conservation projects authorized by section 2404, $60,000,000.

(8) For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), $246,116,000.

(9) For military family housing functions:

(A) For improvement of military family housing and facilities, $49,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $49,575,000.

(C) For credit to the Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of title 10, United States Code, $2,500,000.

(10) For the construction of phase 6 of a munitions demilitarization facility at Pueblo Chemical Activity, Colorado, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 839) and section 2407 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2698), $44,792,000.

(11) For the construction of phase 5 of a munitions demilitarization facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act of 2002 (division B of Public Law 107–107; 115 Stat. 1298) and section 2405 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2698), $37,094,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2401 of this Act may not exceed—

(1) the total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a); and

(2) $57,000,000 (the balance of the amount authorized under section 2401(a) for the replacement of a hospital at Fort Belvoir, Virginia).

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment program authorized by section 2501, in the amount of $165,800,000.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

SEC. 2601. AUTHORIZED GUARD AND RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

There are authorized to be appropriated for fiscal years beginning after September 30, 2004, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $361,072,000; and

(B) for the Army Reserve, $63,047,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserve, $25,285,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $214,418,000; and

(B) for the Air Force Reserve, $99,206,000.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

SEC. 2701. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) EXPIRATION OF AUTHORIZATIONS AFTER THREE YEARS.—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVI for military construction projects, land acquisition, family

housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2007; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2008.

(b) EXCEPTION.—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) for which appropriated funds have been obligated before the later of—

(1) October 1, 2007; or

(2) the date of the enactment of an Act authorizing funds for fiscal year 2008 for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program.

SEC. 2702. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2002 PROJECTS.

(a) EXTENSION OF CERTAIN PROJECTS.—Notwithstanding section 2701 of the National Defense Authorization Act for Fiscal Year 2001 (division B of Public Law 107–107; 115 Stat. 1301), authorizations set forth in the tables in subsection (b), as provided in section 2101 or 2302 of that Act, shall remain in effect until October 1, 2005, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Army: Extension of 2002 Project Authorizations

State	Installation or location	Project	Amount
Alaska	Fort Wainwright	Power Plant Cooling Tower	$23,000,000
Hawaii	Pohakuloa Training Area	Parker Ranch Land Acquisition	$1,500,000

Air Force: Extension of 2002 Project Authorizations

State	Installation or location	Project	Amount
Colorado	Buckley Air Force Base	Construct Family Housing (55 Units)	$11,400,000
Louisiana	Barksdale Air Force Base	Replace Family Housing (56 Units)	$7,300,000

SEC. 2703. EXTENSION OF AUTHORIZATION OF CERTAIN FISCAL YEAR 2001 PROJECT.

(a) EXTENSION.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2001 (division B of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–407)), authorizations set forth in the table in subsection (b), as provided in section 2102 of that Act and extended by section 2702 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1716), shall remain in effect until October 1, 2005, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006, whichever is later.

(b) TABLE.—The table referred to in subsection (a) is as follows:

Army: Extension of 2001 Project Authorization

State	Installation or location	Project	Amount
South Carolina	Fort Jackson	New Construction–Family Housing (1 Unit)	$250,000

SEC. 2704. EFFECTIVE DATE.

Titles XXI, XXII, XXIII, XXIV, XXV, and XXVI of this Act shall take effect on the later of—

(1) October 1, 2004; or

(2) the date of the enactment of this Act.

TITLE XXVIII—GENERAL PROVISIONS

Subtitle A—Military Construction Program and Military Family Housing Changes

SEC. 2801. INCREASE IN THRESHOLDS FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS.

(a) INCREASE.—Section 2805(a)(1) of title 10, United States Code, is amended—

(1) by striking ''$1,500,000'' and inserting ''$2,500,000''; and

(2) by striking ''$3,000,000'' and inserting ''$4,000,000''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 2004.

SEC. 2802. MODIFICATION OF APPROVAL AND NOTICE REQUIREMENTS FOR FACILITY REPAIR PROJECTS.

(a) INCREASE IN THRESHOLD FOR APPROVAL REQUIREMENT.—Subsection (b) of section 2811 of title 10, United States Code, is amended by striking ''$5,000,000'' and inserting ''$7,500,000''.

(b) INFORMATION REQUIRED IN COST ESTIMATE FOR MULTI-YEAR PROJECTS.—Subsection (d)(1) of such section is amended by inserting before the semicolon the following: '', including, in the case of a multi-year repair project to a single facility, the total cost of all phases of such project''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2004.

SEC. 2803. ADDITIONAL REPORTING REQUIREMENTS RELATING TO ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) PROJECT REPORTS.—Paragraph (2) of subsection (a) of section 2884 of title 10, United States Code, is amended to read as follows:

''(2) The report on a proposed contract, conveyance, or lease under paragraph (1) shall include the following:

''(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

''(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease (including a justification of the intended method of participation).

''(C) A statement of the scored cost of the contract, conveyance, or lease (as determined by the Office of Management and Budget).

''(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds.

''(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances (including basic allowance for housing under section 403 of title 37)

if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.''.

(b) ANNUAL REPORTS.—Subsection (b) of such section is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph (5):

''(5) A report setting forth—

''(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid during the fiscal year in which the budget is submitted to members of the armed forces living in housing provided under the authorities in this subchapter during such fiscal year, set forth by armed force; and

''(B) an estimate of the amounts of basic allowance for housing that will be paid during the fiscal year for which the budget is submitted to members of the armed forces living in such housing during such fiscal year, set forth by armed force.''.

SEC. 2804. MODIFICATION OF AUTHORITIES UNDER ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) REQUIREMENTS FOR CONTRACTS FOR LEASING OF HOUSING.—Section 2874 of title 10, United States Code, is amended by striking subsection (b) and inserting the following new subsection (b):

''(b) CONTRACT TERMS.—Any contract for the lease of housing units under subsection (a) shall include the following provisions:

''(1) That the obligation of the United States to make payments under such contract in any fiscal year shall be subject to appropriations being available for such fiscal year and specifically for the project covered by such contract.

''(2) A commitment to obligate the necessary amount for a fiscal year covered by such contract when and to the extent that funds are appropriated for the project covered by such contract.

''(3) That the commitment described in paragraph (2) does not constitute an obligation of the United States.''.

(b) INVESTMENTS SUBJECT TO AVAILABILITY OF APPROPRIATIONS.—Section 2875(a) of such title is amended by inserting '', subject to the availability of appropriations for such purpose,'' after ''may''.

(c) REPEAL OF CERTAIN AUTHORITIES.—

(1) RENTAL GUARANTEES.—Section 2876 of such title is repealed.

(2) DIFFERENTIAL LEASE PAYMENTS.—Section 2877 of such title is repealed.

(3) ASSIGNMENT OF MEMBERS OF THE ARMED FORCES TO HOUSING UNITS.—Section 2882 of such title is repealed.

(d) INCREASE IN AMOUNT OF BUDGET AUTHORITY FOR MILITARY FAMILY HOUSING.—Section 2883(g)(1) of such title is amended by striking ''$850,000,000'' and inserting ''$850,000,001''.

(e) CLERICAL AMENDMENTS.—The table of sections at the beginning of subchapter IV of chapter 169 of such title is amended by striking the items relating to sections 2876, 2877, and 2882.

Subtitle B—Real Property and Facilities Administration

SEC. 2811. RECODIFICATION AND CONSOLIDATION OF CERTAIN AUTHORITIES AND LIMITATIONS RELATING TO REAL PROPERTY ADMINISTRATION.

(a) CERTAIN PROVISIONS ON LAND ACQUISITION.—

(1) RECODIFICATION.—Section 2661 of title 10, United States Code, is amended by adding at the end the following new subsections:

''(c) COMMISSIONS ON LAND PURCHASE CONTRACTS.—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.

''(d) AVAILABILITY OF FUNDS FOR ACQUISITION OF CERTAIN INTERESTS IN LANDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the following:

''(1) The acquisition of land or interests in land under section 2672 of this title.

''(2) The acquisition of interests in land under section 2675 of this title.''.

(2) STYLISTIC AMENDMENTS.—Such section is further amended—

(A) in subsection (a), by inserting ''AVAILABILITY OF FUNDS FOR REPAIR OF FACILITIES AND FOR INSTALLATION OF EQUIPMENT.—'' after ''(a)''; and

(B) in subsection (b), by inserting ''LEASES; DEFENSE ACCESS ROADS.—'' after ''(b)''.

(b) CERTAIN PROVISIONS ON USE OF FACILITIES.—Section 2679 of such title is amended to read as follows:

''§ 2679. Use of facilities: use by private organizations; use as polling places

''(a) USE OF SPACE AND EQUIPMENT BY VETERANS SERVICE ORGANIZATIONS.—(1) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of the Secretary concerned that are on land and from which persons are discharged or released from active duty.

''(2) The commanding officer of a military installation allowing representatives to function on the installation under paragraph (1) shall allow the representatives to use available space and equipment at the installation.

''(3) The regulations prescribed to carry out section 2679 of title 10, United States Code (as in effect on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005), that are in effect on January 1, 1958, shall remain in effect until changed by joint action of the Secretary concerned and the Secretary of Veterans Affairs.

''(4) This subsection does not authorize the violation of measures of military security.

''(b) LICENSES TO AMERICAN NATIONAL RED CROSS FOR ERECTION AND USE OF BUILDINGS.—(1) Under such conditions as the Secretary concerned may prescribe, such Secretary may issue a revocable license to the American National Red Cross to—

''(A) erect and maintain, on any military installation under the jurisdiction of such Secretary, buildings for the storage of supplies; or

''(B) use, for the storage of supplies, buildings erected by the United States.

''(2) Supplies stored in buildings erected or used under this subsection are available to aid the civilian population in a serious national disaster.

''(c) USE OF CERTAIN FACILITIES AS POLLING PLACES.—(1) Notwithstanding chapter 29 of title 18 (including sections 592 and 593 of such title) or any other provision of law, the Secretary of Defense or Secretary of a military department may not (except as provided in paragraph (3)) prohibit the designation or use of a qualifying facility under the jurisdiction of such Secretary as an official polling place for Federal, State, or local elections.

''(2) A Department of Defense facility is a qualifying facility for purposes of this subsection if as of December 31, 2000—

''(A) the facility is designated as an official polling place by a State or local election official; or

''(B) the facility has been used as such an official polling place since January 1, 1996.

''(3) The limitation in paragraph (1) may be waived by the Secretary of Defense or the Secretary of a military department with respect to a particular Department of Defense facility if such Secretary determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election.''.

(c) REPEAL OF SUPERSEDED PROVISIONS.—Sections 2666, 2670, and 2673 of such title are repealed.

(d) CLERICAL AMENDMENTS.—The table of sections for chapter 159 of such title is amended—

(1) by striking the items relating to sections 2666, 2670, and 2673; and

(2) by striking the item relating to section 2679 and inserting the following new item:

''Sec. 2679. Use of facilities: use by private organizations; use as polling places.''.

SEC. 2812. MODIFICATION AND ENHANCEMENT OF AUTHORITIES ON FACILITIES FOR RESERVE COMPONENTS.

(a) INTERESTS IN LAND.—

(1) DEFINITION OF TERM.—Section 18232 of title 10, United States Code, is amended—

(A) by striking paragraph (2);

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (1) the following new paragraphs:

''(2) The term 'facility' includes any armory, readiness center, building, structure, or other improvement of real property needed for the administration and training of any unit of the reserve components of the armed forces.

''(3) The term 'interest in land' includes a fee title, lease, easement, license, permit, or agreement on use of a parcel of real property needed for the administration and training of any unit of the reserve components of the armed forces.''.

(2) UTILIZATION OF TERM.—(A) Section 18231(1) of such title is amended by inserting before the semicolon the following: '', and the acquisition of interests in land for such purposes''.

(B) Section 18233 of such title is amended—

(i) in subsection (a), by inserting ''or interests in land'' after ''facilities'' each place it appears; and

(ii) in subsection (f)(2), by striking ''real property'' and inserting ''interests in land''.

(C) Section 18233a(a)(1) of such title is amended by inserting ''or interest in land'' after ''facility''.

(b) MODIFICATION AND ENHANCEMENT OF ACQUISITION AUTHORITY.—Section 18233 of such title is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''and to'' and inserting ''chapters 159 and 169 of this title, and''; and

(B) in paragraph (1), by striking ''transfer,'' and inserting ''transfer from a military department, another department or agency of the Federal Government, or a State agency,''; and

(2) in subsection (f)(2), by striking ''exchange of Government-owned land, or otherwise'' and inserting ''or exchange of Government-owned land''.

(c) AUTHORITY TO CARRY OUT SMALL PROJECTS.—

(1) MODIFICATION OF LIMITATION ON AUTHORITY.—Section 18233a(a) of such title is further amended—

(A) in paragraph (1), by striking ''$1,500,000'' and inserting ''$750,000''; and

(B) in paragraph (2), by adding at the end the following new subparagraph:

''(D) A repair project (as that term is defined in section 2811(e) of this title) costing less than $10,000,000.''.

(2) RECODIFICATION OF AUTHORITY TO CARRY OUT WITH OPERATION AND MAINTENANCE FUNDS.—Chapter 1803 of title 10, United States Code, is amended by inserting after section 18233a the following new section:

''§ 18233b. Authority to carry out small projects with operation and maintenance funds

''Under such regulations as the Secretary of Defense may prescribe, the Secretary may spend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title costing not more than—

''(1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

''(2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.''.

(3) REPEAL OF SUPERSEDED AUTHORITY.—Section 18233a of such title is amended by striking subsection (b).

(4) CONFORMING AMENDMENTS.—Section 18233a of such title is further amended—

(A) by striking ''(1) Except as provided in paragraph (2)'' and inserting ''Except as provided in subsection (b)''; and

(B) by redesignating paragraph (2) as subsection (b) and in that subsection, as so redesignated—

(i) by striking ''Paragraph (1)'' and inserting ''Subsection (a)'';

(ii) by redesignating subparagraphs (A), (B), (C), and (D) as paragraphs (1), (2), (3), and (4), respectively; and

(iii) in paragraph (2), as so redesignated—

(I) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(II) in subparagraph (B), as so redesignated, by striking ''(I) 25 percent, or (II)'' and inserting ''(i) 25 percent, or (ii)''.

(5) CLERICAL AMENDMENTS.—(A) The heading of section 18233a of such title is amended to read as follows:

''§ 18233a. Limitation on certain projects''.

(B) The table of sections at the beginning of chapter 1803 of such title is amended by striking the item relating to section 18233a and inserting the following new items:

''18233a. Limitation on certain projects.
''18233b. Authority to carry out small projects with operation and maintenance funds.''.

SEC. 2813. AUTHORITY TO EXCHANGE OR SELL RESERVE COMPONENT FACILITIES AND LANDS TO OBTAIN NEW RESERVE COMPONENT FACILITIES AND LANDS.

(a) IN GENERAL.—The Secretary of Defense may authorize each Secretary of a military department to carry out projects to assess the feasibility and advisability of obtaining new facilities and lands for the reserve components of such department through the exchange or sale of existing facilities or lands of such reserve components.

(b) TRANSACTIONS AUTHORIZED.—Pursuant to the authority under subsection (a), the Secretary of a military department may carry out any transaction as follows:

(1) An exchange of an existing facility or existing interest in land of a reserve component of such department for a new facility, an interest in land, or an addition to an existing facility for the reserve component.

(2) A sale of an existing facility or existing interest in land of a reserve component of such department with the proceeds of sale used to acquire a new facility, an interest in land, or an addition to an existing facility for the reserve component.

(3) A combination of an exchange and sale of an existing facility, interest in land, or both of a reserve component of such department with the use of the exchange allowance and proceeds of sale to acquire a facility, an interest in land, or an addition to an existing facility for the reserve component.

(c) FACILITIES AND LANDS SUBJECT TO TRANSACTION.—A facility or interest in land of a reserve component that may be exchanged or sold pursuant to the authority under subsection (a) is any facility or interest in land under the control of the military department concerned that is not excess property, as that term is defined in section 102(3) of title 40, United States Code.

(d) FAIR MARKET VALUE TO BE OBTAINED IN TRANSACTION.—In any exchange or sale of an existing facility pursuant to the authority under subsection (a), the United States shall receive cash, a replacement facility or addition to an existing facility, an interest in land, or a combination thereof of in an amount not less than the fair market value of the existing facility, as determined by the Secretary of the military department concerned.

(e) REQUIREMENTS FOR REPLACEMENT FACILITIES.—(1) A facility obtained as a replacement facility for an existing facility, or as an addition to an existing facility, pursuant to the authority under subsection (a) shall, as determined by the Secretary of the military department concerned—

(A) be complete and usable, fully functional, and ready for occupancy, and satisfy fully all operational requirements of the existing facility; and

(B) meet all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

(2) A facility obtained as a replacement facility for an existing facility, or as an addition to an existing facility, pursuant to the authority under subsection (a) shall meet the requirements specified in subparagraphs (A) and (B) of paragraph (1) before the conclusion of the exchange or sale of the existing facility concerned.

(f) AGREEMENT REQUIRED.—The Secretary of a military department shall carry out each transaction pursuant to the authority under subsection (a) through an agreement for that purpose entered into by such Secretary and the person or entity carrying out the transaction.

(g) SELECTION AMONG COMPETING PARTICIPANTS.—(1) If more than one person or entity notifies the Secretary of a military department of an interest in carrying out a transaction pursuant to the authority under subsection (a), the Secretary shall, except as provided in paragraph (2), select the person or entity to carry out the transaction through the use of competitive procedures.

(2) The Secretary of a military department may use procedures other than competitive procedures to select among persons and entities to carry out a transaction pursuant to the authority under subsection (a), but only in accordance with subsections (c) through (f) of section 2304 of title 10, United States Code.

(h) NOTICE AND WAIT REQUIREMENT.—(1) The Secretary of a military department may not enter into an agreement pursuant to the authority under subsection (a) until 30 days after the date on which such Secretary submits to the congressional defense committees a report on the agreement.

(2) A report on an agreement under paragraph (1) shall include the following:

(A) A description of terms of the agreement, including a description of any funds to be received by the United States under the agreement and the proposed use of such funds.

(B) A description of the existing facility, interest in land, or both of a reserve component covered by the agreement, including the fair market value of such facility, interest in land, or both and the method of determination of such fair market value.

(C) Data on the facility or addition to an existing facility, if any, to be received by the United States under the agreement, which data shall meet requirements for data to be provided Congress for military construction projects to obtain a similar facility or addition to an existing facility.

(D) A certification that the existing facility, interest in land, or both of a reserve component covered by the agreement is not required by another military department.

(3) Section 2662 of title 10, United States Code, shall not apply to any transaction carried out pursuant to the authority under subsection (a).

(i) TREATMENT OF FUNDS RECEIVED IN TRANSACTIONS.—(1) The Secretary of a military department shall deposit in a special account in the Treasury established for such purpose pursuant to section 572(b) of title 40, United States Code, any amounts received pursuant to an agreement entered into by such Secretary pursuant to the authority under subsection (a).

(2) Amounts deposited by the Secretary of a military department under paragraph (1) in the account established by such Secretary under that paragraph with respect to an agreement shall be available to such Secretary, without further appropriation, as follows:

(A) For the construction or acquisition of facilities, or of additions to existing facilities, for the reserve component concerned at the location to which such agreement applies.

(B) To the extent that such amounts are not required for purposes of subparagraph (A), for maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of facilities or property of the reserve component concerned at the location to which such agreement applies.

(3) Amounts available under paragraph (2) shall remain available until expended.

(j) SOLE AUTHORITY FOR EXCHANGES OF FACILITIES AND LANDS.—Except as otherwise specifically authorized by law, during the period of the authority under subsection (a), the authority under that subsection to exchange facilities or interests in land of the reserve components to obtain facilities, interests in land, or additions to facilities for the reserve components is the sole authority available in law for that purpose.

(k) CONSTRUCTION WITH OTHER MILITARY CONSTRUCTION LAWS.—Transactions pursuant to the authority under subsection (a) shall not be treated as military construction projects requiring an authorization in law as otherwise required by section 2802 of title 10, United States Code.

(l) REPORT.—Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees a report on the exercise of the authority under subsection (a). The report shall include the following:

(1) A description of the projects carried out under the authority.

(2) A description of the analysis and criteria used to identify existing facilities and interests in land to be exchanged or sold under the authority.

(3) An assessment of the utility to the Department of Defense of the authority, including recommendations for modifications of such authority in order to enhance the utility of such authority for the Department.

(4) An assessment of interest in future exchanges or sales in the event the authority is extended.

(5) An assessment of the advisability of making the authority, including any modifications of the authority recommended under paragraph (3), permanent.

(m) DEFINITIONS.—In this section:

(1) The term ''facility'' includes an armory, readiness center, or other structure, and storage or other facilities, normally needed for the administration and training of a unit of a reserve component.

(2) The terms ''armory'' and ''readiness center'' have the meanings given such terms in section 18232(3) of title 10, United States Code.

(n) EXPIRATION DATE.—No transaction may be commenced pursuant to the authority under subsection (a) after September 30, 2006.

SEC. 2814. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS DURING 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

Subtitle C—Land Conveyances

SEC. 2821. TRANSFER OF ADMINISTRATIVE JURISDICTION, DEFENSE SUPPLY CENTER, COLUMBUS, OHIO.

(a) TRANSFER AUTHORIZED.—The Secretary of the Army may transfer, without reimbursement, to the Secretary of Veterans Affairs administrative jurisdiction of a parcel of real property consisting of approximately 20 acres and comprising a portion of the Defense Supply Center in Columbus, Ohio.

(b) USE OF PROPERTY.—The Secretary of Veterans Affairs may only use the property transferred under subsection (a) as the site for the construction of a new outpatient clinic for the provision of medical services to veterans.

(c) COSTS.—Any administrative costs in connection with the transfer of property under subsection (a), including the costs of the survey required by subsection (e), shall be borne by the Secretary of Veterans Affairs.

(d) RETURN OF JURISDICTION TO ARMY.—If at any time the Secretary of the Army determines that the property transferred under subsection (a) is not being utilized for the outpatient clinic described in subsection (b), then, at the election of the Secretary of the Army, the Secretary of Veterans Affairs shall return to the Secretary of the Army administrative jurisdiction of the property.

(e) EXEMPTION FROM FEDERAL SCREENING.—The conveyance under subsection (a) is exempt from the requirement to screen the property for other Federal use pursuant to section 2693 of title 10, United States Code.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Army may require such additional terms and conditions in connection with the transfer under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2822. LAND CONVEYANCE, BROWNING ARMY RESERVE CENTER, UTAH.

(a) CONVEYANCE AUTHORIZED.—(1) The Secretary of the Army may convey, without consideration, to the State of Utah (in this section referred to as the ''State'') all right, title, and interest of the United States in and to a parcel of unimproved real property consisting of approximately 10 acres and located at the Browning Army Reserve Center, Utah.

(2) The purpose of the conveyance is to permit the Department of Veterans Affairs of the State of Utah to construct and operate a facility for the provision of nursing care for veterans.

(b) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the State.

(2) Amounts received under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2823. LAND EXCHANGE, ARLINGTON COUNTY, VIRGINIA.

(a) EXCHANGE AUTHORIZED.—(1) The Secretary of Defense may convey to Arlington County, Virginia (in this section referred to as the ''County''), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, consisting of not more than 4.5 acres and located along the western boundary of the Navy Annex property, Virginia, for the purpose of the construction of a freedmen heritage museum and an Arlington history museum.

(2) The size of the parcel of real property conveyed under paragraph (1) shall be such that the acreage of the parcel shall be equivalent to the acreage of the parcel of real property conveyed under subsection (b). The Secretary shall determine the acreage of the parcels, and such determination shall be final.

(b) CONSIDERATION.—As consideration for the conveyance of property under subsection (a), the County shall convey to the United States all right, title, and interest of the County in and to a parcel of real property, together with any improvements thereon, consisting of not more than 4.5 acres and known as the Southgate Road right-of-way between Arlington National Cemetery, Virginia, and the Navy Annex property.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the parcels of real property to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(d) PAYMENT OF COSTS OF CONVEYANCES.—(1) The Secretary may require the County to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the County in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the County.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) REVERSIONARY INTEREST.—(1) If at any time the Secretary determines that the property conveyed to the County under subsection (a) is not being used for the purposes stated in that subsection, then, at the option of the Secretary, all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry onto the property.

(2) If the Secretary exercises the reversionary interest provided for in paragraph (1), the Secretary shall pay the County, from amounts available to the Secretary for military construction for the Defense Agencies, an amount equal to the fair market value of the property covered by the reversionary interest, as determined by the Secretary.

(f) EXEMPTION FROM FEDERAL SCREENING.—The conveyance under subsection (a) is exempt from the requirement to screen the property for other Federal use pursuant to sections 2693 and 2696 of title 10, United States Code.

(g) INCLUSION OF SOUTHGATE ROAD RIGHT-OF-WAY PROPERTY IN TRANSFER OF NAVY ANNEX PROPERTY FOR ARLINGTON NATIONAL CEMETERY.—Subsection (a) of section 2881 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 879) is amended by striking ''three parcels of real property consisting of approximately 36 acres'' and inserting ''four parcels of real property consisting of approximately 40 acres''.

(h) TERMINATION OF RESERVATION OF CERTAIN NAVY ANNEX PROPERTY FOR MEMORIALS OR MUSEUMS.—Subsection (b) of such section, as amended by section 2863(f) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1332) and section 2851(a)(1) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2726), is further amended—

(1) by striking ''(1) Subject to paragraph (2), the Secretary'' and inserting ''The Secretary''; and

(2) by striking paragraph (2).

(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2824. LAND CONVEYANCE, HAMPTON, VIRGINIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the Hampton City School Board, Hampton, Virginia (in this section referred to as the ''Board''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, that consists of approximately 29.8 acres, is located on Downey Farm Road in Hampton, Virginia, and is known as the Butler Farm United States Army Reserve Center in order to permit the Board to utilize the property for public education purposes.

(b) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that the Board accept the real property described in subsection (a) in its condition at the time of the conveyance, commonly known as conveyance ''as is''.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the Board to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the Board in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the Board.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) EXEMPTION FROM FEDERAL SCREENING.—The conveyance authorized by subsection (a) is exempt from the requirement to screen the property for other Federal use pursuant to section 2693 and 2696 of title 10, United States Code.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2825. LAND CONVEYANCE, SEATTLE, WASHINGTON.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the State of Washington (in this section referred to as the ''State'') all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9.747 acres in Seattle, Washington, and comprising a portion of the National Guard Facility, Pier 91, for the purpose of permitting the State to convey the facility unencumbered for economic development purposes.

(b) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that the State accept the real property in its condition at the time of the conveyance, commonly known as conveyance ''as is''.

(c) ADMINISTRATIVE EXPENSES.—(1) The State shall reimburse the Secretary for the administrative expenses incurred by the Secretary in carrying out the conveyance under subsection (a), including expenses related to surveys and legal descriptions, boundary monumentation, environmental surveys, necessary documentation, travel, and deed preparation.

(2) Section 2695(c) of title 10, United States Code, shall apply to any amounts received by the Secretary as reimbursement under this subsection.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the United States, subject to the requirement for reimbursement under subsection (c).

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2826. TRANSFER OF JURISDICTION, NEBRASKA AVENUE NAVAL COMPLEX, DISTRICT OF COLUMBIA.

(a) TRANSFER REQUIRED.—The Secretary of the Navy shall transfer to the administrative jurisdiction of the Administrator of General Services the parcel of Department of the Navy real property in the District of Columbia known as the Nebraska Avenue Complex for the purpose of permitting the Administrator to use the Complex to accommodate the Department of Homeland Security. The Complex shall be transferred in its existing condition.

(b) AUTHORITY TO RETAIN MILITARY FAMILY HOUSING.—The Secretary of the Navy may retain administrative jurisdiction over the portion of the Complex that the Secretary considers to be necessary for continued use as Navy family housing.

(c) TIME FOR TRANSFER.—The transfer of administrative jurisdiction over the Complex to the Administrator under subsection (c) shall be completed not later than January 1, 2005.

(d) RELOCATION OF NAVY ACTIVITIES.—As part of the transfer of the Complex under this section, the Secretary of the Navy shall relocate Department of the Navy activities at the Complex to other locations.

(e) PAYMENT OF RELOCATION COSTS.—Subject to the availability of appropriations for this purpose, the Secretary of Homeland Security shall be responsible for the payment of—

(1) all reasonable costs, including costs to move furnishings and equipment, related to the relocation of Department of the Navy activities from the Complex under subsection (d);

(2) all reasonable costs, including rent, incident to the occupancy by such activities of interim leased space; and

(3) all reasonable costs incident to the acquisition of permanent facilities for Department of the Navy activities relocated from the Complex.

(f) SUBMISSION OF COST ESTIMATES.—As soon as practicable after the date of the enactment of this Act, but not later than January 1, 2005, the Secretary of the Navy shall submit to the congressional defense committees an initial estimate of the amounts that will be necessary to cover the costs to permanently relocate Department of the Navy activities from the Complex. The Secretary shall include in the estimate anticipated land acquisition and facility construction costs. The Secretary shall revise the estimate as necessary whenever information regarding the actual costs for the relocation is obtained.

(g) CERTIFICATION OF RELOCATION COSTS.—At the end of the three-year period beginning on the date of the transfer of the Complex under subsection (a), the Secretary of the Navy shall submit to Congress written notice—

(1) specifying the total amount expended under subsection (e) to cover the costs of relocating Department of the Navy activities from the Complex;

(2) specifying the total amount expended to acquire permanent facilities for Department of the Navy activities relocated from the Complex; and

(3) certifying whether the amounts paid are sufficient to complete all relocation actions.

SEC. 2827. LAND CONVEYANCE, HONOLULU, HAWAII.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration but subject to the conditions specified in subsection (b), to the City and County of Honolulu, Hawaii, all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 5.16 acres located at 890 Valkenberg Avenue, Honolulu, Hawaii, and currently used by the City and County of Honolulu as the site of a fire station and firefighting training facility. The purpose of the conveyance is to enhance the capability of the City and County of Honolulu to provide fire protection and firefighting services to the civilian and military properties in the area and to provide a location for firefighting training for civilian and military personnel.

(b) CONDITIONS OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That the City and County of Honolulu accept the real property in its condition at the time of the conveyance, commonly known as conveyance ''as is''.

(2) That the City and County of Honolulu make the firefighting training facility available to the fire protection and firefighting units of the military departments for training not less than 2 days per week on terms satisfactory to the Secretary.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary shall require the City and County of Honolulu to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the City and County of Honolulu in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount, without interest, to the City and County of Honolulu.

(2) Amounts received under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2828. LAND CONVEYANCE, PORTSMOUTH, VIRGINIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration, to the City of Portsmouth, Virginia (in this section referred to as the ''City''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 0.49 acres located at 517 King Street, Portsmouth, Virginia, and known as the ''Navy YMCA Building'', for economic revitalization purposes.

(b) CONDITIONS OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That the City accept the real property described in subsection (a) in its condition at the time of the conveyance, commonly known as conveyance ''as is''.

(2) That the City bear all costs related to the environmental remediation, use, and redevelopment of the real property.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover

costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2829. LAND CONVEYANCE, FORMER GRIFFISS AIR FORCE BASE, NEW YORK.

(a) CONVEYANCE AUTHORIZED.—(1) The Secretary of the Air Force may convey to the Oneida County Industrial Development Agency, New York, the local reuse authority for the former Griffiss Air Force Base (in this section referred to as the ''Authority''), all right, title and interest of the United States in and to a parcel of real property consisting of 9.639 acres and including four buildings described in paragraph (2) that were vacated by the Air Force in conjunction with its relocation to the Consolidated Intelligence and Reconnaissance Laboratory at Air Force Research Laboratory—Rome Research Site, Rome, New York.

(2) The buildings described in this paragraph are the buildings located on the real property referred in paragraph (1) as follows:

(A) Building 240 (117,323 square feet).

(B) Building 247 (13,199 square feet).

(C) Building 248 (4,000 square feet).

(D) Building 302 (20,577 square feet).

(3) The purpose of the conveyance under this subsection is to permit the Authority to develop the parcel and structures conveyed for economic purposes in a manner consistent with the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(b) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that the Authority accept the real property in its condition at the time of the conveyance, commonly known as conveyance ''as is''.

(c) CONSIDERATION.—As consideration for the conveyance of property under subsection (a), the Authority shall pay the United States an amount equal to the fair market of value, as determined by the Secretary.

(d) TREATMENT OF PROCEEDS.—Any consideration received under subsection (c) shall be deposited in the Department of Defense Base Closure Account 1990 established by section 2906 of the Defense Base Closure and Realignment Act of 1990, and shall be available for use in accordance with subsection (b) of such section.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Authority.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2830. LAND EXCHANGE, MAXWELL AIR FORCE BASE, ALABAMA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the City of Montgomery, Alabama (in this section referred to as the ''City''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 28 acres and including all of the Maxwell Heights Housing site and located at Maxwell Air Force Base, Alabama.

(b) CONSIDERATION.—(1) As consideration for the conveyance of property under subsection (a), the City shall convey to the United States all right, title, and interest of the City to a parcel of real property, including any improvements thereon, consisting of approximately 35 acres and designated as project AL 6–4, that is owned by the City and is contiguous to Maxwell Air Force Base, for the purpose of allowing the Secretary to incorporate such property into a project for the acquisition or improvement of military housing under subchapter IV of chapter 169 of title 10, United States Code. The Secretary shall have administrative jurisdiction over the real property received under this subsection.

(2) If the fair market value of the real property received under paragraph (1) is less than the fair market value of the real property conveyed under subsection (a) (as determined pursuant to an appraisal acceptable to the Secretary), the Secretary may require the City to provide, pursuant to negotiations between the Secretary and the City, in-kind consideration the value of which when added to the fair market value of the property conveyed under subsection (b) equals the fair market value of the property conveyed under subsection (a).

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the City in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsections (a) and (b) shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under subsections (a) and (b) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2831. LAND EXCHANGE, NAVAL AIR STATION, PATUXENT RIVER, MARYLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Maryland (in this section referred to as ''State''), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately five acres at Naval Air Station, Patuxent River, Maryland, and containing the Point Lookout Lighthouse, other structures related to the lighthouse, and an archaeological site pertaining to the military hospital that was located on the property during the Civil War. The conveyance shall include artifacts pertaining to the military hospital recovered by the Navy and held at the installation.

(b) PROPERTY RECEIVED IN EXCHANGE.—As consideration for the conveyance of the real property under subsection (a), the State shall convey to the United States a parcel of real property consisting of approximately five acres located in Point Lookout State Park, St. Mary's County, Maryland.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, relocation expenses incurred under subsection (b), and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2832. LAND CONVEYANCE, MARCH AIR FORCE BASE, CALIFORNIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the March Joint Powers Authority (in this section referred to as the ''MJPA'') all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 15 acres located in Riverside County, California, and containing the former Defense Reutilization and Marketing Office facility for March Air Force Base, which is also known as Parcel A–6, for the purpose of economic development and revitalization.

(b) CONSIDERATION.—(1) As consideration for the conveyance of property under subsection (a), the MJPA shall pay the United States an amount equal to the fair market value, as determined by the Secretary, of the property to be conveyed under such subsection.

(2) The consideration received under this subsection shall be deposited in the special account in the Treasury established under section 572(b) of title 40, United States Code, and available in accordance with the provisions of paragraph (5)(B)(ii).

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real

property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the MJPA.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2833. LAND CONVEYANCE, SUNFLOWER ARMY AMMUNITION PLANT, KANSAS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army, in consultation with the Administrator of General Services, may convey to an entity selected by the Board of Commissioners of Johnson County, Kansas (in this section referred to as the ''entity'' and the ''Board'', respectively), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9,065 acres and containing the Sunflower Army Ammunition Plant. The purpose of the conveyance is to facilitate the re-use of the property for economic development and revitalization.

(b) CONSIDERATION.—(1) As consideration for the conveyance under subsection (a), the entity shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount that is not less than the fair market value, as determined by an appraisal of the property acceptable to the Administrator and the Secretary. The Secretary may authorize the entity to carry out, as in-kind consideration, environmental remediation activities for the property conveyed under such subsection.

(2) The Secretary shall deposit any cash received as consideration under this subsection in a special account established pursuant to section 572(b) of title 40, United States Code, to pay for environmental remediation and explosives cleanup of the property conveyed under subsection (a).

(c) CONSTRUCTION WITH PREVIOUS LAND CONVEYANCE AUTHORITY ON SUNFLOWER ARMY AMMUNITION PLANT.—The authority in subsection (a) to make the conveyance described in that subsection is in addition to the authority under section 2823 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2712) to make the conveyance described in that section.

(d) ENVIRONMENTAL REMEDIATION AND EXPLOSIVES CLEANUP.—(1) Notwithstanding any other provision of law, the Secretary may enter into a multi-year cooperative agreement or contract with the entity to undertake environmental remediation and explosives cleanup of the property, and may utilize amounts authorized to be appropriated for the Secretary for purposes of environmental remediation and explosives cleanup under the agreement.

(2) The terms of the cooperative agreement or contract may provide for advance payments on an annual basis or for payments on a performance basis. Payments may be made over a period of time agreed to by the Secretary and the entity or for such time as may be necessary to perform the environmental remediation and explosives cleanup of the property, including any long-term operation and maintenance requirements.

(e) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the entity or other persons to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental, and other administrative costs related to the conveyance.

(2) Amounts received under paragraph (1) shall be credited to the appropriation, fund, or account from which the costs were paid. Amounts so credited shall be merged with funds in such appropriation, fund, or account, and shall be available for the same purposes, and subject to the same limitations, as the funds with which merged.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey jointly satisfactory to the Secretary and the Administrator.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary and the Administrator may require such additional terms and conditions in connection with the conveyance of real property under subsection (a), and the environmental remediation and explosives cleanup under subsection (d), as the Secretary and the Administrator jointly consider appropriate to protect the interests of the United States.

SEC. 2834. LAND CONVEYANCE, NAVAL WEAPONS STATION, CHARLESTON, SOUTH CAROLINA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the Berkeley County Sanitation Authority, South Carolina (in this section referred to as the ''Authority''), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of not more than 38 acres and comprising a portion of the Naval Weapons Station, Charleston, South Carolina, for the purpose of allowing the Authority to expand an existing sewage treatment plant.

(b) CONSIDERATION.—As consideration for the conveyance of property under subsection (a), the Authority shall provide the United States, whether by cash payment, in-kind services, or a combination thereof, an amount that is not less than the fair market value, as determined by an appraisal acceptable to the Secretary, of the property conveyed under such subsection.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the Authority to cover costs incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including appraisal costs, survey costs, costs related to compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and environmental remediation, and other administrative costs related to the conveyance. If the amounts are collected from the Authority in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the Authority.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be made available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Authority.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2835. LAND CONVEYANCE, LOUISIANA ARMY AMMUNITION PLANT, DOYLINE, LOUISIANA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the State of Louisiana (in this section referred to as the ''State'') all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 14,949 acres located at the Louisiana Army Ammunition Plant, Doyline, Louisiana.

(b) CONSIDERATION.—As consideration for the conveyance of property under subsection (a), the State shall—

(1) maintain at least 13,500 acres of such property for the purpose of military training, unless the Secretary determines that fewer acres are required for such purpose;

(2) ensure that any other uses that are made of the property conveyed under subsection (a) do not adversely impact military training;

(3) accommodate the use of such property, at no cost or fee, for meeting the present and future training needs of Armed Forces units, including units of the Louisiana National Guard and the other active and reserve components of the Armed Forces;

(4) assume, starting on the date that is five years after the date of the conveyance of such property, responsibility for any monitoring, sampling, or reporting requirements that are associated with the environmental restoration activities of the Army on the Louisiana Army Ammunition Plant, and shall bear such responsibility until such time as such monitoring, sampling, or reporting is no longer required; and

(5) assume the rights and responsibilities of the Army under the armaments retooling manufacturing support agreement between the Army and the facility use contractor with respect to the Louisiana Army Ammunition Plant in accordance with the terms of such agreement in effect at the time of the conveyance.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by surveys satisfactory to the Secretary. The cost of each survey shall be borne by the State.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2836. MODIFICATION OF AUTHORITY FOR LAND CONVEYANCE, EQUIPMENT AND STORAGE YARD, CHARLESTON, SOUTH CAROLINA.

Section 563(h) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 360) is amended to read as follows:

''(h) CHARLESTON, SOUTH CAROLINA.—

''(1) IN GENERAL.—The Secretary may convey to the City of Charleston, South Carolina (in this section referred to as the 'City'), all right, title, and interest of the United States in and to a parcel of real property of the Corps of Engineers, together with any improvements thereon, that is known as the Equipment and Storage Yard and consists of approximately 1.06 acres located on Meeting Street in Charleston, South Carolina, in as-is condition.

''(2) CONSIDERATION.—As consideration for the conveyance of property under paragraph (1), the City shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount that is not less than the fair market value of the property conveyed, as determined by the Secretary.

''(3) USE OF PROCEEDS.—Amounts received as consideration under this subsection may be used by the Corps of Engineers, Charleston District, as follows:

''(A) Any amounts received as consideration may be used to carry out activities under this Act, notwithstanding any requirements associated with the Plant Replacement and Improvement Program (PRIP), including—

''(i) leasing, purchasing, or constructing an office facility within the boundaries of Charleston, Berkeley, and Dorchester Counties, South Carolina; and

''(ii) satisfying any PRIP balances.

''(B) Any amounts received as consideration that are in excess of the fair market value of the property conveyed under paragraph (1) may be used for any authorized activities of the Corps of Engineers, Charleston District.

''(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under paragraph (1) and any property transferred to the United States as consideration under paragraph (2) shall be determined by surveys satisfactory to the Secretary.

''(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under paragraph (1) as the Secretary considers appropriate to protect the interests of the United States.''.

Subtitle D—Other Matters

SEC. 2841. DEPARTMENT OF DEFENSE FOLLOW-ON LABORATORY REVITALIZATION DEMONSTRATION PROGRAM.

(a) FOLLOW-ON PROGRAM AUTHORIZED.—(1) The Secretary of Defense may carry out a program (to be known as the ''Department of Defense Follow-On Laboratory Revitalization Demonstration Program'') for the revitalization of Department of Defense laboratories. Under the program, the Secretary may carry out minor military construction projects in accordance with subsection (b) and other applicable law to improve laboratories covered by the program.

(2) The program under this section is the successor program to the Department of Defense Laboratory Revitalization Demonstration Program carried out under section 2892 of the Military Construction Authorization Act for Fiscal Year 1996 (division B of Public Law 104–106; 10 U.S.C. 2805 note).

(b) INCREASED MAXIMUM AMOUNTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS.—For purpose of any military construction project carried out under the program—

(1) the amount provided in the second sentence of subsection (a)(1) of section 2805 of title 10, United States Code, shall be deemed to be $3,000,000;

(2) the amount provided in subsection (b)(1) of such section shall be deemed to be $1,500,000; and

(3) the amount provided in subsection (c)(1)(B) of such section shall be deemed to be $1,000,000.

(c) PROGRAM REQUIREMENTS.—(1) Not later than 30 days before commencing the program, the Secretary shall—

(A) designate the Department laboratories at which construction may be carried out under the program; and

(B) establish procedures for the review and approval of requests from Department laboratories to carry out such construction.

(2) The laboratories designated under paragraph (1)(A) may not include Department laboratories that are contractor owned.

(3) The Secretary shall notify Congress of the Department laboratories designated under paragraph (1)(A).

(d) REPORT.—Not later than September 30, 2005, the Secretary shall submit to the congressional defense committees a report on the program under this section. The report shall include—

(1) a list and description of the construction projects carried out under the program, and of any projects carried out under the program referred to in subsection (a) during the period beginning on October 1, 2003, and ending on the date of the enactment of this Act, including the location and costs of each such project; and

(2) the assessment of the Secretary of the advisability of extending or expanding the authority for the program under this section.

(e) CONSTRUCTION OF AUTHORITY.—Nothing in this section may be construed to limit any other authority provided by law for any military construction project at a Department laboratory covered by the program.

(f) DEFINITIONS.—In this section:

(1) The term ''laboratory'' includes—

(A) a research, engineering, and development center;

(B) a test and evaluation activity owned, funded, and operated by the Federal Government through the Department of Defense; and

(C) a supporting facility of a laboratory.

(2) The term ''supporting facility'', with respect to a laboratory, means any building or structure that is used in support of research, development, test, and evaluation at the laboratory.

(g) EXPIRATION OF AUTHORITY.—The authority to carry out a project under the program under this section expires on September 30, 2006.

SEC. 2842. JURISDICTION AND UTILIZATION OF FORMER PUBLIC DOMAIN LANDS, UMATILLA CHEMICAL DEPOT, OREGON.

(a) JURISDICTION.—The various parcels of real property consisting of approximately 8,300 acres and located within the boundaries of Umatilla Chemical Depot, Oregon, that were previously withdrawn from the public domain are determined to be no longer suitable for return to the public domain and are hereby transferred to the administrative jurisdiction of the Secretary of the Army.

(b) UTILIZATION.—The Secretary shall combine the real property transferred under subsection (a) with other lands and lesser interests comprising the Umatilla Chemical Depot for purposes of their management and disposal pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 100–526; 10 U.S.C. 2687 note) and other applicable law.

SEC. 2843. DEVELOPMENT OF HERITAGE CENTER FOR THE NATIONAL MUSEUM OF THE UNITED STATES ARMY.

(a) AUTHORITY TO ENTER INTO AGREEMENT.—(1) The Secretary of the Army may enter into an agreement with the Army Historical Foundation, a nonprofit organization, for the design, construction, and operation of a facility or group of facilities at Fort Belvoir, Virginia (in this section referred to as the ''center''), for the National Museum of the United States Army.

(2) The center shall be used for the identification, curation, storage, and public viewing of artifacts and artwork of significance to the United States Army, as agreed to by the Secretary.

(3) The center may also be used to support such education, training, research, and associated purposes as the Secretary considers appropriate.

(b) DESIGN AND CONSTRUCTION.—(1) The design of the center shall be subject to the approval of the Secretary.

(2) For each phase of the development of the center, the Secretary may—

(A) accept funds from the Army Historical Foundation for the design and construction of such phase of the center; or

(B) permit the Army Historical Foundation to contract for the design and construction of such phase of the center.

(c) ACCEPTANCE OF FACILITY.—(1) Upon satisfactory completion, as determined by the Secretary, of any phase of the center, and upon the satisfaction of any and all financial obligations incident thereto by the Army Historical Foundation, the Secretary shall accept such phase of the center from the Army Historical Foundation, and all right, title, and interest in and to such phase of the center shall vest in the United States.

(2) Upon becoming property of the United States, a phase of the center accepted under paragraph (1) shall be under the jurisdiction of the Secretary.

(d) USE OF CERTAIN GIFTS.—(1) Under regulations prescribed by the Secretary, the Commander of the United States Army Center of Military History may, without regard to section 2601 of title 10, United States Code, accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of $250,000 or less made to the United States if such gift, devise, or bequest is for the benefit of the National Museum of the United States Army or the center.

(2) The Secretary may pay or authorize the payment of any reasonable and necessary expense in connection with the conveyance or transfer of a gift, devise, or bequest under this subsection.

(e) LEASE OF FACILITY.—(1) The Secretary may lease, under such terms and conditions as the Secretary considers appropriate for the agreement authorized by subsection (a), portions of the center developed under that subsection to the Army Historical Foundation for use by the public, commercial and nonprofit entities, State and local governments, and other departments and agencies of the Federal Government for use in generating revenue for activities of the center and for such administrative purposes as may be necessary for the support of the center.

(2) The amount of consideration paid to the Secretary by the Army Historical Foundation for a lease under paragraph (1) may not exceed an amount equal to the actual cost, as determined by the Secretary, of the operations and maintenance of the center.

(3) Notwithstanding any other provision of law, the Secretary shall use amounts paid under paragraph (2) to cover the costs of operation of the center.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional

terms and conditions in connection with the agreement authorized by subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2844. AUTHORITY TO SETTLE CLAIM OF OAKLAND BASE REUSE AUTHORITY AND REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, CALIFORNIA.

(a) AUTHORITY.—The Secretary of the Navy may pay funds as agreed to by both parties, in the amount of $2,100,000, to the Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland, California, in settlement of Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland v. the United States, Case No. C02–4652 MHP, United States District Court, Northern District of California, including any appeal.

(b) CONSIDERATION.—As consideration, the Oakland Base Reuse Authority and Redevelopment Agency shall agree that the payment constitutes a final settlement of all claims against the United States related to said case and give to the Secretary a release of all claims to the eighteen officer housing units located at the former Naval Medical Center Oakland, California. The release shall be in a form that is satisfactory to the Secretary.

(c) SOURCE OF FUNDS.—The Secretary may use funds in the Department of Defense Base Closure Account 1990 established pursuant to section 2906 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for the payment authorized by subsection (a) or the proceeds of sale from the eighteen housing units and property described in subsection (b).

SEC. 2845. COMPTROLLER GENERAL REPORT ON CLOSURE OF DEPARTMENT OF DEFENSE DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS AND COMMISSARY STORES.

(a) COMPTROLLER GENERAL REPORT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report that includes the following:

(1) With respect to Department of Defense dependent elementary and secondary schools—

(A) an assessment by the Comptroller General of the policy of the Department of Defense, and the criteria utilized by the Department, regarding the closure of schools, including whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces; and

(B) an assessment by the Comptroller General of any current or on-going studies or assessments of the Department with respect to any of the schools.

(2) With respect to commissary stores—

(A) an assessment by the Comptroller General of the policy of the Department of Defense, and the criteria utilized by the Department, regarding the closure of commissary stores, including whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces; and

(B) an assessment by the Comptroller General of any current or on-going studies or assessments of the Department with respect to any of the commissary stores.

(b) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Armed Services of the Senate; and

(2) the Committee on Armed Services of the House of Representatives.

TITLE XXIX—MARITIME ADMINISTRATION

SEC. 2901. MODIFICATION OF PRIORITY AFFORDED APPLICATIONS FOR NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE.

Section 3542(d) of the Maritime Security Act of 2003 (title XXXV of Public Law 108–136; 117 Stat. 1821; 46 U.S.C. 53101 note) is amended—

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

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

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

''(2) shall give priority consideration to a proposal submitted by an applicant who has been accepted for participation in the Shipboard Technology Evaluation Program as outlined in Navigation and Vessel Inspection Circular 01–04, issued by the Commandant of the United States Coast Guard on January 2, 2004; and''.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs Authorizations

SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for the activities of the National Nuclear Security Administration in carrying out programs necessary for national security in the amount of $9,165,145,000, to be allocated as follows:

(1) For weapons activities, $6,674,898,000.

(2) For defense nuclear nonproliferation activities, $1,348,647,000.

(3) For naval reactors, $797,900,000.

(4) For the Office of the Administrator for Nuclear Security, $343,700,000.

(b) AUTHORIZATION OF NEW PLANT PROJECTS.—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary of Energy may carry out new plant projects for weapons activities, as follows:

(1) For readiness in technical base and facilities:

Project 05–D–140, Readiness in Technical Base and Facilities Program (RTBF), project engineering and design (PED), various locations, $11,600,000.

Project 05–D–401, Building 12–64 production bays upgrade, Pantex Plant, Amarillo, Texas, $25,000,000.

Project 05–D–402, Beryllium Capability (BeC) Project, Y–12 National Security Complex, Oak Ridge, Tennessee, $3,627,000.

(2) For facilities and infrastructure recapitalization:

Project 05–D–160, Facilities and Infrastructure Recapitalization Program (FIRP), project engineering and design (PED), various locations, $8,700,000.

Project 05–D–601, compressed air upgrades, Y–12 National Security Complex, Oak Ridge, Tennessee, $4,400,000.

Project 05–D–602, power grid infrastructure upgrade (PGIU), Los Alamos National Laboratory, Los Alamos, New Mexico, $10,000,000.

Project 05–D–603, new master substation, technical areas I and IV, Sandia National Laboratories, Albuquerque, New Mexico, $600,000.

(3) For safeguards and security:

Project 05–D–170, safeguards and security, project engineering and design (PED), various locations, $17,000,000.

Project 05–D–701, security perimeter, Los Alamos National Laboratory, Los Alamos, New Mexico, $20,000,000.

(4) For naval reactors:

Project 05–N–900, materials development facility building, Schenectady, New York, $6,200,000.

SEC. 3102. DEFENSE ENVIRONMENTAL MANAGEMENT.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for environmental management activities in carrying out programs necessary for national security in the amount of $6,954,402,000, to be allocated as follows:

(1) For defense site acceleration completion, $5,971,932,000.

(2) For defense environmental services, $982,470,000.

(b) AUTHORIZATION OF NEW PLANT PROJECT.—From funds referred to in subsection (a)(2) that are available for carrying out plant projects, the Secretary of Energy may carry out, for environmental management activities, the following new plant project:

Project 05–D–405, salt waste processing facility, Savannah River Site, Aiken, South Carolina, $52,000,000.

SEC. 3103. OTHER DEFENSE ACTIVITIES.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for other defense activities in carrying out programs necessary for national security in the amount of $568,096,000.

SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for defense nuclear waste disposal for payment to the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount of $108,000,000.

Subtitle B—Program Authorizations, Restrictions, and Limitations

SEC. 3111. LIMITATION ON AVAILABILITY OF FUNDS FOR MODERN PIT FACILITY.

(a) LIMITATION.—Of the amount authorized to be appropriated by section 3101(a)(1) for the National Nuclear Security Administration for weapons activities and available for the Modern Pit Facility, not more than 50 percent of such amount may be obligated or expended until 30 days after the latter of the following:

(1) The date of the submittal of the revised nuclear weapons stockpile plan specified in the joint explanatory statement to accompany the report of the Committee on Conference on the bill H.R. 2754 of the 108th Congress.

(2) The date on which the Administrator for Nuclear Security submits to the congressional defense committees a report setting forth the validated pit production requirements for the Modern Pit Facility.

(b) VALIDATED PIT PRODUCTION REQUIREMENTS.—(1) The validated pit production requirements in the report under subsection (a)(2) shall be established by the Administrator in conjunction with the Chairman of the Nuclear Weapons Council.

(2) The validated pit production requirements shall—

(A) include specifications regarding the number of pits that will be required to be produced in order to support the weapons that will be retained in the nuclear weapons stockpile, set forth by weapon type and by year; and

(B) take into account any surge capacity that may be included in the annual pit production capability.

(c) FORM OF REPORT.—The report described in subsection (a)(2) shall be submitted in unclassified form, but may include a classified annex.

SEC. 3112. LIMITATION ON AVAILABILITY OF FUNDS FOR ADVANCED NUCLEAR WEAPONS CONCEPTS INITIATIVE.

(a) LIMITATION.—None of the funds authorized to be appropriated by this title may be obligated or expended for purposes of additional or exploratory studies under the Advanced Nuclear Weapons Concepts Initiative until 30 days after the date on which the Administrator for Nuclear Security submits to the congressional defense committees a detailed report on the activities for such studies under the Initiative that are planned for fiscal year 2005.

(b) FORM OF REPORT.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 3113. LIMITED AUTHORITY TO CARRY OUT NEW PROJECTS UNDER FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM AFTER PROJECT SELECTION DEADLINE.

(a) LIMITED AUTHORITY TO CARRY OUT NEW PROJECTS.—Section 3114(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1744; 50 U.S.C. 2453 note) is amended—

(1) in the subsection caption, by striking ''DEADLINE FOR'';

(2) in paragraph (2), by striking ''No project'' and inserting ''Except as provided in paragraph (3), no project''; and

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

''(3)(A) Subject to the provisions of this paragraph, a project described in subparagraph (B) may be carried out under the Facilities and Infrastructure Recapitalization Program after December 31, 2004, if the Administrator approves the project. The Administrator may not delegate the authority to approve projects under the preceding sentence.

''(B) A project described in this subparagraph is a project that consists of a specific building, facility, or other improvement (including fences, roads, or similar improvements).

''(C) Funds may not be obligated or expended for a project under this paragraph until 60 days after the date on which the Administrator submits to the congressional defense committees a notice on the project, including a description of the project and the nature of the project, a statement explaining why the project was not included in the Facilities and Infrastructure Recapitalization Program under paragraph (1), and a statement explaining why the project was not included in any other program under the jurisdiction of the Administrator.

''(D) The total number of projects that may be carried out under this paragraph in any fiscal year may not exceed five projects.

''(E) The Administrator may not utilize the authority in this paragraph until 60 days after the later of—

''(i) the date of the submittal to the congressional defense committees of a list of the projects selected for inclusion in the Facilities and Infrastructure Recapitalization Program under paragraph (1); or

''(ii) the date of the submittal to the congressional defense committees of the report required by subsection (c).

''(F) A project may not be carried out under this paragraph unless the project will be completed by September 30, 2011.''.

(b) CONSTRUCTION OF AUTHORITY.—The amendments made by subsection (a) may not be construed to authorize any delay in either of the following:

(1) The selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program under subsection (a) of section 3114 of the National Defense Authorization Act for Fiscal Year 2004.

(2) The submittal of the report required by subsection (c) of such section.

SEC. 3114. MODIFICATION OF MILESTONE AND REPORT REQUIREMENTS FOR NATIONAL IGNITION FACILITY.

(a) NOTIFICATION ON MILESTONES TO ACHIEVE IGNITION.—Subsection (a) of section 3137 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1369) is amended by striking ''each Level I milestone and Level II milestone for the National Ignition Facility.'' and inserting the following: ''each milestone for the National Ignition Facility as follows:

''(1) Each Level I milestone.

''(2) Each Level II milestone.

''(3) Each milestone to achieve ignition.''.

(b) REPORT ON FAILURE OF TIMELY ACHIEVEMENT OF MILESTONES.—Subsection (b) of such section is amended by striking ''a Level I milestone or Level II milestone for the National Ignition Facility'' and inserting ''a milestone for the National Ignition Facility referred to in subsection (a)''.

(c) MILESTONES TO ACHIEVE IGNITION.—Subsection (c) of such section is amended to read as follows:

''(c) MILESTONES.—For purposes of this section:

''(1) The Level I and Level II milestones for the National Ignition Facility are as established in the August 2000 revised National Ignition Facility baseline document.

''(2) The milestones of the National Ignition Facility to achieve ignition are such milestones (other than the milestones referred to in paragraph (1)) as the Administrator shall establish on any activities at the National Ignition Facility that are required to enable the National Ignition Facility to achieve ignition and be a fully functioning user facility by December 31, 2011.''.

(d) SUBMITTAL TO CONGRESS OF MILESTONES TO ACHIEVE IGNITION.—Not later than January 31, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a report setting forth the milestones of the National Ignition Facility to achieve ignition as established by the Administration under subsection (c)(2) of section 3137 of the National Defense Authorization Act for Fiscal Year 2002, as amended by subsection (c) of this section. The report shall include—

(1) a description of each milestone established; and

(2) a proposal for the funding to be required to meet each such milestone.

(e) EXTENSION OF SUNSET.—Subsection (d) of section 3137 of such Act is amended by striking ''September 30, 2004'' and inserting ''December 31, 2011''.

SEC. 3115. MODIFICATION OF SUBMITTAL DATE OF ANNUAL PLAN FOR STEWARDSHIP, MANAGEMENT, AND CERTIFICATION OF WARHEADS IN THE NUCLEAR WEAPONS STOCKPILE.

Section 4203(c) of the Atomic Energy Defense Act (50 U.S.C. 2523(c)) is amended by striking ''March 15 of each year thereafter'' and inserting ''May 1 of each year thereafter''.

SEC. 3116. DEFENSE SITE ACCELERATION COMPLETION.

(a) IN GENERAL.—Notwithstanding any other provision of law, with respect to material stored at a Department of Energy site at which activities are regulated by the State pursuant to approved closure plans or permits issued by the State, high-level radioactive waste does not include radioactive material resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy determines—

(1) does not require permanent isolation in a deep geologic repository for spent fuel or highly radioactive waste pursuant to criteria promulgated by the Department of Energy by rule approved by the Nuclear Regulatory Commission;

(2) has had highly radioactive radionuclides removed to the maximum extent practical in accordance with the Nuclear Regulatory Commission-approved criteria; and

(3) in the case of material derived from the storage tanks, is disposed of in a facility (including a tank) within the State pursuant to a State-approved closure plan or a State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this Act.

(b) INAPPLICABILITY TO CERTAIN MATERIALS.—Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the State.

(c) SCOPE OF AUTHORITY TO CARRY OUT ACTIONS.—The Department of Energy may implement any action authorized—

(1) by a State-approved closure plan or State-issued permit in existence on the date of enactment of this section; or

(2) by a closure plan approved by the State or a permit issued by the State during the pendency of the rulemaking provided for in subsection (a).

Any such action may be completed pursuant to the terms of the closure plan or the State-issued permit notwithstanding the final criteria adopted by the rulemaking pursuant to subsection (a).

(d) STATE DEFINED.—In this section, the term ''State'' means the State of South Carolina.

(e) CONSTRUCTION.—(1) Nothing in this section shall affect, alter, or modify the full implementation of—

(A) the settlement agreement entered into by the United States with the State of Idaho in the actions captioned Public Service Co. of Colorado v. Batt, Civil No. 91–0035–S–EJL, and United States v. Batt, Civil No. 91–0054–S–EJL, in the United States District Court for the District of Idaho, and the consent order of the United States District Court for the District of Idaho, dated October 17, 1995, that effectuates the settlement agreement;

(B) the Idaho National Engineering Laboratory Federal Facility Agreement and Consent Order; or

(C) the Hanford Federal Facility Agreement and Consent Order.

(2) Nothing in this section establishes any precedent or is binding on the State of Idaho, the State of Washington, the State of Oregon, or any other State for the management, storage, treatment, and disposition of radioactive and hazardous materials.

SEC. 3117. NATIONAL ACADEMY OF SCIENCES STUDY.

(a) REVIEW BY NATIONAL RESEARCH COUNCIL.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Energy shall enter into a contract with the National Research Council of the National Academies to conduct a study of the necessary technologies and research gaps in the Department of Energy's program to remove high-level radioactive waste from the storage tanks at the Department's sites in South Carolina, Washington and Idaho.

(b) MATTERS TO BE ADDRESSED IN STUDY.—The study shall address the following:

(1) the quantities and characteristics of waste in each high-level waste storage tank described in paragraph (a), including data uncertainties;

(2) the technologies by which high-level radioactive waste is currently being removed from the tanks for final disposal under the Nuclear Waste Policy Act;

(3) technologies currently available but not in use in removing high-level radioactive waste from the tanks;

(4) any technology gaps that exist to effect the removal of high-level radioactive waste from the tanks;

(5) other matters that in the judgement of the National Research Council directly relate to the focus of this study.

(c) TIME LIMITATION.—The National Research Council shall conduct the review over a one year period beginning upon execution of the contract described in subsection (a).

(d) REPORTS.—(1) The National Research Council shall submit its findings, conclusions and recommendations to the Secretary of Energy and to the relevant Committees of jurisdiction of the United States Senate and House of Representatives.

(2) The final report shall be submitted in unclassified form with classified annexes as necessary.

(e) PROVISION OF INFORMATION.—The Secretary of Energy shall make available to the National Research Council all of the information necessary to complete its report in a timely manner.

(f) EXPEDITED PROCESSING OF SECURITY CLEARANCES.—For purposes of facilitating the commencement of the study under this section, the Secretary of Energy shall expedite to the fullest degree possible the processing of security clearances that are necessary for the National Research Council to conduct the study.

(g) FUNDING.—Of the amount authorized to be appropriated in section 3102(a)(1) for environmental management for defense site acceleration completion, $750,000 shall be available for the study authorized under this section.

SEC. 3118. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

(a) ANNUAL REPORT REQUIRED.—Subtitle C of title XLVII of the Atomic Energy Defense Act (50 U.S.C. 2771 et seq.) is amended by adding at the end the following new section:

''SEC. 4732. ANNUAL REPORT ON EXPENDITURES FOR SAFEGUARDS AND SECURITY.

''The Secretary of Energy shall submit to Congress each year, in the budget justification materials submitted to Congress in support of the budget of the President for the fiscal year beginning in such year (as submitted under section 1105(a) of title 31, United States Code), the following:

''(1) A detailed description and accounting of the proposed obligations and expenditures by the Department of Energy for safeguards and security in carrying out programs necessary for the national security for the fiscal year covered by such budget, including any technologies on safeguards and security proposed to be deployed or implemented during such fiscal year.

''(2) With respect to the fiscal year ending in the year before the year in which such budget is submitted, a detailed description and accounting of—

''(A) the policy on safeguards and security, including any modifications in such policy adopted or implemented during such fiscal year;

''(B) any initiatives on safeguards and security in effect or implemented during such fiscal year;

''(C) the amount obligated and expended for safeguards and security during such fiscal year, set forth by total amount, by amount per program, and by amount per facility; and

''(D) the technologies on safeguards and security deployed or implemented during such fiscal year.''.

(b) CLERICAL AMENDMENT.—The table of contents for that Act is amended by inserting after the item relating to section 4731 the following new item:

''Sec. 4732. Annual report on expenditures for safeguards and security.''.

SEC. 3119. AUTHORITY TO CONSOLIDATE COUNTERINTELLIGENCE OFFICES OF DEPARTMENT OF ENERGY AND NATIONAL NUCLEAR SECURITY ADMINISTRATION WITHIN NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORITY.—The Secretary of Energy may consolidate the counterintelligence programs and functions referred to in subsection (b) within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and provide for their discharge by that Office.

(b) COVERED PROGRAMS AND FUNCTIONS.—The programs and functions referred to in this subsection are as follows:

(1) The functions and programs of the Office of Counterintelligence of the Department of Energy under section 215 of the Department of Energy Organization Act (42 U.S.C. 7144b).

(2) The functions and programs of the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration under section 3232 of the National Nuclear Security Administration Act (50 U.S.C. 2422), including the counterintelligence programs under section 3233 of that Act (50 U.S.C. 2423).

(c) ESTABLISHMENT OF POLICY.—The Secretary shall have the responsibility to establish policy for the discharge of the counterintelligence programs and functions consolidated within the National Nuclear Security Administration under subsection (a) as provided for under section 213 of the Department of Energy Organization Act (42 U.S.C. 7144).

(d) PRESERVATION OF COUNTERINTELLIGENCE CAPABILITY.—In consolidating counterintelligence programs and functions within the National Nuclear Security Administration under subsection (a), the Secretary shall ensure that the counterintelligence capabilities of the Department of Energy and the National Nuclear Security Administration are in no way degraded or compromised.

(e) REPORT ON EXERCISE OF AUTHORITY.—In the event the Secretary exercises the authority in subsection (a), the Secretary shall submit to the congressional defense committees a report on the exercise of the authority. The report shall include—

(1) a description of the manner in which the counterintelligence programs and functions referred to in subsection (b) shall be consolidated within the Office of Defense Nuclear Counterintelligence of the National Nuclear Security Administration and discharged by that Office;

(2) a notice of the date on which that Office shall commence the discharge of such programs and functions, as so consolidated; and

(3) a proposal for such legislative action as the Secretary considers appropriate to effectuate the discharge of such programs and functions, as so consolidated, by that Office.

(f) DEADLINE FOR EXERCISE OF AUTHORITY.—The authority in subsection (a) may be exercised, if at all, not later than one year after the date of the enactment of this Act.

SEC. 3120. TREATMENT OF WASTE MATERIAL.

(a) AVAILABILITY OF FUNDS FOR TREATMENT.—Of the amount authorized to be appropriated by section 3102(a)(1) for environmental management for defense site acceleration completion, $350,000,000 shall be available for the following purposes at the sites referred to in subsection (b):

(1) The safe management of tanks or tank farms used to store waste from reprocessing activities.

(2) The on-site treatment and storage of wastes from reprocessing activities and related waste.

(3) The consolidation of tank waste.

(4) The emptying and cleaning of storage tanks.

(5) Actions under section 3116.

(b) SITES.—The sites referred to in this subsection are as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho.

(2) The Savannah River Site, Aiken, South Carolina.

(3) The Hanford Site, Richland, Washington.

(c) EFFECTIVE DATE.—This section shall become effective 1 day after enactment.

SEC. 3121. LOCAL STAKEHOLDER ORGANIZATIONS FOR DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITES.

(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish for each Department of Energy Environmental Management 2006 closure site a local stakeholder organization having the responsibilities set forth in subsection (c).

(2) The local stakeholder organization shall be established in consultation with interested elected officials of local governments in the vicinity of the closure site concerned.

(b) COMPOSITION.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall be composed of such elected officials of local governments in the vicinity of the closure site concerned as the Secretary considers appropriate to carry out the responsibilities set forth in subsection (c) who agree to serve on the organization, or the designees of such officials.

(c) RESPONSIBILITIES.—A local stakeholder organization for a Department of Energy Environmental Management 2006 closure site under subsection (a) shall—

(1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site;

(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and Tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site;

(3) transmit to appropriate officers and employees of the Department of Energy questions and concerns of governments, persons, and entities referred to paragraph (2) on the closure and post-closure operations of the site; and

(4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.

(d) DEADLINE FOR ESTABLISHMENT.—The local stakeholder organization for a Department of Energy Environmental Management 2006 closure site shall be established not later than six months before the closure of the site.

(e) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to local stakeholder organizations under this section.

(f) DEPARTMENT OF ENERGY ENVIRONMENTAL MANAGEMENT 2006 CLOSURE SITE DEFINED.—In this section, the term ''Department of Energy Environmental Management 2006 closure site'' means each clean up site of the Department of Energy scheduled by the Department as of January 1, 2004, for closure in 2006.

SEC. 3122. REPORT ON MAINTENANCE OF RETIREMENT BENEFITS FOR CERTAIN WORKERS AT 2006 CLOSURE SITES AFTER CLOSURE OF SITES.

(a) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Assistant Secretary of Energy for

Environmental Management shall submit to the Secretary of Energy a report on the maintenance of retirements benefits for workers at Department of Energy 2006 closure sites after the closure of such sites.

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) The number of workers at Department of Energy 2006 closure sites that could lose retirement benefits as a result of the early closure of such a site.

(2) The impact on collective bargaining agreements with workers at Department of Energy 2006 closure sites of the loss of their retirement benefits as described in paragraph (1).

(3) The cost of providing retirement benefits, after the closure of Department of Energy 2006 closure sites, to workers at such sites who would otherwise lose their benefits as described in paragraph (1) after the closure of such sites.

(c) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report under subsection (a), the Secretary shall transmit the report to Congress, together with such recommendations, including recommendations for legislative action, as the Secretary considers appropriate.

(d) DEFINITIONS.—In this section:

(1) The term ''Department of Energy 2006 closure site'' means the following:

(A) The Rocky Flats Environmental Technology Site, Colorado.

(B) The Fernald Plant, Ohio.

(C) The Mound Plant, Ohio.

(2) The term ''worker'' means any employee who is employed by contract to perform cleanup, security, or administrative duties or responsibilities at a Department of Energy 2006 closure site.

(3) The term ''retirement benefits'' means health, pension, and any other retirement benefits.

SEC. 3123. REPORT ON EFFORTS OF NATIONAL NUCLEAR SECURITY ADMINISTRATION TO UNDERSTAND PLUTONIUM AGING.

(a) STUDY.—(1) The Administrator for Nuclear Security shall enter into a contract with a Federally Funded Research and Development Center (FFRDC) providing for a study to assess the efforts of the National Nuclear Security Administration to understand the aging of plutonium in nuclear weapons.

(2) The Administrator shall make available to the FFRDC contractor under this subsection all information that is necessary for the contractor to successfully complete a meaningful study on a timely basis.

(b) REPORT REQUIRED.—(1) Not later than two years after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the findings of the study on the efforts of the Administration to understand the aging of plutonium in nuclear weapons.

(2) The report shall include the recommendations of the study for improving the knowledge, understanding, and application of the fundamental and applied sciences related to the study of plutonium aging.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

Subtitle C—Proliferation Matters

SEC. 3131. MODIFICATION OF AUTHORITY TO USE INTERNATIONAL NUCLEAR MATERIALS PROTECTION AND COOPERATION PROGRAM FUNDS OUTSIDE THE FORMER SOVIET UNION.

(a) APPLICABILITY OF AUTHORITY LIMITED TO PROJECTS NOT PREVIOUSLY AUTHORIZED.—Subsection (a) of section 3124 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1747) is amended by inserting ''that has not previously been authorized by Congress'' after ''states of the former Soviet Union''.

(b) REPEAL OF LIMITATION ON TOTAL AMOUNT OF OBLIGATION.—Such section is further amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) PROGRAM AUTHORIZED.—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) PROGRAM ELEMENTS.—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials and radiological materials and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, nongovernmental organizations, and other international entities as the Secretary considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''fissile materials'' means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term ''radiological materials'' includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226 and Strontium-90, Curium-244, Strontium-90, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term ''related equipment'' includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term ''highly-enriched uranium'' means uranium enriched to or above 20 percent in isotope 235.

(5) The term ''low-enriched uranium'' means uranium enriched below 20 percent in isotope 235.

(6) The term ''proliferation-attractive'', in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

Subtitle D—Other Matters

SEC. 3141. INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.

Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking ''until December 31, 2004'' and inserting ''until December 31, 2006''.

SEC. 3142. TWO-YEAR EXTENSION OF AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.

Section 4601(c)(1) of the Atomic Energy Defense Act (50 U.S.C. 2701(c)(1)) is amended by striking ''September 30, 2004'' and inserting ''September 30, 2006''.

SEC. 3143. ENHANCEMENT OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM AUTHORITIES.

(a) STATE AGREEMENTS.—Section 3661 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–394) (42 U.S.C. 7385o) is amended—

(1) in subsection (b), by striking ''Pursuant to agreements under subsection (a), the'' and inserting ''The'';

(2) in subsection (c), by striking ''provided in an agreement under subsection (a), and if''; and

(3) in subsection (e), by striking ''If provided in an agreement under subsection (a)'' and inserting ''If a panel has reported a determination under subsection (d)(5)''.

(b) PHYSICIAN PANELS.—Subsection (d) of such section is amended by striking paragraph (2) and inserting the following new paragraph (2):

''(2) The Secretary of Health and Human Services shall, in consultation with the Secretary of Energy, select the individuals to serve as panel members based on experience and competency in diagnosing occupational illnesses. The Secretary shall appoint the individuals so selected as panel members or shall obtain by contract the services of such individuals as panel members.''.

SEC. 3144. SUPPORT FOR PUBLIC EDUCATION IN THE VICINITY OF LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

The Secretary of Energy shall require that the primary management and operations contract for Los Alamos National Laboratory, New Mexico, that involves Laboratory operations after September 30, 2005, shall contain terms requiring the contractor under such contract to provide support to the Los Alamos Public School District, New Mexico, for the elementary and secondary education of students by the School District in the amount of $8,000,000 in each fiscal year.

SEC. 3145. REVIEW OF WASTE ISOLATION PILOT PLANT, NEW MEXICO, PURSUANT TO COMPETITIVE CONTRACT.

(a) CONTRACT REQUIREMENT.—The Secretary of Energy shall use competitive procedures to enter into a contract to conduct independent reviews and evaluations of the design, construction, and operations of the Waste Isolation Pilot Plant in New Mexico (hereafter in this section referred to as the ''WIPP'') as they relate to the protection of the public health and safety and the environment. The contract shall be for a period of one year, beginning on October 1, 2004, and shall be renewable for four additional one-year periods with the consent of the contractor and subject to the authorization and appropriation of funds for such purpose.

(b) CONTENT OF CONTRACT.—A contract entered into under subsection (a) shall require the following:

(1) The contractor shall appoint a Director and Deputy Director, who shall be scientists of national eminence in the field of nuclear waste disposal, shall be free from any biases related to the activities of the WIPP, and shall be widely known for their integrity and scientific expertise.

(2) The Director shall appoint staff. The professional staff shall consist of scientists and engineers of recognized integrity and scientific expertise who represent scientific and engineering disciplines needed for a thorough review of the WIPP, including disciplines such as geology, hydrology, health physics, environmental engineering, probability risk analysis, mining engineering, and radiation chemistry. The disciplines represented in the staff shall change as may be necessary to meet changed needs in carrying out the contract for expertise in any certain scientific or engineering discipline. Scientists employed under the contract shall have qualifications and experience equivalent to the qualifications and experience required for scientists employed by the Federal Government in grades GS–13 through GS–15.

(3) Scientists employed under the contract shall have an appropriate support staff.

(4) The Director and Deputy Director shall each be appointed for a term of 5 years, subject to contract renewal, and may be removed only for misconduct or incompetence. The staff shall be appointed for such terms as the Director considers appropriate.

(5) The rates of pay of professional staff and the procedures for increasing the rates of pay of professional staff shall be equivalent to those rates and procedures provided for the General Schedule pay system under chapter 53 of title 5, United States Code.

(6) The results of reviews and evaluations carried out under the contract shall be published.

(c) ADMINISTRATION.—The contractor shall establish general policies and guidelines to be used by the Director in carrying out the work under the contract.

SEC. 3146. COMPENSATION OF PAJARITO PLATEAU, NEW MEXICO, HOMESTEADERS FOR ACQUISITION OF LANDS FOR MANHATTAN PROJECT IN WORLD WAR II.

(a) ESTABLISHMENT OF COMPENSATION FUND.—There is established in the Treasury of the United States a fund to be known as the Pajarito Plateau Homesteaders Compensation Fund (in this section referred to as the ''Fund''). The Fund shall be dedicated to the settlement of the two lawsuits in the United States District Court for the District of New Mexico consolidated as Civ. No. 00–60.

(b) ELEMENTS OF FUND.—The Fund shall consist of the following:

(1) Amounts available for deposit in the Fund under subsection (j).

(2) Interest earned on amounts in the Fund under subsection (g).

(c) USE OF FUND.—The Fund shall be available for the settlement of the consolidated lawsuits in accordance with the following requirements:

(1) The settlement shall be subject to preliminary and final approval by the Court in accordance with rule 23(e) of the Federal Rules of Civil Procedure.

(2) Lead Counsel and Counsel for the United States of America shall recommend to the Court reasonable procedures by which the claims for monies from the Fund shall be administered, which recommendations shall include mechanisms—

(A) to identify class members;

(B) to receive claims from class members so identified;

(C) to determine in accordance with subsection (d) eligible claimants from among class members submitting claims; and

(D) to resolve contests, if any, among eligible claimants with respect to a particular eligible tract regarding the disbursement of monies in the Fund with respect to such eligible tract.

(3) Lead Counsel and Counsel for the United States of America shall provide evidence to the Court to assist the Court in—

(A) identifying each class member by name and whereabouts;

(B) providing notice of the settlement process for the consolidated lawsuits to each class member so identified; and

(C) providing the forms, and describing the procedure, for making claims to each class member so identified.

(4) After the provision of notice to class members under paragraph (3), if, within a time period to be established by the Court, more than 10 percent of the class members submit to the Court written notice of their determination to be excluded from participation in the settlement of the consolidated lawsuits—

(A) the Fund shall not serve as the basis for the settlement of the consolidated lawsuits and the provisions of this section shall have no further force or effect; and

(B) amounts in the Fund shall not be disbursed, but shall be retained in the Treasury as miscellaneous receipts.

(5) The Court may award attorney fees and expenses from the Fund pursuant to rule 23 of the Federal Rules of Civil Procedure, except that the award of attorney fees may not exceed 20 percent of the Fund and the award of expenses may not exceed 2 percent of the Fund. Any attorney fees and expenses so paid shall be paid from the Fund before distribution of the amount in the Fund to eligible claimants entitled thereto.

(6) The Fund shall be available to pay settlement awards in accordance with the following:

(A) The balance of the amount of the Fund that is available for disbursement after any award of attorney fees and expenses under paragraph (5) shall be allocated proportionally by eligible tract according to its acreage as compared with all eligible tracts.

(B) The allocation for each eligible tract shall be allocated pro rata among all eligible claimants having an interest in such eligible tract according to the extent of their interest in such eligible tract, as determined under the laws of the State of New Mexico.

(C) Payments from the Fund under this paragraph shall be made by the Secretary of the Treasury.

(7) Any amounts available for disbursement with respect to an eligible tract that are not awarded to eligible claimants with respect to that tract by reason of paragraph (6)(B) shall be retained in the Treasury as miscellaneous receipts.

(d) ELIGIBLE CLAIMANTS.—(1) For purposes of this section, an eligible claimant is any class member determined by the Court, by a preponderance of evidence and pursuant to procedures established under subsection (c)(2), to be a person or entity who held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project, or the heir, successor in interest, assignee, or beneficiary of such a person or entity.

(2) The status of a person or entity as an heir, successor in interest, assignee, or beneficiary for purposes of this subsection shall be determined under the laws of the State of New Mexico, including the descent and distribution law of the State of New Mexico.

(e) FULL RESOLUTION OF CLAIMS AGAINST UNITED STATES.—(1) The acceptance of a disbursement from the Fund by an eligible claimant under this section shall constitute a final and complete release of the defendants in the consolidated lawsuits with respect to such eligible claimant, and shall be in full satisfaction of any and all claims of such eligible claimant against the United States arising out of acts described in the consolidated lawsuits.

(2) Upon the disbursement of the amount in the Fund to eligible claimants entitled thereto under this section, the Court shall, subject to the provisions of rule 23(e) of the Federal Rules of Civil Procedure, enter a final judgment dismissing with prejudice the consolidated lawsuits and all claims and potential claims on matters covered by the consolidated lawsuits.

(f) COMPENSATION LIMITED TO AMOUNTS IN FUND.—(1) An eligible claimant may be paid under this section only from amounts in the Fund.

(2) Nothing in this section shall authorize the payment to a class member by the United States Government of any amount authorized by this section from any source other than the Fund.

(g) INVESTMENT OF FUND.—(1) The Secretary of the Treasury shall, in accordance with the requirements of section 9702 of title 31, United States Code, and the provisions of this subsection, direct the form and manner by which the Fund shall be safeguarded and invested so as to maximize its safety while earning a return comparable to other common funds in which the United States Treasury is the source of payment.

(2) Interest on the amount deposited in the Fund shall accrue from the date of the enactment of the Act appropriating amounts for deposit in the Fund until the date on which the Secretary of the Treasury disburses the amount in the Fund to eligible claimants who are entitled thereto under subsection (c).

(h) PRESERVATION OF RECORDS.—(1) All documents, personal testimony, and other records created or received by the Court in the consolidated lawsuits shall be kept and maintained by the Archivist of the United States, who shall preserve such documents, testimony, and records in the National Archives of the United States.

(2) The Archivist shall make available to the public the materials kept and maintained under paragraph (1).

(i) DEFINITIONS.—In this section:

(1) The term ''Court'' means the United States District Court for the District of New Mexico having jurisdiction over the consolidated lawsuits.

(2) The term ''consolidated lawsuits'' means the two lawsuits in the United States District Court for the District of New Mexico consolidated as Civ. No. 00–60.

(3)(A) The term ''eligible tract'' means private real property located on the Pajarito Plateau of what is now Los Alamos County, New Mexico, that was acquired by the United States during World War II for use in the Manhattan Project and which is the subject of the consolidated lawsuits.

(B) The term does not include lands of the Los Alamos Ranch School and of the A.M. Ross Estate (doing business as Anchor Ranch).

(4) The term ''class member'' means the following:

(A) Any person or entity who claims to have held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project.

(B) Any person or entity claiming to be the heir, successor in interest, assignee, or beneficiary of a person or entity who held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project.

(j) FUNDING.—Of the amount authorized to be appropriated by section 3101(a)(4) for the National Nuclear Security Administration for the Office of the Administrator for Nuclear Security, $10,000,000 shall be available for deposit in the Fund under subsection (b)(1).

Subtitle E—Energy Employees Occupational Illness Compensation Program

SEC. 3151. COVERAGE OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITIES DURING PERIODS OF RESIDUAL CONTAMINATION.

(a) COVERAGE.—Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384*l*) is amended to read as follows:

''(3) The term 'atomic weapons employee' means any of the following:

''(A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

''(B) An individual employed—

''(i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled 'Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities', or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;

''(ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and

''(ii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.''.

SEC. 3152. UPDATE OF REPORT ON RESIDUAL CONTAMINATION OF FACILITIES.

(a) UPDATE OF REPORT.—Not later than December 31, 2006, the Director of the National Institute for Occupational Safety and Health shall submit to Congress an update to the report required by section 3151(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384 note).

(b) ELEMENTS.—The update shall—

(1) for each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

(2) for each facility for which such report found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

(3) for each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities; and

(4) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

(c) PUBLICATION.—The Director shall ensure that the report referred to in subsection (a) is published in the Federal Register not later than 15 days after being released.

SEC. 3153. WORKERS COMPENSATION.

(a) IN GENERAL.—Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7385*o*) is amended to read as follows:

''Subtitle D—Workers Compensation

''SEC. 3661. COVERED DEPARTMENT OF ENERGY CONTRACTOR EMPLOYEES.

''(a) IN GENERAL.—In this subtitle, the term 'covered Department of Energy contractor employee' means any Department of Energy contractor employee determined under section 3663 to have contracted an occupational illness or covered illness through exposure at a Department of Energy facility.

''(b) EXCLUSION OF ILLNESS THROUGH EXPOSURE AFTER COMMENCEMENT OF NEW PROGRAM.—For purposes of this subtitle, an occupational illness or covered illness shall not include any illness contracted by a Department of Energy contractor employee through exposure at a Department of Energy facility if the exposure occurs after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005.

''SEC. 3662. WORKERS COMPENSATION.

''(a) IN GENERAL.—Except as provided in subsection (b), a covered Department of Energy contractor employee, or the survivor of a covered Department of Energy contractor employee if the covered Department of Energy contractor employee is deceased, shall receive workers compensation in an amount determined under section 3664.

''(b) ELECTION TO PROCEED UNDER STATE WORKERS' COMPENSATION SYSTEM.—(1) A Department of Energy contractor employee otherwise covered by this section may elect to seek workers' compensation under the appropriate State workers' compensation system for the occupational illness or covered illness of the covered Department of Energy contractor employee rather than seek workers compensation for the occupational illness or covered illness, as the case may be, under this subtitle.

''(2) Any Department of Energy contractor employee making an election under paragraph (1) who becomes entitled to workers' compensation under the appropriate State workers' compensation system following an election under that paragraph is not entitled to receive workers compensation under this subtitle.

''(c) FUNDING.—The Secretary of Labor shall make payments of workers compensation under this section from amounts authorized to be appropriated for such purpose under section 3670.

"SEC. 3663. DETERMINATIONS REGARDING CONTRACTION OF OCCUPATIONAL OR COVERED ILLNESSES.

''(a) EMPLOYEES COVERED BY PREVIOUS DETERMINATION OF ENTITLEMENT TO COMPENSATION AND BENEFITS.—(1) A Department of Energy contractor employee who has been determined to be entitled to compensation and benefits for an occupational illness contracted in the performance of duty at a Department of Energy facility under subtitle B shall be treated as having contracted the occupational illness through exposure at the Department of Energy facility for purposes of this subtitle.

''(2) A determination, pursuant to activities under paragraph (2) of section 3163(d) of the National Defense Authorization Act for Fiscal Year 2005 before or during the period of transition of administration of this subtitle to the Department of Labor under paragraph (1) of such section, that an individual contracted an occupational illness through exposure at a Department of Energy facility for purposes of this subtitle shall be valid for purposes of this subtitle.

''(b) OTHER EMPLOYEES.—In the case of a Department of Energy contractor employee not previously covered by a determination described in subsection (a) with respect to an occupational illness, the Department of Energy contractor employee shall be determined to have contracted an illness (in this subtitle referred to as a 'covered illness') through exposure at a Department of Energy facility for purposes of this subtitle if—

''(1) it is at least as likely as not that exposure to a toxic substance was a significant factor in aggravating, contributing to, or causing the illness; and

''(2) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

''(c) DETERMINATIONS REGARDING EMPLOYEES NOT PREVIOUSLY COVERED BY DETERMINATION OF ENTITLEMENT.—(1) The Secretary of Labor shall make each determination under subsection (b) as to whether or not a Department of Energy contractor employee described in that subsection contracted a covered illness related to employment at a Department of Energy facility.

''(2) The Secretary may utilize the services of physicians for purposes of making determinations under this subsection. Any physicians so utilized shall possess appropriate expertise and experience in the evaluation and diagnosis of illnesses aggravated, contributed to, or caused by exposure to toxic substances.

''(3) The Secretary may secure the services of physicians under this subsection through the appointment of physicians or by contract.

''(4) The Secretary shall consult with the Secretary of Health and Human Services before utilizing the services of physicians for purposes of making determinations under this subsection.

"SEC. 3664. AMOUNT OF WORKERS COMPENSATION.

''(a) IN GENERAL.—The amount of workers compensation payable to a covered Department of Energy contractor employee, or the eligible survivors of a covered Department of Energy contractor employee, for an occupational illness or covered illness under section 3662 is the amount of workers' compensation to which the Department of Energy contractor employee, or the eligible survivors, respectively, would otherwise be entitled for the occupational illness or covered illness, as the case may be, under the appropriate State workers' compensation system.

''(b) INAPPLICABILITY OF CERTAIN STATE WORKERS' COMPENSATION SYSTEM LIMITATIONS.—The amount of workers' compensation to which a covered Department of Energy contractor employee would otherwise be entitled under subsection (a) shall be determined without regard to any requirements under the appropriate State workers' compensation system for each of the following:

''(1) Statutes of limitation, or other rules limiting compensation to claims filed within a specified period after last exposure to a toxic substance or after last employment by an employer where the employee was exposed to a toxic substance.

''(2) Exposure rules, including minimum periods of exposure to toxic substances.

''(3) Causation rules more stringent that the standard in section 3663(b).

''(4) Burdens of proof, quantum of proof standards, or both more stringent than the standard in section 3663(b).

''(5) Return to work requirements, including obligations to participate in vocational rehabilitation and medical examinations connected with the ability to return to work.

''(6) Medical examinations in addition to medical examinations required by the Secretary of Labor for the application of section 3663 in determining causation or required by the Secretary of Labor for the application of subsection (c) in determining the amount of workers' compensation payable.

''(c) DETERMINATION OF AMOUNT.—(1) The Secretary of Labor shall determine the amount of workers compensation payable to each covered Department of Energy contractor employee under section 3662.

''(2)(A) The Secretary may utilize the assistance of the workers' compensation system personnel of any State in making determinations under paragraph (1).

''(B) The utilization of assistance under subparagraph (A) shall be in accordance with an agreement entered into by the Secretary and the chief executive officer of the State concerned.

''(C) An agreement under subparagraph (B) may provide for the Secretary to reimburse the State concerned for the costs of the State in providing assistance under the agreement.

''(3)(A) The Secretary may utilize the services of physicians for purposes of making determinations under this subsection.

''(B) Any physicians utilized under subparagraph (A) shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments.

''(C) The Secretary may secure the services of physicians under subparagraph (A) through the appointment of physicians or by contract.

"SEC. 3665. MEDICAL BENEFITS.

''(a) IN GENERAL.—A Department of Energy contractor employee eligible for workers compensation for an occupational illness or covered illness under this subtitle shall be furnished medical benefits specified in section 3629 for the occupational illness or covered illness, as the case may be, to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

''(b) FUNDING.—Amounts for payments for medical benefits under this section shall be derived from amounts authorized to be appropriated for such purpose under section 3670.

"SEC. 3666. REVIEW OF CERTAIN DETERMINATIONS.

''(a) STATUS AS DEPARTMENT OF ENERGY CONTRACTOR EMPLOYEE.—An individual may seek the review of a determination that the individual is not a Department of Energy contractor employee.

''(b) ELIGIBILITY AND AMOUNT OF WORKERS COMPENSATION.—A Department of Energy contractor employee may seek the review of any determination as follows:

''(1) A determination under section 3663(b) that the Department of Energy contractor employee is not a covered Department of Energy contractor employee.

''(2) A determination under 3664 of the amount of workers compensation payable to the Department of Energy contractor employee under section 3662.

''(c) REVIEW.—(1) The review of a determination under subsection (a) or (b) shall be conducted by the Secretary of Labor in accordance with procedures applicable for the review of claims under sections 30.310 through 30.320 of title 20, Code of Federal Regulations, or any successor regulations.

''(2)(A) The review of a determination under subsection (b)(1) shall include review by a physician or physician panel.

''(B) Each physician or physician on a panel under subparagraph (A) shall be a physician with experience and competency in diagnosing illnesses aggravated, contributed to, or caused by exposure to toxic substances.

''(C) The Secretary of Labor may investigate any allegation that a physician appointed under this paragraph has a conflict of interest. If the Secretary of Labor determines that a conflict of interest exists, the Secretary shall notify the Secretary of Health and Human Services, who shall review the allegation.

''(D) Each review by a physician or physician panel under subparagraph (A) shall be conducted in accordance with such procedures as the Secretary shall prescribe.

''(3)(A) The results of each review under this subsection shall be submitted to the Secretary.

''(B) The Secretary shall accept the results of any portion of a review under this subsection that consists of a review by a physician or physician panel under paragraph (2) unless there is substantial evidence to the contrary.

''(d) REVERSAL OF DETERMINATIONS.—Except as provided in subsection (c)(3)(B), the Secretary of Labor may vacate or reverse any determination described in subsection in subsection (a) or (b) if the Secretary determines, as the result of a review of such determination under subsection (c), that such determination was erroneous.

"SEC. 3667. ATTORNEY FEES.

''(a) IN GENERAL.—Except as provided in subsection (b), the provisions of section 3648 shall apply to the availability of attorney fees for assistance on a claim under this subtitle to the same extent, and subject to the same conditions and limitations, that such provisions apply to the availability of attorney fees for assistance on a claim under subtitle B.

''(b) ATTORNEY FEE SCHEDULE.—(1) The Secretary of Labor may, by regulation, modify the application of section 3648 to the availability of attorney fees under this subtitle to establish a schedule for attorney fees under this subtitle that will ensure representation of claimants and appropriate compensation for such representation.

''(2) The amount of attorney fees for assistance on claims under the schedule of attorney fees shall take into appropriate account the nature and complexity of the legal issues involved in such claims and the procedural level at which assistance is given.

"SEC. 3668. ADMINISTRATIVE MATTERS.

''(a) IN GENERAL.—The Secretary of Labor shall administer the provisions of this subtitle.

''(b) CONTRACT AUTHORITY.—(1) The Secretary may enter into contracts with appropriate persons and entities in order to administer the provisions of this subtitle.

''(2) The authority of the Secretary to enter into contracts under this subtitle shall be effective in any fiscal year only to the extent and in such amount as are provided in advance in appropriations Acts.

''(c) RECORDS.—(1)(A) The Secretary of Energy shall provide to the Secretary of Labor all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of the provisions of this subtitle by the Secretary of Labor, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

''(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary of Energy and the Secretary of Labor jointly consider appropriate to facilitate their use by the Secretary of Labor for purposes of this subtitle.

''(2) The Secretary of Energy and the Secretary of Labor shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for workers compensation under this subtitle, including employment records, records of exposure to beryllium, radiation, silicon, or metals or volatile organic chemicals, and records regarding medical treatment.

''(d) REGULATIONS.—The Secretary of Labor shall prescribe regulations necessary for the administration of the provisions of this subtitle.

''SEC. 3669. OFFICE OF OMBUDSMAN.

''(a) ESTABLISHMENT.—There is established in the Department of Labor an office to be known as the 'Office of the Ombudsman' (in this section referred to as the 'Office').

''(b) HEAD.—The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

''(1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

''(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

''(c) DUTIES.—The duties of the Office shall be as follows:

''(1) To assist individuals in making claims under this subtitle.

''(2) To provide information on the benefits available under this subtitle and on the requirements and procedures applicable to the provision of such benefits.

''(3) To act as an advocate on behalf of individuals seeking benefits under this subtitle.

''(4) To make recommendations to the Secretary regarding the location of centers (to be known as 'resource centers') for the acceptance and development of claims for benefits under this subtitle.

''(5) To carry out such other duties with respect to this subtitle as the Secretary shall specify for purposes of this section.

''(d) INDEPENDENT OFFICE.—The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this subtitle.

''(e) ANNUAL REPORT.—(1) Not later than February 15 each year, the Ombudsman shall submit to Congress a report on activities under this subtitle.

''(2) Each report under paragraph (1) shall set forth the following:

''(A) The number and types of complaints, grievances, and requests for assistance received by the Ombudsman under this subtitle during the preceding year.

''(B) An assessment of the most common difficulties encountered by claimants and potential claimants under this subtitle during the preceding year.

''(C) Such recommendations as the Ombudsman considers appropriate for the improvement of the practices of the Department of Labor in administering this subtitle.

''(D) Such recommendations at the Ombudsman considers appropriate for modifying the authorities and requirements of this subtitle in order to better address the workers compensation interests of covered Department of Energy contractor employees and others, as determined by the Ombudsman, meriting benefits under this subtitle.

''(3) No official of the Department of Labor, or of any other department or agency of the Federal Government, may require the review or approval of a report of the Ombudsman under this subsection before the submittal of such report to Congress.

''(f) OUTREACH.—The Secretary of Labor and the Secretary of Health and Human Services shall each undertake outreach to advise the public of the existence and duties of the Office.

''SEC. 3670. AUTHORIZATION OF APPROPRIATIONS.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Labor for fiscal year 2005 and each fiscal year thereafter such sums as may be necessary in such fiscal year for—

''(1) the provision of compensation and benefits under this subtitle; and

''(2) the administration of the provisions of this subtitle.

''(b) AVAILABILITY WITHOUT FISCAL YEAR LIMITATION.—Amounts authorized to be appropriated by subsection (a) shall remain available without fiscal year limitation.

''(c) AVAILABILITY OF AMOUNTS SUBJECT TO APPROPRIATIONS ACTS.—The authority to provide compensation and benefits under this subtitle shall be effective in any fiscal year only to the extent and in such amounts as are provided in advance in appropriations Acts.''.

(b) CONFORMING AMENDMENT.—Section 3643 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385b) is amended by striking ''The acceptance'' and inserting ''Except as provided in subtitle D, the acceptance''.

(c) REGULATIONS.—The Secretary of Labor shall prescribe the regulations required by section 3668(d) of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended by this section, not later than 120 days after the date of the enactment of this Act. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in the preceding sentence and subsection (d)(1).

(d) TRANSITION.—(1) The Secretary of Labor shall commence the administration of the provisions of subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended by this section, not later than 180 days after the date of the enactment of this Act.

(2) The Secretary of Energy and the Secretary of Labor shall jointly take such actions as are appropriate—

(A) to identify the activities under subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000, as in effect on the day before the date of the enactment of this Act, that will continue under that subtitle, as amended by this section, upon the commencement of the administration of that subtitle, as so amended, by the Secretary of Labor under paragraph (1); and

(B) to ensure the continued discharge of such activities until the commencement of the administration of that subtitle, as so amended, by the Secretary of Labor under paragraph (1).

(3)(A) In carrying out activities under paragraph (2), the Secretary of Energy shall only conduct a causation review on a claim if the claim is completely prepared and awaiting review as of the date of the enactment of this Act.

(B) Activities under paragraph (2) on any claim covered by such activities that is not described by subparagraph (A) shall be carried out by the Secretary of Labor.

(e) PROVISION OF RECORDS.—The Secretary of Energy shall, to the maximum extent practicable, complete the provision of records to the Secretary of Labor under section 3668(c)(1) of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended by this section, not later than 60 days after the date of the enactment of this Act.

(f) SITE PROFILES.—(1)(A) The Secretary of Labor shall prepare a site profile for each of the 14 Department of Energy facilities that have received the most number of claims for compensation and benefits under subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 as of the date of the enactment of this Act.

(B) The Secretary of Labor shall prepare a site profile under subparagraph (A) utilizing the former worker medical screening programs of the Department of Energy.

(2) If the Secretary of Labor determines that the preparation of a site profile for a facility cannot be performed under paragraph (1) because no worker medical screening activities occurred for the facility, or that preparation of the profile is otherwise impracticable, the site profile for the facility shall be prepared by the National Institute of Occupational Safety and Health.

(3) All site profiles required by this subsection shall be completed not later than 210 days after the date of the enactment of this Act.

(4) The Secretary of Energy shall provide the Secretary of Labor with any support that the Secretary of Labor considers necessary for carrying out this subsection.

(5) In this subsection, the term ''site profile'', in the case of a Department of Energy facility, means an exposure assessment that—

(A) identifies any processes and toxic substances used in the facility;

(B) establishes the times in which such toxic substances were used in the facility; and

(C) establishes the degree of exposure to such toxic substances taking into account available records and studies and information on such processes and toxic substances.

(g) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Energy should—

(1) adopt a policy not to oppose any final positive determinations with respect to injured workers at Department of Energy facilities and atomic weapons employer facilities under State adjudication systems unless such determinations are frivolous; and

(2) incorporate the policy referred to in paragraph (1) in all Department of Energy contracts with non-Federal government entities to which such policy could apply.

(h) FUNDING FOR ADMINISTRATION IN FISCAL YEAR 2005.—(1) Of the amount authorized to

be appropriated for fiscal year 2005 by section 3102(a)(1) for environmental management for defense site acceleration completion, $2,000,000 shall be available for purposes of the administration of the provisions of subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended by this section, during fiscal year 2005.

(2) The Secretary of Energy shall transfer to the Secretary of Labor the amount available under paragraph (1) for the purposes specified in that paragraph.

(3) The Secretary of Labor shall utilize amounts transferred to the Secretary under paragraph (2) for the purposes specified in paragraph (1).

SEC. 3154. TERMINATION OF EFFECT OF OTHER ENHANCEMENTS OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

Notwithstanding any other provision of this Act, section 3143, relating to enhancements of the Energy Employees Occupational Illness Compensation Program, shall have no force or effect, and the amendments specified in such section shall not be made.

SEC. 3155. SENSE OF SENATE ON RESOURCE CENTER FOR ENERGY EMPLOYEES UNDER ENERGY EMPLOYEE OCCUPATIONAL ILLNESS COMPENSATION PROGRAM IN WESTERN NEW YORK AND WESTERN PENNSYLVANIA REGION.

(a) FINDINGS.—The Senate makes the following findings:

(1) New York has 36 current or former Department of Energy facilities involved in nuclear weapons production-related activities statewide, mostly atomic weapons employer facilities, and 14 such facilities in western New York. Despite having one of the greatest concentrations of such facilities in the United States, western New York, and abutting areas of Pennsylvania, continue to be severely underserved by the Energy Employees Occupational Illness Compensation Program under the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384 et seq.).

(2) The establishment of a permanent resource center in western New York would represent a substantial step toward improving services under the Energy Employees Occupational Illness Compensation Program for energy employees in this region.

(3) The number of claims submitted to the Department under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 from the western New York region, including western Pennsylvania, exceeds the number of such claims filed at resource centers in Hanford, Washington, Portsmouth, Ohio, Los Alamos, New Mexico, the Nevada Test Site, Nevada, the Rocky Flats Environmental Technology Site, Colorado, the Idaho National Engineering Laboratory, Idaho, and the Amchitka Test Site, Alaska.

(4) Energy employees in the western New York region, including western Pennsylvania, deserve assistance under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 commensurate with the assistance provided energy employees at other locations in the United States.

(b) SENSE OF SENATE.—It is the sense of the Senate to encourage the Office of Ombudsman of the Department of Labor, as established by section 3669 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (as amended by section 3163 of this Act), to—

(1) review the availability of assistance under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 for energy employees in the western New York region, including western Pennsylvania; and

(2) recommend a location in that region for a resource center to provide such assistance to such energy employees.

SEC. 3156. REVIEW BY CONGRESS OF INDIVIDUALS DESIGNATED BY PRESIDENT AS MEMBERS OF COHORT.

Section 3621(14)(C)(ii) of that Act (42 U.S.C. 10 7384l(14)(C)(ii)) is amended by striking ''180 days'' and inserting ''60 days.''

SEC. 3157. INCLUSION OF CERTAIN FORMER NUCLEAR WEAPONS PROGRAM WORKERS IN SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM.

(a) FINDINGS.—Congress makes the following findings:

(1) Energy workers at the former Mallinkrodt facilities (including the St. Louis downtown facility and the Weldon Springs facility) were exposed to levels of radionuclides and radioactive materials that were much greater than the current maximum allowable Federal standards.

(2) The Mallinkrodt workers at the St. Louis site were exposed to excessive levels of airborne uranium dust relative to the standards in effect during the time, and many workers were exposed to 200 times the preferred levels of exposure.

(3)(A) The chief safety officer for the Atomic Energy Commission during the Mallinkrodt-St. Louis operations described the facility as 1 of the 2 worst plants with respect to worker exposures.

(B) Workers were excreting in excess of a milligram of uranium per day causing kidney damage.

(C) A recent epidemiological study found excess levels of nephritis and kidney cancer from inhalation of uranium dusts.

(4) The Department of Energy has admitted that those Mallinkrodt workers were subjected to risks and had their health endangered as a result of working with these highly radioactive materials.

(5) The Department of Energy reported that workers at the Weldon Springs feed materials plant handled plutonium and recycled uranium, which are highly radioactive.

(6) The National Institute of Occupational Safety and Health admits that—

(A) the operations at the St. Louis downtown site consisted of intense periods of processing extremely high levels of radionuclides; and

(B) the Institute has virtually no personal monitoring data for Mallinkrodt workers prior to 1948.

(7) The National Institute of Occupational Safety and Health has informed claimants and their survivors at those 3 Mallinkrodt sites that if they are not interviewed as a part of the dose reconstruction process, it—

(A) would hinder the ability of the Institute to conduct dose reconstruction for the claimant; and

(B) may result in a dose reconstruction that incompletely or inaccurately estimates the radiation dose to which the energy employee named in the claim had been exposed.

(8) Energy workers at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) between 1947 and 1975 were exposed to levels of radionuclides and radioactive material, including enriched uranium, plutonium, tritium, and depleted uranium, in addition to beryllium and photon radiation, that are greater than the current maximum Federal standards for exposure.

(9) According to the National Institute of Occupational Safety and Health—

(A) between 1947 and 1975, no records, including bioassays or air samples, have been located that indicate any monitoring occurred of internal doses of radiation to which workers described in paragraph (8) were exposed;

(B) between 1947 and 1955, no records, including dosimetry badges, have been located to indicate that any monitoring occurred of the external doses of radiation to which such workers were exposed;

(C) between 1955 and 1962, records indicate that only 8 to 23 workers in a workforce of over 1,000 were monitored for external radiation doses; and

(D) between 1970 and 1975, the high point of screening at the Iowa Army Ammunition Plant, only 25 percent of the workforce was screened for exposure to external radiation.

(10) The Department of Health and Human Services published the first notice of proposed rulemaking concerning the Special Exposure Cohort on June 25, 2002, and the final rule published on May 26, 2004.

(11) Many of those former workers have died while waiting for the proposed rule to be finalized, including some claimants who were waiting for dose reconstruction to be completed.

(12) Because of the aforementioned reasons, including the serious lack of records and the death of many potential claimants, it is not feasible to conduct valid dose reconstructions for the Iowa Army Ammunition Plant facility or the Mallinkrodt facilities.

(b) INCLUSION OF CERTAIN FORMER WORKERS IN COHORT.—Section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384*l*(14)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

''(C) Subject to the provisions of section 3612A and section 3146(e) of the National Defense Authorization Act for Fiscal Year 2005, the employee was so employed for a number of work days aggregating at least 45 workdays at a facility operated under contract to the Department of Energy by Mallinkrodt Incorporated or its successors (including the St. Louis downtown or 'Destrehan' facility during any of calendar years 1942 through 1958 and the Weldon Springs feed materials plant facility during any of calendar years 1958 through 1966), or at a facility operated by the Department of Energy or under contract by Mason & Hangar-Silas Mason Company at the Iowa Army Ammunition Plant (also known as the Burlington Atomic Energy Commission Plant and the Iowa Ordnance Plant) during any of the calendar years 1947 through 1975, and during the employment—

''(i)(I) was monitored through the use of dosimetry badges for exposure at the plant of the external parts of an employee's body to radiation; or

''(II) was monitored through the use of bioassays, in vivo monitoring, or breath samples for exposure at the plant to internal radiation; or

''(ii) worked in a job that had exposures comparable to a job that is monitored, or should have been monitored, under standards of the Department of Energy in effect on the date of enactment of this subparagraph through the use of dosimetry badges for monitoring external radiation exposures, or bioassays, in vivo monitoring, or breath samples for internal radiation exposures, at a facility.''.

(c) FUNDING OF COMPENSATION AND BENEFITS.—(1) Such Act is further amended by inserting after section 3612 the following new section:

"SEC. 3612A. FUNDING FOR COMPENSATION AND BENEFITS FOR CERTAIN MEMBERS OF THE SPECIAL EXPOSURE COHORT.

''(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Department of Labor for each fiscal year after fiscal year 2004 such sums as may be necessary for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) in such fiscal year.

''(b) PROHIBITION ON USE FOR ADMINISTRATIVE COSTS.—(1) No amount authorized to be appropriated by subsection (a) may be utilized for purposes of carrying out the compensation program for the members of the Special Exposure Cohort referred to in that subsection or administering the amount authorized to be appropriated by subsection (a).

''(2) Amounts for purposes described in paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a).

''(c) PROVISION OF COMPENSATION AND BENEFITS SUBJECT TO APPROPRIATIONS ACTS.—The provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort referred to in subsection (a) in any fiscal year shall be subject to the availability of appropriations for that purpose for such fiscal year and to applicable provisions of appropriations Acts.''.

(2) Section 3612(d) of such Act (42 U.S.C. 7384e(d)) is amended—

(A) by inserting ''(1)'' before ''Subject''; and

(B) by adding at the end the following new paragraph:

''(2) Amounts for the provision of compensation and benefits under the compensation program for members of the Special Exposure Cohort described in section 3621(14)(C) may be derived from amounts authorized to be appropriated by section 3612A(a).''.

(d) OFFSET.—The total amount authorized to be appropriated under subtitle A of this title is hereby reduced by $61,000,000.

(e) CERTIFICATION.—Funds shall be available to pay claims approved by the National Institute of Occupational Safety and Health for a facility by reason of section 3621(14)(C) of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended by subsection (b)(2), if the Director of the National Institute of Occupational Safety and Health certifies with respect to such facility each of the following:

(1) That no atomic weapons work or related work has been conducted at such facility after 1976.

(2) That fewer than 50 percent of the total number of workers engaged in atomic weapons work or related work at such facility were accurately monitored for exposure to internal and external ionizing radiation during the term of their employment.

(3) That individual internal and external exposure records for employees at such facility are not available, or the exposure to radiation of at least 40 percent of the exposed workers at such facility cannot be determined from the individual internal and external exposure records that are available.

(f) SENSE OF THE SENATE.—It is the sense of the Senate that all employees who are eligible to apply for benefits under the compensation program established by the Energy Employees Occupational Illness Compensation Act should be treated fairly and equitably with regard to inclusion under the special exposure cohort provisions of this Act.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

SEC. 3201. AUTHORIZATION.

There are authorized to be appropriated for fiscal year 2005, $21,268,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

SEC. 3301. DISPOSAL OF FERROMANGANESE.

(a) DISPOSAL AUTHORIZED.—The Secretary of Defense may dispose of up to 50,000 tons of ferromanganese from the National Defense Stockpile during fiscal year 2005.

(b) CONTINGENT AUTHORITY FOR ADDITIONAL DISPOSAL.—After the disposal of ferromanganese authorized by subsection (a)—

(1) the Secretary may dispose of up to an additional 25,000 tons of ferromanganese from the National Defense Stockpile before September 30, 2005; and

(2) if the Secretary completes the disposal authorized by paragraph (1) before September 30, 2005, the Secretary may dispose of up to an additional 25,000 tons of ferromanganese from the National Defense Stockpile before that date.

(c) CERTIFICATION.—The Secretary may dispose of ferromanganese under paragraph (1) or (2) of subsection (b) only if the Secretary, with the concurrence of the Secretary of Commerce, certifies to the congressional defense committees not later than 30 days before the commencement of disposal under the applicable paragraph that—

(1) the disposal of ferromanganese under such paragraph is in the national interest due to extraordinary circumstances in markets for ferromanganese;

(2) the disposal of ferromanganese under such paragraph will not cause undue harm to domestic manufacturers of ferroalloys; and

(3) the disposal of ferromanganese under such paragraph is consistent with the requirements and purpose of the National Defense Stockpile under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).

(d) DELEGATION OF RESPONSIBILITY.—The Secretary of Defense and the Secretary of Commerce may each delegate the responsibility of such Secretary under subsection (c) to an appropriate official within the Department of Defense or the Department of Commerce, as the case may be.

(e) NATIONAL DEFENSE STOCKPILE DEFINED.—In this section, the term ''National Defense Stockpile'' means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

SEC. 3302. REVISIONS TO REQUIRED RECEIPT OBJECTIVES FOR CERTAIN PREVIOUSLY AUTHORIZED DISPOSALS FROM THE NATIONAL DEFENSE STOCKPILE.

Section 3303(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 98d note) is amended—

(1) in paragraph (4), by striking ''and'' at the end;

(2) in paragraph (5), by striking the period at the end and inserting ''; and''; and

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

''(6) $870,000,000 by the end of fiscal year 2014.''.

SEC. 3303. PROHIBITION ON STORAGE OF MERCURY AT CERTAIN FACILITIES.

(a) PROHIBITION.—The Secretary of Defense may not store mercury from the National Defense Stockpile at any facility that is not owned or leased by the United States.

(b) NATIONAL DEFENSE STOCKPILE DEFINED.—In this section, the term ''National Defense Stockpile'' means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

TITLE XXXIV—LOCAL LAW ENFORCEMENT ENHANCEMENT ACT.

SEC. 3401. SHORT TITLE.

This title may be cited as the ''Local Law Enforcement Enhancement Act of 2004''.

SEC. 3402. FINDINGS.

Congress makes the following findings:

(1) The incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem.

(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.

(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias. These authorities can carry out their responsibilities more effectively with greater Federal assistance.

(4) Existing Federal law is inadequate to address this problem.

(5) The prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.

(6) Such violence substantially affects interstate commerce in many ways, including—

(A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and

(B) by preventing members of targeted groups from purchasing goods and services, obtaining or sustaining employment, or participating in other commercial activity.

(7) Perpetrators cross State lines to commit such violence.

(8) Channels, facilities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.

(9) Such violence is committed using articles that have traveled in interstate commerce.

(10) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, and ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th amendment to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived race, color, or ancestry. Accordingly, eliminating racially motivated violence is an important means of eliminating, to the extent possible, the badges, incidents, and relics of slavery and involuntary servitude.

(11) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted, and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct ''races''. Thus, in order to eliminate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.

(12) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.

(13) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States and local jurisdictions.

SEC. 3403. DEFINITION OF HATE CRIME.

In this title, the term ''hate crime'' has the same meaning as in section 280003(a) of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 994 note).

SEC. 3404. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.

(a) ASSISTANCE OTHER THAN FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—At the request of a law enforcement official of a State or Indian tribe, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that—

(A) constitutes a crime of violence (as defined in section 16 of title 18, United States Code);

(B) constitutes a felony under the laws of the State or Indian tribe; and

(C) is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim, or is a violation of the hate crime laws of the State or Indian tribe.

(2) PRIORITY.—In providing assistance under paragraph (1), the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than 1 State and to rural jurisdictions that have difficulty covering the extraordinary expenses relating to the investigation or prosecution of the crime.

(b) GRANTS.—

(1) IN GENERAL.—The Attorney General may award grants to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes.

(2) OFFICE OF JUSTICE PROGRAMS.—In implementing the grant program, the Office of Justice Programs shall work closely with the funded jurisdictions to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

(3) APPLICATION.—

(A) IN GENERAL.—Each State that desires a grant under this subsection shall submit an application to the Attorney General at such time, in such manner, and accompanied by or containing such information as the Attorney General shall reasonably require.

(B) DATE FOR SUBMISSION.—Applications submitted pursuant to subparagraph (A) shall be submitted during the 60-day period beginning on a date that the Attorney General shall prescribe.

(C) REQUIREMENTS.—A State or political subdivision of a State or tribal official applying for assistance under this subsection shall—

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State, political subdivision, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, political subdivision, or tribal official has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINE.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any single jurisdiction within a 1 year period.

(6) REPORT.—Not later than December 31, 2005, the Attorney General shall submit to Congress a report describing the applications submitted for grants under this subsection, the award of such grants, and the purposes for which the grant amounts were expended.

(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2005 and 2006.

SEC. 3405. GRANT PROGRAM.

(a) AUTHORITY TO MAKE GRANTS.—The Office of Justice Programs of the Department of Justice shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.

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

SEC. 3406. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE AND LOCAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Community Relations Service, for fiscal years 2005, 2006, and 2007 such sums as are necessary to increase the number of personnel to prevent and respond to alleged violations of section 249 of title 18, United States Code, as added by section ___07.

SEC. 3407. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end the following:

''§ 249. Hate crime acts

''(a) IN GENERAL.—

''(1) OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

''(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(i) death results from the offense; or

''(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(2) OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, OR DISABILITY.—

''(A) IN GENERAL.—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B), willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, or disability of any person—

''(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

''(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

''(I) death results from the offense; or

''(II) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(B) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

''(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

''(I) across a State line or national border; or

''(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

''(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

''(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

''(iv) the conduct described in subparagraph (A)—

''(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

''(II) otherwise affects interstate or foreign commerce.

''(b) CERTIFICATION REQUIREMENT.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

''(1) he or she has reasonable cause to believe that the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of any person was a motivating factor underlying the alleged conduct of the defendant; and

''(2) he or his designee or she or her designee has consulted with State or local law enforcement officials regarding the prosecution and determined that—

''(A) the State does not have jurisdiction or does not intend to exercise jurisdiction;

''(B) the State has requested that the Federal Government assume jurisdiction;

''(C) the State does not object to the Federal Government assuming jurisdiction; or

''(D) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.

''(c) DEFINITIONS.—In this section—

''(1) the term 'explosive or incendiary device' has the meaning given the term in section 232 of this title; and

''(2) the term 'firearm' has the meaning given the term in section 921(a) of this title.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The analysis for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

''249. Hate crime acts.''.

SEC. 3408. DUTIES OF FEDERAL SENTENCING COMMISSION.

(a) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—Pursuant to the authority provided under section 994 of title 28, United States Code, the United States Sentencing Commission shall study the issue of adult recruitment of juveniles to commit hate crimes and shall, if appropriate, amend the Federal sentencing guidelines to provide sentencing enhancements (in addition to the sentencing enhancement provided for the use of a minor during the commission of an offense) for adult defendants who recruit juveniles to assist in the commission of hate crimes.

(b) CONSISTENCY WITH OTHER GUIDELINES.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that there is reasonable consistency with other Federal sentencing guidelines; and

(2) avoid duplicative punishments for substantially the same offense.

SEC. 3409. STATISTICS.

Subsection (b)(1) of the first section of the Hate Crimes Statistics Act (28 U.S.C. 534 note) is amended by inserting ''gender,'' after ''race,''.

SEC. 3410. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

TITLE XXXV—ASSISTANCE TO FIREFIGHTERS.

SEC. 3501. SHORT TITLE.

This title may be cited as the ''Assistance to Firefighters Act of 2004''.

SEC. 3502. AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR FIREFIGHTER ASSISTANCE PROGRAM.

(a) IN GENERAL.—Subsection (b)(1) of section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended by striking ''Director'' in the matter preceding subparagraph (A) and inserting ''Secretary of Homeland Security, in consultation with the Administrator,''.

(b) CONFORMING AMENDMENT.—Such section is further amended by striking ''Director'' each place it appears and inserting ''Secretary of Homeland Security''.

(c) TECHNICAL AMENDMENT.—The heading of subsection (b)(8) of such section is amended by striking ''DIRECTOR'' and inserting ''SECRETARY''.

SEC. 3503. GRANTS TO VOLUNTEER EMERGENCY MEDICAL SERVICE ORGANIZATIONS.

(a) AUTHORITY TO AWARD GRANTS TO VOLUNTEER EMERGENCY MEDICAL SERVICE SQUADS.—Paragraph (1)(A) of section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)) is amended by inserting ''or to volunteer emergency medical service organizations'' after ''fire departments''.

(b) USE OF GRANT FUNDS.—Paragraph (3)(F) of such section is amended by inserting ''or volunteer emergency medical service organizations that are not affiliated with a for-profit entity'' after ''fire departments''.

(c) SPECIAL RULE FOR APPLICATIONS FOR VOLUNTEER EMERGENCY MEDICAL SERVICES.—Paragraph (5) of such section is amended by adding at the end, the following new subparagraph:

''(C) SPECIAL RULE FOR VOLUNTEER EMERGENCY MEDICAL SERVICES.—The Secretary of Homeland Security shall permit an applicant seeking grant funds for volunteer emergency medical services under paragraph (3)(F) to use the same application form to seek grant funds for one or more of the other purposes set out in subparagraphs (A) through (O) of paragraph (3).''.

SEC. 3504. GRANTS FOR AUTOMATED EXTERNAL DEFIBRILLATOR DEVICES.

Paragraph (3) of section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)) is amended by adding at the end the following new subparagraph:

''(O) To obtain automated external defibrillator devices.''.

SEC. 3505. CRITERIA FOR REVIEWING GRANT APPLICATIONS.

Paragraph (2) of section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)) is amended to read as follows:

''(2) CRITERIA AND REVIEW OF APPLICATIONS.—

''(A) PRELIMINARY REVIEW CRITERIA.—

''(i) IN GENERAL.—The Secretary of Homeland Security shall establish specific criteria for the preliminary review of an application submitted under this section. If an application does not meet such criteria, the application may not receive further consideration for a grant under this section.

''(ii) ANNUAL REVIEW OF CRITERIA.—Not less often than once each year, the Secretary of Homeland Security, in consultation with the Administrator, shall convene a meeting of individuals who are members of a fire service and are recognized for expertise in firefighting or in emergency medical services provided by fire services, and who are not employees of the Federal Government for the purpose of reviewing and proposing changes to the criteria established under clause (i).

''(B) SELECTION THROUGH REVIEW BY EXPERTS.—

''(i) REQUIREMENT FOR REVIEW.—The Secretary of Homeland Security shall award grants under this section based on the review of applications for such grants by a panel of fire service personnel appointed by a national organization recognized for expertise in the operation and administration of fire services.

''(ii) ROLE OF THE SECRETARY.—The Secretary of Homeland Security shall provide for the administration of the review panel described in clause (i) and shall ensure that an individual appointed to such panel is a recognized expert in firefighting, medical services provided by fire services, fire prevention, or research on firefighter safety.''.

SEC. 3506. FINANCIAL ASSISTANCE FOR FIREFIGHTER SAFETY PROGRAMS.

(a) AUTHORITY.—Paragraph (1)(B) of section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)) is amended by inserting ''and firefighter safety'' after ''prevention''.

(b) EXPANSION OF EXISTING PROGRAM.—

(1) FIREFIGHTER SAFETY ASSISTANCE.—Paragraph (4) of such section is amended—

(A) in subparagraph (A)(ii), by striking ''organizations that are recognized'' and all that follows and inserting ''organizations eligible under subparagraph (B) for the purposes described in subparagraph (C).''; and

(B) by striking subparagraph (B), and inserting the following new subparagraphs:

''(B) ELIGIBILITY FOR ASSISTANCE.—An organization may be eligible for assistance under subparagraph (A)(ii), if such organization is a national, State, local, or community organization that is not a fire service and that is recognized for experience and expertise with respect to programs and activities that promote—

''(i) fire prevention or fire safety; or

''(ii) the health and safety of firefighting personnel.

''(C) USE OF FUNDS.—Assistance provided under subparagraph (A)(ii) shall be used—

''(i) to carry out fire prevention programs; or

''(ii) to fund research to improve the health and safety of firefighting personnel.

''(D) PRIORITY.—In selecting organizations described in subparagraph (B) to receive assistance under this paragraph, the Secretary of Homeland Security shall give priority—

''(i) to organizations that focus on preventing injuries from fire to members of groups at high risk of such injuries, with an emphasis on children; and

''(ii) to organizations that focus on researching methods to improve the health and safety of firefighting personnel.

''(E) ALLOCATION OF FUNDS.—Not less than 66 percent of the total amount of funds made available in a fiscal year to carry out this paragraph shall be made available of the programs described in subparagraph (A)(ii).''.

(2) CONFORMING AMENDMENT.—The heading of such paragraph is amended to read as follows:

''(4) FIRE PREVENTION AND FIREFIGHTER SAFETY PROGRAMS.—''.

(c) AVAILABILITY OF FUNDS FOR FIRE PREVENTION AND FIREFIGHTER SAFETY PROGRAMS.—Paragraph (4)(A) of such section, as amended by subsection (b), is further amended in the matter preceding clause (i), by striking ''5 percent'' and inserting ''6 percent''.

SEC. 3507. ASSISTANCE FOR APPLICATIONS.

Paragraph (5) of section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)), as amended by section 3(c), is further amended by adding at the end the following new subparagraph:

''(D) ASSISTANCE TO PREPARE AN APPLICATION.—The Secretary of Homeland Security shall provide assistance with the preparation of applications for grants under this section.''.

SEC. 3508. REDUCED REQUIREMENTS FOR MATCHING FUNDS.

(a) AMOUNT REQUIRED.—Paragraph (6) of section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)) is amended by striking subparagraphs (A) and (B) and inserting the following:

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary of Homeland Security may provide assistance under this subsection only if the applicant for such assistance agrees to match 20 percent of such assistance for any fiscal year with an equal amount of non-Federal funds.

''(B) REQUIREMENT FOR SMALL COMMUNITY ORGANIZATIONS.—In the case of an applicant whose personnel—

''(i) serve jurisdictions of 50,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 10 percent; or

''(ii) serve jurisdictions of 20,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 5 percent.''.

(b) EXCEPTION.—Such paragraph, as amended by subsection (a), is further amended by adding at the end the following new subparagraph:

''(C) EXCEPTION.—No matching funds may be required under this subsection for assistance provided under subparagraph (A)(ii) of paragraph (4) to an organization described in subparagraph (B) of such paragraph.''.

(c) SPECIAL RULE FOR REQUESTS FOR AUTOMATED EXTERNAL DEFIBRILLATOR DEVICES.—Section 33(b) of such Act is further amended by adding at the end the following new paragraph:

''(13) SPECIAL RULES FOR GRANTS FOR AUTOMATED EXTERNAL DEFIBRILLATOR DEVICES.—

''(A) LIMITATIONS.—The Secretary of Homeland Security shall reduce the percentage of non-Federal matching funds for a grant as described in subparagraph (B) if—

''(i) the applicant is requesting grant funds to obtain one or more automated external defibrillator devices, as authorized by paragraph (3)(O);

''(ii) the award of such grant will result in the applicant possessing exactly one such device for each first-due emergency vehicle operated by the applicant;

''(iii) the applicant certifies to the Secretary of Homeland Security that the applicant possesses, at the time such application is filed, a number of such devices that is less than the number of first-due emergency vehicles operated by the applicant and that the applicant is capable of storing, in a manner conducive to rapid use, such devices on each such vehicle; and

''(iv) the applicant has not previously received a grant under this subsection to obtain such devices.

''(B) MATCHING REQUIREMENTS.—If an applicant meets the criteria set out in clauses (i), (ii), (iii), and (iv) of subparagraph (A), the Secretary of Homeland Security shall reduce the percentage of non-Federal matching funds required by paragraph (6) by 2 percentage points for all assistance requested in the application submitted by such applicant.

''(C) FIRST-DUE DEFINED.—In this paragraph, the term 'first-due' means the firefighting and emergency medical services vehicles that are utilized by a fire service for immediate response to an emergency situation.''.

SEC. 3509. GRANT RECIPIENT LIMITATIONS.

(a) LIMITATIONS ON GRANT AMOUNTS.—Subparagraph (A) of section 33(b)(10) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)(10)) is amended to read as follows:

''(A) LIMITATIONS ON GRANT AMOUNT.—

''(i) GENERAL LIMITATION.—Subject to clause (ii), a recipient of assistance under this section may not receive in a fiscal year an amount of such assistance that exceeds the greater of $2,250,000 or the amount equal to 0.5 percent of the total amount of funds appropriated for such assistance for such fiscal year.

''(ii) LIMITATIONS ON BASIS OF POPULATION.—Subject to clause (iii), a recipient of assistance under this section that serves a jurisdiction of less than 1,000,000 individuals may not receive more than $1,500,000 of such assistance for a fiscal year, except that such a recipient that serves a jurisdiction of less than 500,000 individuals may not receive more than $1,000,000 of such assistance during a fiscal year.

''(iii) WAIVER.—With respect to assistance provided in a fiscal year before fiscal year 2007, the Secretary of Homeland Security, in consultation with the Administrator, may waive the limitations set out in clause (ii) if the Secretary determines that a waiver is warranted by an extraordinary need for assistance for fire suppression activities by a jurisdiction, whether such need is caused by the likelihood of terrorist attack, natural disaster, destructive fires occurring over a large geographic area, or some other cause.''.

(b) LIMITATIONS ON GRANTS FOR VOLUNTEER EMERGENCY MEDICAL SERVICES.—Such section, as amended by subsection (a), is further amended by adding at the end the following new subparagraph:

''(C) LIMITATIONS ON EXPENDITURES FOR VOLUNTEER EMERGENCY MEDICAL SERVICES.—Not more than 3.5 percent of the funds appropriated to provide grants under this section for a fiscal year may be awarded to volunteer emergency medical service organizations.''.

SEC. 3510. OTHER CONSIDERATIONS.

Section 33(b) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)), as amended by section 8, is amended by adding at the end the following new paragraph:

''(14) OTHER CONSIDERATIONS.—In providing assistance under this section, the Secretary of Homeland Security shall—

''(A) consider the extent to which the recipient of such assistance is able to enhance the daily operations of a fire service and to improve the protection of people and property from fire; and

''(B) ensure that such assistance awarded to a volunteer emergency medical service organization will not be used to provide emergency medical services in a geographic area if such services are adequately provided by a fire service in such area.''.

SEC. 3511. REPORTS TO CONGRESS.

(a) STUDY AND REPORT ON ASSISTANCE TO FIREFIGHTERS.—

(1) STUDY.—The Secretary, in conjunction with the National Fire Protection Association, shall conduct a study—

(A) to assess the types of activities that are carried out by fire services;

(B) to determine whether the level of Federal funding made available to fire services is adequate;

(C) to assess categories of services, including emergency medical services, that are not adequately provided by fire services on either the national or State level; and

(D) to measure the effect, if any, of the assistance provided under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) on the needs of fire services identified in the report submitted to Congress under section 1701(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–363).

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the findings of the study described in paragraph (1).

(b) REPORT BY GAO.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on—

(1) the administration of the assistance provided under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229); and

(2) the success of the Secretary in administering the Federal Emergency Management Agency.

(c) REPORT ON WAIVER OF AMOUNT LIMITATIONS.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the instances, if any, of the use of the waiver authority set out in section 33(b)(10)(A)(iii) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(b)(10)(A)(iii)), as added by section 9.

(d) DEFINITIONS.—In this section:

(1) FIRE SERVICE.—The term ''fire service'' has the meaning given that term in section 4 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2203).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of Homeland Security.

SEC. 3512. TECHNICAL CORRECTIONS.

(a) REPEAL OF DUPLICATIVE DEFINITION.—Subsection (d) of section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is repealed.

(b) REDESIGNATIONS NECESSITATED BY DUPLICATIVE NUMBERING.—The sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2230 and 2231) that were added by sections 105 and 106 of Public Law 106–503 (114 Stat. 2301) are redesignated as sections 34 and 35, respectively.

SEC. 3513. AUTHORIZATION OF APPROPRIATIONS.

(a) FIREFIGHTER ASSISTANCE PROGRAMS.—Section 33(e) of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229(e)) is amended by striking the first sentence and inserting ''There are authorized to be appropriated for the purposes of this section $900,000,000 for fiscal year 2005, $950,000,000 for fiscal year 2006, and $1,000,000,000 for each of the fiscal years 2007 through 2010.''.

(b) STUDY ON ASSISTANCE TO FIREFIGHTERS.—There are authorized to be appropriated to the Secretary of Homeland Security $300,000 for fiscal year 2005 to carry out the requirements of section 4011(a).

MEASURE PLACED ON THE CALENDAR—H.R. 4359

Mr. GRASSLEY. I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER. The Senator is correct. The clerk will report the bill by title for the second time.

The assistant legislative clerk read as follows:

A bill (H. R. 4359) to amend the Internal Revenue Code of 1986 to increase the child tax credit.

Mr. GRASSLEY. I object to further proceedings on the measure at this time in order to place the bill on the calendar under the provisions of rule XIV.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

ORDERS FOR WEDNESDAY, JULY 7, 2004

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, July 7. I further ask unanimous consent that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and that the Senate then begin a period of morning business for up to 60 minutes with the first 30 minutes under the control of the Democratic leader or his designee, and the final 30 minutes under the control of the majority leader or his designee; provided that following morning business the Senate resume consideration of S. 2062, the class action bill.

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

PROGRAM

Mr. GRASSLEY. Mr. President, tomorrow, following morning business, the Senate will resume consideration of the class action bill. The majority leader stated this morning that it is his desire to consider related amendments to the pending class action bill and finish the bill in a reasonable timeframe. It is our hope that progress can be made on the bill during tomorrow's session.

Again, to reiterate, this is a bipartisan bill, and I would encourage Senators to show restraint in offering nonrelevant amendments.

ORDER FOR ADJOURNMENT

Mr. GRASSLEY. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order following the remarks of the Senator from Delaware, Mr. CARPER, for as much time as he may want to Use.

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

The Senator from Delaware.

CLASS ACTION FAIRNESS ACT

Mr. CARPER. Mr. President, over the course of the next several days, a number of unkind things are likely to be said about class action lawsuits, usually by people who do not support this legislation which is before us.

I simply suggest that some of the criticism we are going to hear is merited, but, quite frankly, some of it is not. The legal process that we call class action can be traced back to the old English courts of chancery.

Despite the criticism leveled at class action lawsuits today, these lawsuits frequently have served a public good. They have proven a powerful weapon against unscrupulous or reckless businesses, discouraging those businesses from selling dangerous products or from cheating customers.

Class action lawsuits reduce the likelihood that rogue companies can harm thousands of innocent people, confident in the belief that none of those people could ever afford to hold those companies accountable in court for their misdeeds.

There are many examples over time where the bad guys were caught in the act, where they were taken to court and where they were ordered to pay up.

The film ''Erin Brockovich'' tells a story about one such time. Not long ago I picked up a video at Blockbuster of the film starring Julie Roberts in the title role that some of us may have seen. The film tells the story of how one woman convinced hundreds of people residing in a place called Hinkley, CA, to join in a lawsuit. Together, they sued a utility company that was making people sick by polluting their water supply. Erin Brockovich's leadership won damages of $333 million for the victims of that pollution. That true story is just one example of the good that class action litigation can accomplish.

While I will not take the time this evening to talk about those other examples, let me say there are plenty of them. Unfortunately, though, there are also a growing number of examples that are not as uplifting or not as inspiring as the tale told in ''Erin Brockovich.''

Let me mention several of those, too. Ironically, one of them also involves Blockbuster. That company was sued over its policy of charging customers for overdue rentals. The result was that plaintiffs, of which I may unknowingly have been one, will get two free movie rentals and a dollar-off coupon. Meanwhile, attorneys received more than $9 million in fees and expenses.

Let me also mention Poland Spring. Poland Spring, if you are not aware of it, is a bottled water company. They were sued a couple of years ago in a place called Kane County, IL. Allegedly, the company's water was not pure and did not come from a spring. During the course of litigation, Poland Spring settled. The consumers alleging that they had spent their money on a product they did not actually receive were not compensated. Instead, they were awarded coupons which they could apply toward the purchase of the same Poland Spring water of which they originally weren't happy. The attorneys who negotiated the settlement on their behalf meanwhile were awarded $1.35 million. Poland Spring itself admitted no wrongdoing and has no plans, at least to my knowledge, to change the way they bottle and market their water.

Here is another one: General Mills was sued because an unapproved food additive apparently was used in some oats that were used to make Cheerios. Although I am told there was no evidence of customer injury, a settlement was reached in the class action lawsuit. It provided for $1.75 million in fees for the plaintiffs' attorneys. The plaintiffs? They received a coupon for more Cheerios.

In another class action suit involving Chase Manhattan Bank, plaintiffs' attorneys collected, I am told, over $4 million. The plaintiffs? They could collect 33 cents apiece if they were willing to pony up the money for a postage stamp.

With the next one, I think it may actually get worse. In a different class action lawsuit against the Bank of Boston over escrow accounts, plaintiffs apparently didn't win a dime. In fact, their accounts were debited to help pay attorneys' fees of $8.5 million.

Let me mention just one more. A couple of years ago, Intel was taken into court in I believe Madison County, IL, for asserting that the company's Pentium IV chips were faster than the company's Pentium III chips.

Let me say that I have no idea which chip is faster. I do have a hunch, though, that the Madison County Courthouse probably isn't the best forum in which to make that determination. For that matter, neither were any of the other local courts in which the previous five cases that I have mentioned here were brought.

Don't get me wrong. Class action lawsuits are still being brought for noble purposes that none of us would question for a minute. Last month, in fact, a class of 1.6 million current and former female Wal-Mart employees alleging gender discrimination at that company were certified as a class. Ironically, I believe it was in a Federal court in California.

There is a growing phenomena, however, that is troubling, at least to me and I suspect to other fairminded people, including, I would be willing to bet, a number of plaintiffs' attorneys. We have witnessed the emergence in different parts of America of something called magnet courts. Oftentimes, they are county courts with locally elected judges and a reputation for verdicts that can put the fear of God in companies when cases are filed in one of them. Once a plaintiffs' class is certified in one of those courts, the companies generally realize that their goose is about to be cooked and the work of reaching a settlement begins in earnest.

The attorneys who in many cases assembled the plaintiff class of aggrieved consumers from across the country oftentimes make out pretty well in those settlements. As you might imagine from the examples I have cited above, the people those attorneys represent sometimes do not.

Those who are supporting the legislation before the Senate this evening do so in the belief somebody needs to do something about the growing trend toward forum shopping we are witnessing around the country.

In addition, somebody needs to do so while preserving access to the courts when people are harmed. My colleagues, that somebody is us.

The legislation before the Senate tonight, the Class Action Fairness Act, does not get rid of class action lawsuits. And it should not. For years, they have been an efficient way for small and large groups of consumers who have been harmed or shortchanged by some product or service to pursue legislation against the company, when those consumers lack the wherewithal to pursue justice on their own.

What the legislation now before the Senate seeks to do is ensure class action lawsuits that are national in scope are decided in Federal courts. When the bulk of plaintiffs comes from across America, a decision can have an impact on all or most of the 50 States. Federal judges, not State, not county judges, should hear those cases more often than not.

These issues are not new. They have been the subject of a number of congressional hearings over the years. These issues have been debated and voted on in the relevant committees in both the House and the Senate. These issues have been debated in the U.S. House of Representatives and last year the House approved and sent to the Senate a bill that sought to address the concerns we are raising this evening.

The Senate Judiciary Committee reported out a more balanced bill, I believe, than the one we received from the House last year. That Senate bill was further improved through bipartisan negotiations last fall after efforts to proceed to class action fell one vote short in the Senate.

It will come as no surprise that not everyone likes the measure before the Senate this evening. As is often the case with highly contentious issues,

some would say this bill goes too far. Frankly, there are others who say it does not go far enough. The latter contend, for example, this is not real tort reform. They are right. It is court reform. It attempts to close the gaping loophole in Federal law.

That loophole allows the plaintiffs from one State to be tried in a State or county court of another State on matters that have national implications. That loophole also allows those cases to be heard by judges who are locally elected and whose elections and reelections are supported at least in part by some of the very same plaintiffs' attorneys bringing cases before those judges against out-of-State defendants.

Let me take a moment or two to be clear about what this bill does and does not do. This legislation does not limit the damages that can be awarded in class action lawsuits. It does not eliminate punitive damages. It does not mention joint and several liability. In fact, even if this bill is adopted, a majority of class action lawsuits will still be heard in State courts. For example, cases with fewer than 100 plaintiffs will be heard in State courts. The same holds true for cases involving less than $5 million, as well as for cases where two-thirds or more of the plaintiffs are from the same State as the defendant.

Federal judges would also have the discretion to keep cases in State courts where as few as one-third of the plaintiffs are from the same State as the defendants.

That is not all. This bill includes what we call a local controversy exception. That local controversy exception will leave in State court class actions with multiple defendants as long as one of the primary defendants is local. That provision is intended to ensure State courts can continue to preside over local controversies even though plaintiffs may name an out-of-State defendant, such as a parent company.

This bill is an improvement, at least in my judgment, over the House bill in some other ways, too. The House bill is retroactive. The Senate bill is not. The House bill allows defendants to file appeals of class certifications that would unnecessarily delay a plaintiff's day in court. The Senate bill does not. The House bill allows defendants to have multiple bites out of the apple and continue to appeal decisions by judges to keep cases in State court. The Senate bill does not.

Unlike the House bill, the measure before the Senate allows lead plaintiffs, especially those in civil rights cases, to receive a greater payment that is reflective of the higher and riskier profile they have assumed.

Other provisions have been adopted as well. In settlements where coupons were awarded to plaintiffs, the fees to their attorneys are linked directly under this bill to the coupons that are actually redeemed, not just issued. In addition, Federal judges may direct that the value of unredeemed coupons be donated to charity.

These and other changes have caused several of our colleagues, especially on our side of the aisle, who had previously opposed class action legislation, to support the bill that is before the Senate tonight.

But Members of the legislative branch are not the only ones who apparently have had a change of heart. Back in 1999, the Federal judiciary registered its opposition to a previous version of the Class Action Fairness Act through a letter the judicial conference sent to HENRY HYDE who was then the chairman of the House Judiciary Committee. And why? Largely because Federal judges fear the bill could well flood Federal courts with class action cases that otherwise would be heard in State or in local courts. Today, that view has changed as the legislation has undergone some of the changes we have been talking about this evening.

The Federal judiciary no longer opposes class action reform. I invite my colleagues to read those views for themselves. They are contained in this letter from the Judicial Conference which I hold in my hand.

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

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

JUDICIAL CONFERENCE OF THE UNITED STATES

Washington, DC, April 25, 2003.

Hon. PATRICK J. LEAHY,

Ranking Member, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: Thank you for your letters of April 9, 2003, and April 11, 2003. In those letters, you requested that the Judicial Conference provide the Senate Judiciary Committee with legislative language implementing the Judicial Conference's March 2003 recommendations on class-action litigation and the views of the Conference on S. 274, the ''Class Action Fairness Act of 2003,'' as reported by the Senate Judiciary Committee on April 11, 2003.

As you know, at its March 18, 2003, session, the Judicial Conference adopted the following resolution:

That the Judicial Conference recognize that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the federal courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that the federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the state courts in the handling of in-state class actions. Such exceptions for in-state class actions may appropriately include such factors as whether substantially all members of the class are citizens of a single state, the relationship of the defendants to the forum state, or whether the claims arise from death, personal injury, or physical property damage within the state. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude on state courts or burden federal courts.

S. 274, as reported by the Senate Judiciary Committee, generally provides for federal jurisdiction of a class action based on minimal diversity of citizenship if the matter in controversy exceeds the sum of $5 million, exclusive of interest and costs. (S. 274 as introduced established a $2 million minimum amount in controversy.) The bill also now permits a federal district court, in the interests of justice, to decline to exercise jurisdiction over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed. The court would be required to consider five specified factors when exercising this discretion. (This discretionary provision was not included in the bill as introduced.)

In addition, S. 274 as reported provides that the federal district courts shall not have original jurisdiction over any class action in which: (A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed; (B) the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or (C) the number of members of all proposed plaintiff classes in the aggregate is less than one hundred. As introduced, the second and third exceptions were the same, but the first one originally precluded federal jurisdiction where ''the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed'' and ''the claims asserted therein will be governed primarily by the laws of'' that state. The replacement language in essence substitutes a numerical ratio for ''substantial majority'' and eliminates the choice-of-law requirement.

We are grateful that Congress is working to resolve the serious problems generated by overlapping and competing class actions. The Judicial Conference ''recognizes that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts.'' At the same time, the Judicial Conference does not support the removal of all state law class actions into federal court. Appropriate legislation should ''include sufficient limitations and threshold requirements so that federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed.'' Finding the right balance between these objectives and articulating that balance in legislative language implicate important policy choices.

Any minimal-diversity bill will result in certain cases being litigated in federal court that would not previously have been subject to federal jurisdiction. The effects of this transfer should be assessed in determining the appropriateness of various limitations on the availability of minimal diversity jurisdiction.

Certain kinds of cases would seem to be inherently ''state-court'' cases—cases in which a particular state's interest in the litigation is so substantial that federal court jurisdiction ought not be available. At the same

time, significant multi-state class actions would seem to be appropriate candidates for removal to federal court.

The Judicial Conference's resolution deliberately avoided specific legislative language, out of deference to Congress's judgment and the political process. These issues implicate fundamental interests and relationships that are political in nature and are peculiarly within Congress's province. Notwithstanding this general view, we can, however, confirm that the conference has no objection to proposals: (1) to increase the threshold jurisdictional amount in controversy for federal minimal diversity jurisdiction: (2) to increase the number of all proposed plaintiff class members required for maintenance of a federal minimal-diversity class action; and (3) to confer upon the assigned district judge the discretion to decline to exercise jurisdiction over a minimal-diversity federal class action if whatever criteria imposed by the statute are satisfied. Finally, the Conference continues to encourage Congress to ensure that any legislation that is crafted does not ''unduly intrude on state courts or burden federal courts.''

We thank you for your efforts in this most complex area of jurisdiction and public policy.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

Mr. CARPER. The pages who are still here tonight would agree I may have talked at least long enough for one evening.

As I prepare to wrap up, let me acknowledge that the impact of class action lawsuits on our Nation's business climate may not be as harmful as some of our business interests contend. In some cases, they may actually overstate the harm class actions have done.

Having said that, a balance still needs to be found in today's system that is respectful on the one hand of the right to seek redress for wrongdoing by corporations while preserving a reasonable measure of fairness for business interests, too.

Patti Waldmeir, who writes on legal issues for the Financial Times, summed it up in her column last month with these words:

The class-action lawsuit was meant to be a vehicle for democracy in the U.S., a way to level the playing field between the powerless and powerful by allowing individuals to band together to sue big corporations.

I believe the bill before us does strike the balance that is needed. I am pleased to say that view is reflected on the editorial pages of scores of newspapers across America: from the Chicago Tribune, to the St. Louis Post Dispatch, the Des Moines Register, the Christian Science Monitor, the Buffalo News, the Baltimore Sun, the Hartford Courant, Newsday, the Omaha World-Herald, the Oregonian, the Orlando Sentinel, the Providence Journal, the Santa Fe New Mexican, and, yes, even the Washington Post.

Let me conclude my remarks this evening with these words from the editorial pages of the Washington Post in endorsing the Class Action Fairness Act. These are their words:

It would ensure that cases with implications for national policies get decided by a court system accountable to the whole country. This is not, as opponents have cast it, an attack on the right to sue or a liability shield for corporate wrongdoing. It is a modest step to rein in a system that too often simply taxes corporations—irrespective of whether they have done anything wrong—and uses that money to pay lawyers who provided no services to anyone. Such a system does not deserve the Senate's protection for yet another Congress.

Their words, not mine. But to those words let me simply add: Amen.

With that, Mr. President, I yield back my time.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow morning.

Thereupon, the Senate, at 7:38 p.m., adjourned until Wednesday, July 7, 2004, at 9:30 a.m.

NOMINATIONS

Executive nomination received by the Senate July 6, 2004:

THE JUDICIARY

KEITH STARRETT, OF MISSISSIPPI, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, VICE CHARLES W. PICKERING, SR., RESIGNED.

CONFIRMATION

Executive nomination confirmed by the Senate July 6, 2004:

THE JUDICIARY

J. LEON HOLMES, OF ARKANSAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS.